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Eaverly Logan *elc*  
Clerk Superior Court, Athens-Clarke County, Ga.  
Bk 04679 Pg 0291-0326  
Penalty:

STATE OF GEORGIA,  
COUNTY OF ATHENS-CLARKE.

RETURN TO: JAMES C. WARNES  
244 E. WASHINGTON STREET  
ATHENS, GEORGIA 30603

**DECLARATION OF RESTRICTIVE COVENANTS FOR DISCOVERY TRAIL**

**SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS made and published this 1<sup>ST</sup> day of DECEMBER, 2017, by Scout Construction, LLC, a Georgia limited liability company, hereinafter referred to as Declarant.

**WITNESSETH:**

THAT WHEREAS, the undersigned is the owner of the property described in Exhibit A, attached hereto and incorporated herein, to be known as DISCOVERY TRAIL SUBDIVISION shown on a Plat entitled "FINAL PLAT FOR DISCOVERY TRAIL", dated August 17, 2017, prepared by Jon G. Stubblefield, Registered Land Surveyor, Development Planning & Engineering, Inc., (the "Plat") and recorded in the office of the Clerk of the Superior Court of Athens-Clarke County, Georgia, in Plat Book H, pages 378, and incorporated herein by reference thereto; and

WHEREAS, it is to the benefit and advantage of Declarant and of each and every Person who hereafter purchases any numbered lot in DISCOVERY TRAIL SUBDIVISION, to have Protective Covenants governing and regulating the use and occupancy of the same, which covenants are declared to be covenants running with the land;

NOW, THEREFORE, for and in consideration of the premises and of the benefits to be derived by Declarant and each and every subsequent owner of any of the numbered lots in DISCOVERY TRAIL SUBDIVISION, Declarant does hereby establish, promulgate, and declare the following restrictive covenants to apply to, and only to, each and every numbered lot in DISCOVERY TRAIL SUBDIVISION, the Open Spaces, and the Storm Water Management Areas as delineated on the Plat, and to all Persons owning these lots, or any of them hereafter. These Restrictive Covenants shall become effective immediately and run with the land and shall be binding upon all Persons owning or having an interest in any such numbered lot (hereinafter "Lot") in DISCOVERY TRAIL SUBDIVISION. The rights reserved to Declarant under this Article shall terminate upon the earlier of (a) 7 years from the date this Declaration is filed in the Public Records, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

1. **DEFINITIONS.**

- A. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee initially comprised of N. Judson Shiver, and such other individuals as

Declarant may appoint, and thereafter such Persons appointed by the Board of Directors.

- B. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be hereinafter amended.
- C. "Association" shall mean and refer to the Discovery Trail Homeowners Association, Inc., a non-profit Georgia corporation, its successors and assigns.
- D. "Board of Directors" shall mean the Board of Directors of the Association, the members of which shall be elected from time to time as provided in this Declaration, the Articles of Incorporation, and the By-Laws. The Board of Directors shall be the governing body of the Association.
- E. "By-Laws" shall mean the By-Laws of the Association, as the same may be hereinafter amended.
- F. "Common Area" shall mean all real property submitted to the Declaration which is owned, leased by, used by, or for the benefit of the Association for common use and enjoyment of the members, including the Open Areas, green space, drainage easements, Storm Water Management Areas, and undisturbed buffers.
- G. "Common Expenses" shall mean all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of the Declaration.
- H. "Declarant" shall mean Scout Construction, LLC, a Georgia limited liability company.

- I. "Declaration" shall mean this recordable instrument creating covenants upon property, which covenants are administered by a property owners' Association in which membership is mandatory for all owners of lots in the subdivision.
- J. "Lot" shall mean any numbered lot which constitutes a single family dwelling site designated on the Plat.
- K. "Lot Owner" or "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot excluding, however, any Scout Construction, LLC, any builder owning a lot for the purpose of constructing a single family residence thereon for sale to a third party, or a Person holding such interest merely as security for the performance or satisfaction of any obligation.
- L. "Mortgage" shall mean any Mortgage, deed to secure debt, security deed, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.
- M. "Open Space Areas" shall mean Open Space Areas #1, #2, #3, and #4 as the same are shown and delineated on the Plat.
- N. "Person" shall mean any natural Person, as well as a corporation, joint venture, partnership (general or limited), Association, trust, or other legal entity.
- O. "Private Access Drives" shall mean the private access drives shown and delineated on the Plat which serve Lots B6 through B10 and Lots C1 through C10.
- P. "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein, which includes the entirety of DISCOVERY TRAIL SUBDIVISION.

2. **LAND USE AND BUILDING TYPE.** No Lot in DISCOVERY TRAIL SUBDIVISION shall be used for any purpose except a single-family residence. The Open Spaces, some of which incorporate the Storm Water Management Areas are not considered lots. Provided, however, in the event a single family residence is maintained as a model home for the purpose of marketing single family residences for sale on the subject property, such model home shall be a permitted use. No building shall be erected, altered, placed, or permitted to remain on any numbered Lot other than one (1) detached single family dwelling, constructed and maintained for the use and occupancy of a single family and private garage for not more than two (2) cars, and other outbuildings customarily used in connection with and incidental to a singlefamily dwelling.
3. **ARCHITECTURAL CONTROL.** No building, fence, wall or other structure or improvement shall be erected, placed, or altered on any Lot until the construction plans and specifications and a site plan showing location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, as to harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be as provided in Paragraph 18.B. below.
- A. No person other than the Declarant, a Lot Owner, or the Association shall:
- (i) construct, place or install any structures or other improvements on a Lot or alter the exterior of any existing structures or improvements;
  - (ii) plant, install, or remove any trees, shrubs, or other landscaping materials within or make any encroachment onto the Common Area;
- B. This Article shall not apply to:

- (i) improvements, renovations, or alterations within the interior of any dwelling, provided they are not visible from outside of the structure and do not conflict with this Declaration or impair the structural integrity of any portion of the structure;
- (ii) repairs, maintenance, or rebuilding of existing structures in accordance with original plans and specifications; and
- (iii) the Declarant's activities;

4. **DWELLING QUALITY AND SIZE.**

- A. Each Lot shall be occupied by one dwelling, each of which must contain a minimum of one thousand five hundred (1,500) square feet of heated interior space.
- B. Each residence and other structures shall be constructed only of materials approved in writing by the Architectural Control Committee with the exterior of the residences being brick, rock, and hardy plank siding with wood accents. No vinyl siding shall be used in the development, but vinyl may be used for eaves, soffits or roof trim.

5. **FENCES.** No fences shall be allowed in front or side yards beyond the rear line of the house extended to the side boundaries of the Lot. The only types of fences allowed are six foot (6') wooden privacy or wrought iron fence or four foot (4') chain link fences of dark green or black. No silver or aluminum colored chain link fences are allowed. Nothing in this paragraph 5 shall prohibit a decorative picket fence on the front of a lot used to border a planting bed or other architectural accent.

6. **EASEMENTS.**

A. **Cross-Drainage Easements.** Each Lot shall be burdened with a perpetual, non-exclusive easement over that portion of the Lot which is not improved with structures, for the purpose of drainage of storm water runoff from any portion of the subdivision; however, no Person shall alter the natural drainage of storm water from any Lot once construction of initial improvements has been completed so as to unreasonably increase the drainage of storm water onto adjacent portions of the subdivision without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any property subject to the Declaration.

B. **Easements for Utilities.** Easements are reserved throughout the Property (but not through a structure) as shown on the Plat for the purposes of:

(a) installing utilities, infrastructure, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkaways, irrigation systems, drainage systems, street lights, and signage; and

(b) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements;

C. **Easements for Maintenance, Emergency, and Enforcement.** Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Lot (but not to the interior of a dwelling located on such Lot) for emergency, security, and safety reasons and to inspect for the purpose of ensuring compliance with and enforce the provision of this Declaration. Such right may be exercised by any member of the Board and its duly authorized

agents and assignees, and all emergency personnel in the performance of their duties.

Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

**D. Easement to Inspect and Right to Correct.** Declarant reserves for itself and others it may designate the right to inspect, monitor, test, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a perpetual nonexclusive easement of access throughout the Subdivision to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Lot shall be only after a reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this right to inspect and correct shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**E. Storm Water Management Area Easements.** The Association shall own the Storm Water Management facilities consisting of Pond #1, STP-01-1; Pond # 2, STP-03-1; and Pond #3, STP-04-01, subject to the easement granted to the Unified Government of Athens-Clarke County, Georgia. The 20' access easements for Pond # 2, STP-03-1; and Pond #3, STP-04-01, as shown on the Plat shall run in favor of the Association and the Unified Government of Athens-Clarke County, Georgia.

7. **NUISANCES.** No noxious or offensive activity shall be permitted on any Lot, or amenity area, nor shall anything be done thereon, which may be or become an annoyance or nuisance to the neighborhood. Animals, such as unrestrained barking dogs, that make an undue amount of noise shall be considered a nuisance.

8. **ABOVE GROUND STORAGE TANKS.** No exposed above ground storage tanks will be permitted on any Lot.
9. **SIGNS.** No sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than two feet by three feet (2' x 3') and not more than four feet (4') tall advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction period.
10. **LIVESTOCK AND POULTRY.** No livestock of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, other household pets, and chickens as permitted by local ordinance may be kept, provided they are not kept, bred, or maintained for any commercial purposes. Pets should be restrained from undue barking or cause of any nuisance to other homeowners. Dogs and chickens must be kept inside a building on a Lot or in fenced enclosures.
11. **GARBAGE AND REFUSE DISPOSAL.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or waste. All incinerators or other equipment for the storage or disposal of such material are prohibited. Trash cans will be placed behind front corners of house other than the day of pick up and are allowed curb side for pick-up for no more than twenty-four (24) hours on the day of pick-up.
12. **CARS, BOATS, CAMPERS, AND MOTOR HOMES.** The parking on the street or in a driveway of any boats, campers, motor homes, or service or other commercial trucks driven by a Lot Owner or his guests is prohibited. Other motor vehicles must be kept in garages or parked on the driveway. Guests may park a passenger vehicle on the street. No vehicle should be left unattended on the side of the street for more than twelve (12) hour periods. On-street parking is not for permanent parking. Vehicles left longer than twelve (12)

hours may be towed at owner's expense. No on street parking is permitted which would prevent or obstruct the free passage of fire trucks, ambulances, or other emergency vehicles. Service or commercial trucks are allowed in Discovery Trail Subdivision for the purpose of providing service, making repairs, or making deliveries in the ordinary course of the business of the owner or operator of such vehicle.

13. **USE AND CONDUCT.**

A. **Framework for Regulation.** Once control of the Association is turned over to the lot owners, the Association shall have the authority to adopt and enforce Restrictions and Rules governing use, conduct, and activities within the Open Space Areas set forth on the Plat. This Article establishes procedures for adopting rules which interpret, expand, modify, or repeal the Restrictions and Rules in order to respond to unforeseen circumstances and changes in conditions, needs, desires, trends, and technology which inevitably will affect the Subdivision.

B. **Rule Making Authority and Procedures.**

- (i) Subject to the terms of this Article, the Owners may adopt rules applicable to the Open Space Areas upon the approval of a majority of the total votes in the Association.
- (i) Nothing in this Article shall authorize the Board or the Owners to modify, repeal, or expand the Architectural Guidelines. In the event of any inconsistency between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.
- (ii) **Notice to Owners.** No rulemaking action shall be taken unless and until a meeting of the Board or the membership of the Association has been called to

consider and discuss the proposed action. The notice of any meeting at which proposed rulemaking action is to be considered shall state that fact. Members shall have a reasonable opportunity to be heard at such meeting prior to any vote being taken on the proposed action. At least 10 days prior to the effective date of any rulemaking action approved under this Section, the Board shall send a notice to each Owner describing the action and its effective date.

(iii) **Owner's Acknowledgment.** All Owners and occupants of dwellings are given notice that use of the Open Area is limited by the Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract for sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected and that the Restrictions and Rules may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

14. **PLAY EQUIPMENT.** Play equipment shall be placed no closer to the street than the rear line of the house extended to the side boundaries of the Lot.
15. **SIGHT DISTANCE AT INTERSECTION.** No fence, wall, hedge, or shrub planting which obstructs sight-lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line

limitations shall apply on any Lot which is within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight-lines.

16. **HOLIDAY DECORATIONS.** There shall be no permanent seasonal decorations (e.g. Christmas) allowed on any Lot. All such holiday decorations and lighting must be removed no later than thirty (30) days after the holiday for which they were displayed.
17. **DETACHED BUILDINGS.** Except as provided herein, no outbuildings, except for detached two car garages, may be built on any Lot. No freestanding carports or shelter shall be allowed on any Lot. A Lot containing a swimming pool may have a free standing pool house or cabana, which must be approved in writing by the Architectural Control Committee prior to its construction.
18. **ARCHITECTURAL CONTROL COMMITTEE.** So long as Declarant, or any other entity in which N. Judson Shiver is the principal, owns any property described in Exhibit "A" to this Declaration, Declarant shall have the exclusive authority to review and act upon all applications for approval and to exercise all authority of the "Reviewer" under this Article. Thereafter, such authority shall be exercised by the Architectural Control Committee.
  - A. **Membership.** After the Declarant and any other entity in which N. Judson Shiver is the principal sells its last Lot in the subdivision, the Architectural Control Committee shall be composed of three to five persons appointed by the Board, the members of which shall serve and may be removed and replaced at the Board's discretion. The Committee may designate a representative to act for it. Neither the members of the

Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. (For purposes of this Article, the "Reviewer" shall refer to Declarant or the ARC, as appropriate under the circumstances.)

The Architectural Control Committee shall have the right to grant variances to these Covenants provided that the variance is in writing and signed by a majority of the Architectural Control Committee. Variance may not be granted for anything required by Athens-Clarke County Ordinances or state law.

**B. Guidelines and Procedures.**

- (i) **Architectural Guidelines.** Declarant or the Board may prepare Architectural Guidelines for the Subdivision to provide guidance in submitting applications and to establish minimum standards for certain types of modifications to structures located on a Lot. Copies of the Architectural Guidelines shall be made available to any owner upon request. Any such Architectural Guidelines are intended to provide guidance regarding matters of particular concern in considering applications for architectural approval, but shall not be the exclusive basis for decisions of the Reviewer. Compliance with the Architectural Guidelines does not guarantee approval of any application.

All Work shall be conducted in strict compliance with any applicable Architectural Guidelines in effect at the time the application for such Work is approved, unless the Reviewer has granted a variance in writing. So long as the Reviewer has acted in good faith, his findings and conclusions with respect to acceptability or appropriateness of proposed Work, and applicability of or

compliance with the Architectural Guidelines and this Declaration, shall be final. The Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it has jurisdiction over architectural matters. Thereafter, the Architectural Control Committee shall have the authority to amend the Architectural Guidelines. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitations on the scope of amendments to the Architectural Guidelines; amendments may eliminate requirements previously imposed or otherwise make the Architectural Guidelines more or less restrictive.

- (ii) **Procedures.** An application for approval of any proposed Work shall be in the form required by the Reviewer and shall include plans and specifications (“Plans”) in such detail as the Reviewer reasonably deems appropriate to evaluate such matters as the location, size, materials, manner of construction or installation, and other features of the proposed Work which the Reviewer deems relevant. The Reviewer may require the submission of such additional information as it deems necessary to consider any application. The Reviewer may refuse to consider any application if the Reviewer determines, in its reasonable discretion, that the Plans are not sufficiently legible, precise, or detailed or are otherwise insufficient in any respect.

In reviewing each submission, the Reviewer may consider (but shall not be limited to consideration of) quality of workmanship and design and

compliance with the general intent of the Architectural Guidelines and the general scheme of development for the Subdivision.

Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the Reviewer and members of the Architectural Control Committee change over time. State law prohibits the decisions of the Reviewer from being arbitrary and capricious.

The Reviewer shall, within 30 days after receipt of each complete application or other required submission, advise the applicant, in writing at an address specified in the application, of: (i) the approval of Plans, or (ii) the disapproval of Plans, specifying the features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Reviewer fails to so advise the applicant by written notice within such 30-day period, the applicant may give the reviewer written notice of such failure to respond. If the Reviewer has still not responded within 10 days after the receipt of such notice, approval shall be deemed granted. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a variance has been granted in writing.

Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested.

Personal delivery of such written notice, shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event any person fails to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Lot Owner and any opportunity to be heard as provided for in the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment.

**C. Design Requirements.**

- (i) All Lots shall be improved with a four foot wide concrete sidewalk the full length of the right of way from lot line to lot line adjacent to the right of way.
- (ii) All driveways shall be concrete.
- (iii) All front yards shall be sodded.
- (iv) All dwellings shall have a two-car garage with garage doors.
- (v) All mailboxes shall be consistent and in conformance with the design approved by the Declarant and consistent with the mailboxes throughout the Subdivision. A Builders shall install a mailbox for each Lot on which it constructs a single-family residence.
- (vi) Once construction begins on any Lot, the approved structure for that Lot shall be completed within one year.

(vii) Builders shall be responsible for implementing and maintaining conformance with County and State soil erosion ordinances.

(viii) Builders shall be required to maintain cleanliness of building sites, removing all debris and construction materials after completion of each stage of construction. Builders shall be required to remove transported soils from street gutters, and catch basins abutting a developed Lot. Owners are responsible for damage to streets, curbs, gutters, common sidewalks, and entry features from any of the Owner's employees, sub-contractors, or vendors.

(ix) No driveway shall be constructed to provide direct access on a road outside the Subdivision.

19. **RIGHT OF ENJOYMENT.** Every Owner shall have a right and easement to use and enjoy the Open Area in accordance with these Restrictions and subject to the rules and regulations which may be adopted by the Association, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Open Area by all other Owners. Except for the right to use the streets and the easement for drainage and storm water detention which may not be interfered with, the right and easement of enjoyment granted or permitted by this section to any Owner is subject to suspension by the Association as provided herein.

20. **DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS TO THE COMMON AREA.** Repair, reconstruction, or rebuilding of improvements located in the Common Area following damage or destruction to all or any such improvements shall be governed by the following provisions:

- A. Estimates of the cost of repair. As soon as practicable following the occurrence of any damage to, or destruction of, any portion of the Common Property, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such improvements so damaged or destroyed to substantially the same condition as such improvement was in prior to the occurrence of such damage and destruction and shall proceed with the filing and adjustment of all claims arising under insurance maintained by the Association as a result of such damage or destruction.
- B. Determination to Repair, Reconstruct, or Rebuild. Any damage to, or destruction of, the such improvements will be repaired, reconstructed, or rebuilt within forty-five (45) days after the occurrence of the damage or destruction.
- C. Manner of Repair, Reconstruction, or Rebuilding. All repairs, reconstruction, or rebuilding to be made as a result of damage by fire or other casualty shall be made in accordance with the following provisions:
- (i) The damage shall be repaired, reconstructed, or rebuilt substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of the damage.
  - (ii.) All the work or repairing, reconstructing or rebuilding any portion of the improvements, the damage to or destruction of which are paid by insurance benefits, shall be performed under the supervision of the Board of Directors which, in discharging such supervisory responsibility, shall be authorized to employ such architects, engineers, and contractors as the Board of Directors shall deem to be in the best interest of the Association.

D. Cost of Repairs, Reconstruction, or Rebuilding. The cost of repairing, reconstructing, or rebuilding any improvements to the Common Area which has been damaged or destroyed shall be paid with insurance proceeds paid to the Association on account of such damage or destruction. If such insurance proceeds are not sufficient to defray such cost of repair, reconstruction or rebuilding, then the Board of Directors may levy a special assessment against all of the Lot Owners to raise the excess funds necessary to defray such cost.

21. **HOMEOWNERS ASSOCIATION.** DISCOVERY TRAIL HOMEOWNERS ASSOCIATION, INC., (the "Association") is a Georgia not for profit corporation. The provisions of this Article are to be amplified by the Articles of Incorporation and By-Laws of the Association provided, however, no such amplification shall substantially alter or amend any of the rights or obligations of the Lot Owners as set forth herein. In the event of any conflict or inconsistencies among this Declaration, the Articles of Incorporation, or the By-Laws of the Association, this Declaration, the Articles of Incorporation, and the By-Laws, in that order, shall prevail.

A. **Membership.** Every Owner shall be a member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners of a Lot shall be jointly obligated to perform the responsibilities of the Lot Owner, and any one co-Owner may be held fully responsible for all such obligations. The membership rights of an Owner which is a corporation, partnership, trust or other entity may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

- A. **COMMON AREA PROPERTY AND CONTROL OF THE ASSOCIATION.** Certain parcels have been delineated on the Plat as Open Areas. The Open Area shall be conveyed to the Association. Declarant shall control the Association until such time as thirty (30) residences have been sold to Owners other than builders who are building houses for sale to owners, at which time control of the Association, but not the Architectural Control Committee, shall be delivered to the Lot Owners.
- B. **Control of Common Area.** The Association, acting through its Board, may acquire, hold, and dispose of real property (i.e., land and improvements to the land and interests in land), subject to the limitations set forth in this Declaration. Any such property shall be Common Area during such period as it is held by the Association and shall cease to be the Common Area upon transfer or conveyance of the Association's interest in the property. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for management, operation, and control of the Common Area.
- C. **Common Area Maintenance.** The storm water drainage facilities shall be inspected by the Board of Directors or at its behest no less often than annually. The budget of the Association shall include a line item for regular maintenance of the entrance signs, landscaping, vegetative control, and repair and maintenance of the storm water drainage facilities. The budget of the Association shall also include a line item for capital reserves. The portion of the annual assessment paid by each lot owner attributable to capital reserve shall be paid into a separate capital reserve account maintained by the Association. Funds in the capital reserve account shall be used for repair and maintenance of the of the storm water drainage areas. In the event there

are not sufficient funds in the capital reserve to pay for required and necessary repairs to the storm water drainage, the Board of Directors shall be authorized to levy a Special Assessment to provide the funds to make the needed repairs.

**D. Easement in Common Area.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to Open Spaces, subject to:

- (i) the Governing Documents, any other applicable covenants, and any other instrument affecting title to the property;
- (ii) any restrictions or limitations contained in any deed or other document conveying an interest in such property to the Association;
- (iii) the right of the Board and the Membership to adopt, amend, and repeal rules regulating the use and enjoyment of Open Spaces;
- (iv) the right of the Association, acting through the Board, to dedicate, transfer, or grant easements over all or any part of the Common Area, subject to such approval requirements as may be set forth elsewhere in this Declaration, except that any transfer or encumbrance of Common Area shall be subject to an easement over such Common Area for Access to all Lots saved thereby; and
- (v) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all its real property as security for money borrowed or debts incurred.

**E. Assignment of Rights to Use Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, occupants of the Owner's Lot under any lease and guests, subject to reasonable regulation by the Board. The owner of a Lot which is rented shall be deemed to have assigned to the

tenant all of such Owner's rights to use facilities on the Common Area for the term of the lease.

F. **Street Maintenance.** The Private Access Drives shall be inspected by the Board of Directors or at its behest no less often than annually. The budget of the Association shall also include a separate line item for capital reserves for the Private Access Drives. The capital reserve for the Private Access Drives shall only be collected from those Owners whose Lots are served by the Private Access Drives. The amount of the capital reserve paid by each Lot Owner served by a Private Access Drive shall be paid into a separate capital reserve account maintained by the Association. Funds in the capital reserve account for Private Access Drives shall only be used for repair and maintenance of the Private Access Drives. In the event there are not sufficient funds in the capital reserve to pay for required and necessary repairs to the Private Access Drives, the Board of Directors shall be authorized to levy a Special Assessment against such Lot Owners to provide the funds to make the needed repairs.

22. **ASSESSMENTS.** Assessments against the Lot Owners shall be made to raise funds to pay the Common Expenses of the Property, and contribute a pro rata share of the maintenance of the Common Areas of DISCOVERY TRAIL SUBDIVISION and shall be governed by the following provisions:

A. **Liability.** Each Lot Owner shall be liable to the Association for all sums as are lawfully assessed by the Association against him/her or his/her Lot or Lots in accordance with the terms and provisions of this Declaration and Articles of Incorporation and By-Laws. In addition to exercising the remedies provided for herein, the Association may enforce such liability by an action at law to recover all

amounts assessed against each Lot owner in accordance with the provisions of this Declaration. Each Lot Owner shall also be liable to the Association for such monetary damages as the Association or its members may suffer or incur as a result of a Lot Owner's violation of or refusal to comply with these covenants.

- B. Creation of the Lien and Personal Obligation for Assessment.** Each owner of any Lot by acceptance of a deed or other conveyance thereof, whether or not so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association any assessment which shall be fixed, established, and collected as herein provided; however, nothing contained herein shall be construed to obligate Declarant to pay assessments on Lots prior to the sale of Lots to third parties.
- C. Uniform Rate of Assessment.** All annual assessments shall be fixed at a uniform rate for all Lots. The annual assessments which will begin for calendar year 2018, and shall be prorated for the remaining portion of the year in which the purchase takes place. An Initial Assessment of One Hundred and No/100 Dollars (\$100.00). shall be paid by a homeowner to the Association at the closing of the purchase of the Lot from Declarant or from the builder of the house on the Lot. Each Lot Owner who purchases a dwelling from Declarant or from the builder shall pay an initial capital contribution of Fifty and no/100 Dollars (\$50.00) to the Association for the creation of the reserve fund for the repair of the Storm Water Management Areas. Additionally, each Lot Owner who purchases a dwelling from Declarant or from the builder on a Lot served by a Private Access Drive shall pay an initial capital contribution of Fifty and no/100 Dollars (\$50.00) to the Association for the creation of the reserve fund for the repair of the Private

Access Drives. Subsequent purchasers of a Lot shall not be required to pay any of the three Initial Assessments.

- D. Persons owning Lots upon which a dwelling has not been constructed shall not be liable for assessments until a dwelling is built on the lot and sold to a third party. Each Lot Owner shall pay 1/34 of such budget to the Association. This annual assessment shall be paid in advance no later than January 15 of each calendar year.
- E. **Purpose.** Assessments shall be levied against the Lot Owners and the Lots to defray the Common Expenses of the Association. The Common Expenses shall be all of the expenditures which are made or incurred by or on behalf of the Association in connection with the exercise of its powers and responsibilities, and shall include, but not be limited to, the following:
- (i) All expenses related to the maintenance and repair of the entrance sign and landscaping, the Common Areas, and the Storm Water Management Areas;
  - (ii) Premiums for all insurance policies maintained by the Association;
  - (iii) The expenses of performing the maintenance, repair, renovation, restoration, and replacement work which is the responsibility of the Association hereunder;
  - (iv) The Association is responsible for the upkeep and maintenance of all Common Areas, including, but not limited to, grass cutting, tree pruning, storm water maintenance, decorative entrance, and taxes; and
  - (vi) Such other costs and expenses as may be determined from time to time by the Board of Directors to be Common Expenses.

- F. **Special Assessments.** If for any reason, including nonpayment of any Lot Owner's assessments, an annual budget adopted by the Board of Directors for any fiscal year proves inadequate to defray the Common Expenses for such fiscal year, the Board of Directors may, at any time, levy a special assessment to raise the additional funds necessary to defray such Common Expenses, which special assessment shall be due and payable at such time and in such installments as the Board of Directors shall determine. Additionally, the Board of Directors shall be authorized to levy special assessments under the circumstances described in this Declaration.
- G. **Special Assessments for Capital Improvements.** In addition to the assessments which shall be levied against the Lot Owners, the Board of Directors shall be authorized, upon the affirmative vote of two-thirds (2/3) of the Lot Owners entitled to cast votes, to levy a special assessment to defray, in whole or in part, the costs of making repairs or replacements which are not provided for in the then current budget of the Association. Any such special assessment for the capital improvements and repairs shall be payable at such time and in such installments as the Board of Directors may determine.
- H. **Collection.** In addition to all other remedies provided by law, the Association may enforce collection of the assessments for which a Lot Owner is liable, together with all other amounts as may be owed by such Lot Owner to the Association, as herein provided.
- (i) In the event that any Lot Owner shall fail to pay any installment of any assessment levied against him/her within ten (10) days after such installment shall be due and payable, such owner shall pay, in addition to the amounts so due the Association:

- (ii) A late charge equal to Ten Dollars (\$10.00) or Ten Percent (10%) of the amount so due, whichever is greater;
- (iii) Interest on the amount so due, including the late charge, from the date same became due and payable, at the rate of Ten Percent (10%) per annum, until paid;
- (iv) The cost of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the Lot, and reasonable attorney fees actually incurred; and
- (v) In the event the Association shall seek to foreclose its lien on the Lot of such owner, the fair rental value of the Lot from the time of the institution of suit until sale of the Lot at foreclosure (or until the judgment rendered in such suit is otherwise satisfied).
- (vi) All sums lawfully assessed by the Association against any Lot Owner, whether for the share of the Common Expenses pertaining to that Lot, fines, or otherwise, and all reasonable charges made to any Lot Owner or Lot for material furnished or services rendered by the Association at the owner's request to or on behalf of the Lot Owner or Lot, shall, from the time the sums become due and payable, be the personal obligation of the Lot Owner and constitute a lien in favor of the Association on the Lot prior and superior to all other liens whatsoever except:
  - (a) Liens for ad valorem taxes on the Lot;
  - (b) The lien of any first priority Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of the Declaration; or

(c) The lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of the Mortgage is the seller of the Lot.

(vii) **Suspension of Privileges.** The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Area of any Person who:

- (i) Shall be subject to the right of abatement, as defined below, for failing to take reasonable steps to remedy a violation or breach of the restrictions within thirty (30) days after having received notice of same as set forth below.
- (ii) Shall be delinquent in the payment of any assessment by the Association provided for herein; or
- (iii) Shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property.

Right of Abatement. In the event of a violation or breach of any restriction contained in this Declaration the Association shall give written notice by certified mail to the Lot Owner setting forth in reasonable detail the nature of such violation or breach and Actions needed to be taken to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all Mortgagees having a security interest in the owner's Lot or Lots that such Lot Owner is in default in the performance of their obligations under these Covenants, and of those actions taken or proposed to be taken by the Association as a result of the default. The Right of Abatement, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any

Lot on which a violation, breach or other condition to be remedied exists, and to take the Actions specified in the notice to the Lot Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this section, and with the cost thereof, together with interest thereon at the lower of the highest rate permitted by law, or 10% , to be a binding personal obligation of such Lot Owner enforceable in law, as well as a lien on such Owner's Lot.

- 23. INSURANCE.** The Association shall obtain and maintain hazard insurance for all improvements on the Common Area and a comprehensive policy of public liability insurance covering all of the Common Areas. Such liability insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners. Such liability insurance policy shall cover the Association, the Board of Directors, the officers of the Association, all agents and employees of the Association, and all Lot owners and other Persons entitled to occupy any Lot or other portion of the Property, shall be for at least Five Hundred Thousand Dollars (\$500,000.00) for injury including death to a single Person; One Million Dollars (\$1,000,000.00) for injury or injuries, including death, arising out of a single occurrence; and Fifty Thousand Dollars (\$50,000.00) for property damages, with a cross-liability endorsement to cover the Lot Owners as a group and shall include protection for damage to the property of others.
- 23. STORM WATER MANAGEMENT AREAS.** The Association and all Lot Owners shall have an easement and an obligation to maintain the Storm Water Management Areas as

required by the Stormwater Management Facility Inspection & Maintenance Agreement recorded in Deed Book \_\_\_\_, page \_\_\_\_, Athens-Clarke County Public Records, and the laws, ordinances, and regulations of Athens-Clarke County and the State of Georgia, including the maintenance of liability insurance on these facilities as provided herein. An easement is hereby granted to the Unified Government of Athens-Clarke County, Georgia, to inspect and to maintain and repair such storm water management facilities should the same not be maintained and kept in good repair by the Association. Should the Unified Government of Athens-Clarke County, Georgia, be required to make such repairs or to perform maintenance on the storm water detention facility, it may recover the cost of such repairs from the Association and the Lot Owners.

24. **Terms.** These covenants are to run with the land and shall be binding on all parties and all Persons under them for twenty (20) years and shall be automatically renewed for successive twenty (20) year periods.
25. **DISSOLUTION OF CORPORATION.** In the event of the dissolution of the Association, the assets thereof shall be distributed to the members at the time of such dissolution or conveyed to one or more non-profit organizations having purposes similar to those of the Association.
26. **SPECIFIC PERFORMANCE.** Nothing contained in this Declaration shall affect or limit the rights of the Declarant, the Association or any Lot Owner to enforce the restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore,

any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity.

27. **ENFORCEMENT.** Enforcement shall be by proceedings of law or in equity against any Person or Persons violating or attempting to violate any covenant either to restrain violation or to recover damages, or both as may be applicable depending upon the nature of the violation.

28. **DISPUTE RESOLUTION.**

**A. Dispute Resolution Procedures.**

(i) **Notice.** The Party asserting a Claim (“Claimant”) against another Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and the Respondent’s role in the claim;

(b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the Claimant’s proposed resolution or remedy; and

(d) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(ii) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

- (iii) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described, the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Oconee County or Athens-Clarke County, Georgia.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

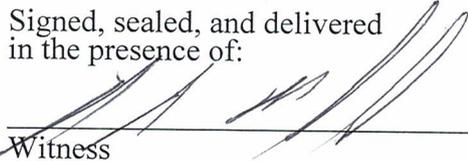
Each Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator.

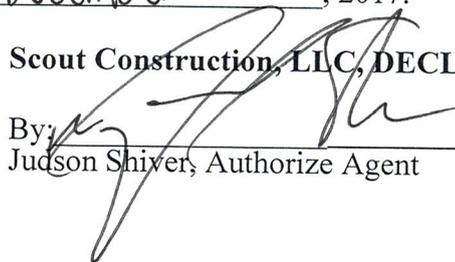
- (iv) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be

entitled to recover from the non-complying (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including without limitation, attorneys' fees and court costs.

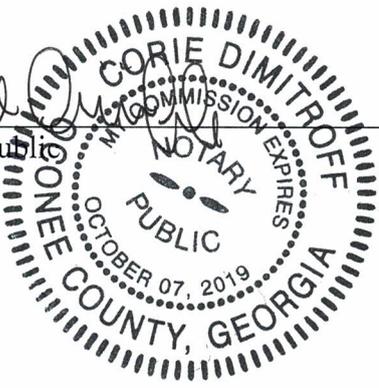
- 29. **INITIATION OF LITIGATION BY ASSOCIATION.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 60% of the total persons voting at a duly called meeting of the Association, except that no such approval shall be required for actions or proceedings:
  - A. initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;
  - B. initiated to challenge ad valorem taxation or condemnation proceedings;
  - C. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
  - D. to defend Claims filed against the Association or to assert counterclaims in proceedings instituted against it.
  
- 30. **SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument under seal effective the 1st day of December, 2017.

Signed, sealed, and delivered in the presence of:  
  
\_\_\_\_\_  
Witness

**Scout Construction, LLC, DECLARANT**  
By:   
\_\_\_\_\_  
Judson Shiver, Authorize Agent (Seal)

*Corie Dimitroff*  
Notary Public



## Exhibit A

## LEGAL DESCRIPTION

All that tract or parcel of land lying and being in the 218<sup>th</sup> GMD of Athens-Clarke County, Georgia and being designated as Tract 2, containing 10.016 acres, and Tract 3, containing 28.635 acres, according to that Plat of Survey prepared for Dr. William L. Williams, prepared by Ben McLeroy and Associates, Inc. dated March 13, 1992, and recorded in Plat Book G, Page 26F, Athens-Clarke County, Georgia Records, which plat is incorporated herein and made a part hereof by reference thereto for a more complete and detailed description of the property conveyed herein.

## Exhibit B

**RULES FOR DISCOVERY TRAIL III SUBDIVISION**

1. There shall be no dogs of breeds deemed aggressive as determined by the Insurance Information Institute including but not limited to:
  - a. Akita
  - b. Alaska Malamute
  - c. Pit Bull
  - d. Rottweiler
  - e. German Shepherd
  - f. Siberian Husky and Husky mixes
  - g. Doberman Pinscher
  - h. Chow Chow
  - i. Presa Canario
  - j. Staffordshire Bull Terrier
  - k. Wolf Mixes
  - l. Great Danes
  - m. St. Bernard
2. There shall be minimum noise in the common areas between the hours of 10:00PM and 8:00AM.
3. Residents are required to use the sanitation company contracted by the HOA for removal of trash and recycling bins. All trash and recycling bins are to be removed from the curb no later than 24 hours after service.
4. Garage doors shall be closed during the nighttime hours.
5. Toys and recreational equipment may not remain in front yards. These items are to be stored indoors or in the back yard, out of sight.
6. No motor vehicles shall be parked in grassy areas.

7. Residents are required to maintain their own yards. Grass shall be cut and bushes shall be trimmed.
8. There shall not be any individual yard sales or estate sales. There will be an annual community sale organized by the HOA.
9. There shall be no plastic furniture or excessively worn furniture on any front porch.

CONSENT OF SECURITY DEED HOLDER

FIRST AMERICAN BANK and TRUST COMPANY, the holder of first priority deed to secure debt describing the real property governed by the foregoing Declaration of Restrictive Covenants hereby consents to the grant of such Declaration of Restrictive Covenants by Grantor.

This 5<sup>th</sup> day of January, 2018.

Signed, sealed and delivered in the presence of:

FIRST AMERICAN BANK and TRUST COMPANY

  
\_\_\_\_\_  
Witness

By: 

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

Attest: 

VALERIE H MCDANIEL  
OCONEE COUNTY, GEORGIA  
NOTARY PUBLIC  
MY COMMISSION EXPIRES  
MARCH 6, 2020