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Madison County, AL  
TOMMY RAGLAND Probate Judge

File **2018-00021523**

THIS INSTRUMENT PREPARED BY:

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STATE OF ALABAMA )

COUNTY OF MADISON )

**DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS**

**OF**

**PHILLIPS COVE SUBDIVISION**

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (this "Declaration") is made this 11<sup>th</sup> day of April, 2018, by SMART LIVING, LLC, a Delaware limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, on March 21, 2018, Declarant recorded as Document No. 2018-20164 of the Office of the Judge of Probate of Madison County, Alabama, a subdivision plat for Phillips Cove Subdivision ("Plat of Subdivision", as further defined below) pertaining to certain real property owned by Declarant in Madison County, Alabama, as more specifically described on Exhibit "A" hereto.

NOW, THEREFORE, DECLARANT HEREBY DECLARES, that subject to the provisions hereof, all of the Lots (hereinafter defined) shall be held, sold and conveyed by the Owners and the Common Area (hereinafter defined) shall be held by the Association subject to the restrictions, covenants and conditions contained herein for the purposes of protecting the value and desirability of, and which shall run with, the Community Property (hereinafter defined) and be binding on all parties having any right, title or interest in the Community Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion thereof.

**ARTICLE ONE**  
**GENERAL PROVISIONS**

1.01 Restrictive Covenants and Easements Running with the Land. The use of the Community Property shall be in accordance with the provisions and restrictions of this Declaration, all of which are to be construed as restrictive covenants and/or easements, as

applicable, running with the land and with the title to each and every Lot and shall be binding upon all Owners and other persons having interests therein and upon their heirs, personal representatives, successors, grantees and assigns.

1.02 Terminology. Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine or neuter gender.

1.03 Definitions. The following terms, when capitalized herein, shall have the meaning set forth in this Section 1.03:

- (a) "Additional Property" shall have the meaning given such term in Section 10.02 hereof.
- (b) "Adult" means a person of age twenty-one (21) or older.
- (c) "Architectural Review Committee" means the Architectural Review Committee as established by the Board of Directors in accordance with the Bylaws.
- (d) "Articles of Incorporation" means the Articles of Incorporation of Phillips Cove Owners Association, Inc., an Alabama non-profit corporation, as recorded in the records of the Office of the Judge of Probate of Madison County, Alabama, as the same may hereafter be amended, altered or repealed from time to time.
- (e) "Association" means Phillips Cove Owners Association, Inc., an Alabama non-profit corporation.
- (f) "Board" or "Board of Directors" means the Board of Directors of the Association, established in accordance with the Articles of Incorporation and Bylaws of the Association.
- (g) "Builder" means any commercial home builder or contractor who is in the business of constructing residential structures to sell to owner-occupants.
- (h) "Bylaws" means the Bylaws of Phillips Cove Owners Association, Inc., an Alabama non-profit corporation, as the same may hereafter be amended, altered or repealed from time to time.
- (i) "Common Area" means all real property within the Subdivision which is owned or leased by the Association or dedicated for use or maintenance by the Association or its members, regardless of whether title has been conveyed to the Association.
- (j) "Community Property" means all of the Lots and the Common Area, collectively.
- (k) "Cottage Lots" mean a Lot with sixty (60) feet or less of road frontage.

- (l) "Declarant" means Smart Living, LLC, a Delaware limited liability company, its successors and assigns which expressly are assigned and assume the Declarant's rights as "Declarant" hereunder.
- (m) "Estate Lots" mean Lots 78 through 95 and 97 through 103.
- (n) "House" or "Home" means any single family dwelling unit situated upon a Lot.
- (o) "Lot" means each and every numbered lot shown on the Plat of Subdivision.
- (p) "Manor Lots" mean Lots with one hundred (100) feet of road frontage.
- (q) "Member" means every person or entity who is a member of the Association.
- (r) "Mortgagee" means a holder or beneficiary of any mortgage, deed with vendor's lien reserved, or any other form of instrument used for the purpose of encumbering or conveying real property as security for payment or satisfaction of any obligation.
- (s) "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding mortgagees, lien holders, lessees, tenants, and those having such interests solely as security for the performance of an obligation.
- (t) "Person" means any individual, corporation, trust, partnership, joint venture, limited liability company or other entity.
- (u) "Plat of Subdivision" has the meaning ascribed to such term hereinabove and shall also include any additional plat or plats of real property that are hereafter recorded where such real property is annexed to this Declaration in accordance with the terms of Section 10.02 hereof.
- (v) "Subdivision" means Phillips Cove, a subdivision as shown on the Plat of Subdivision, including any of the Additional Property made subject to this Declaration in accordance with the terms of Section 10.02.
- (w) "Turnover" means the earlier to occur of (i) Declarant relinquishing control of the Association in a written instrument recorded in the real property records of Madison County, Alabama, or (ii) July 1, 2027; provided however, in the event of a conflict between the Alabama law and the foregoing, the applicable Alabama law controls.

1.04 Purposes. It is intended that the Subdivision development will be a residential community of high esteem and quality homes.

**ARTICLE TWO**  
**COMMON AREA**

2.01 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, the Articles of Incorporation and the Bylaws, shall be responsible for the exclusive maintenance, management, and control of the Common Area and all improvements thereon, and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair pursuant to the terms and conditions of this Declaration. Buildings and improvements of a permanent nature erected or placed on the Common Area and any activities that alter the nature of the Common Area shall require the prior approval of the Members. The Association has the right to restrict the use and govern the operation of the Common Area by promulgating reasonable rules and regulations, including with respect to any Common Area facilities, the right to charge reasonable one-time or monthly fees for the use thereof by the Owners as the Association deems necessary or appropriate. Rules and regulations may be established by the Association to regulate the use of the Common Area. The necessary work or maintenance, repair and replacement of the Common Area and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration, the Articles of Incorporation and the Bylaws.

2.02 Right of Enjoyment. Subject to any rules and regulations promulgated by the Board of Directors, every Member shall have a right and easement of enjoyment of the Common Area, and such easement shall be appurtenant to and pass with the title to each Lot.

2.03 Restrictive Covenant on Common Area. A restrictive covenant is hereby imposed on the Common Area such that no part of the Common Area may be developed for residential or commercial purposes. This restrictive covenant shall run with each Lot and shall exist for the benefit of the Owners and be binding upon, their successors and assigns.

2.04 Lots Subject to Covenants, Restrictions, Limitations and Term. Each Lot that shall be conveyed, held, devised, leased, or demised at any time hereafter shall be subject to all the terms, conditions, covenants, restrictions, and limitations herein contained, and the obligation to observe and perform the same whether or not it be so expressed in the deed or other instrument of conveyance of the Lot or real property, and such shall run with the Lot or real property and be appurtenant thereto as if fully set out in such deed or instrument of conveyance, subject to the terms and conditions hereof.

2.05 Easements.

- (a) Easements and Buffer Strips. All easements and buffer strips shown on the Plat of Subdivision, if any, are hereby adopted as part of this Declaration and all Lots in the Subdivision shall be subject to such easements and buffer strips.
- (b) Structures. No dwelling unit, house, home, and/or other structure of any kind shall be built, erected, or maintained upon any easement, and said easements shall at all times be open and accessible to public and quasi-public utility corporations, and to other persons erecting, constructing, or servicing such utilities, and to the

Association, its successors or assigns, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under, and upon said locations for the carrying out of any of the purposes for which said easements are hereby reserved and may hereafter be reserved.

- (c) Overhead Wires. No Lot shall be served with any overhead electrical or communications service, and no Owner shall erect power poles for such service; provided, however, that nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting provided that such lighting is constructed in accordance with the terms and conditions hereof.

2.06 Control of Common Area. The Association may, upon approval by the Members, sell, subdivide, lease, mortgage, grant easements over or otherwise encumber the Common Area, or exchange all or any portion of the Common Area for Lots or other real property, or purchase or acquire any additional real property and dedicate the same as Common Area subject to the terms of this Declaration.

2.07 Condemnation. In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Area, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the voting interests of the Members. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Area shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

2.08 Liability. Owners, occupants and their guests shall use and enjoy the Common Area at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the Common Area. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by an Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, utility line, facility or from any portion of the Common Area, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or occupant for loss or damage, by theft or otherwise, of any property of such Owner or occupant.

**ARTICLE THREE**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.01 The Association. The operation and administration of the Common Area shall be handled by the Association. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Owners with reference to the Common Area and with reference to any and all other matters in which all of the Owners have a common interest. The Association shall have all the powers and duties set forth in the Articles of Incorporation and the Bylaws. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Common Area and further, shall have the right to grant permits, licenses, and easements over the Common Area for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Common Area. The Board of Directors shall have the authority and duty to levy and enforce the collection of general and specific assessments for common expenses and is further authorized to provide adequate remedies for failure to pay such assessments.

3.02 Membership. Each Owner shall be a Member, subject to the terms and conditions of the Articles of Incorporation and the Bylaws.

3.03 Voting. Voting by Owners shall be in accordance with the Bylaws.

3.04 Assignment. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance of said Owner's Lot.

**ARTICLE FOUR**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

4.01 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements to the Common Area, and (3) the lien for assessments for capital improvements to the Common Area by any governmental entity ("Governmental Assessments"), as such assessments are hereinafter established and shall be collected as hereinafter provided. The annual, special, and Governmental Assessments, together with interest, costs, an administrative late fee and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Any payment received and accepted by the Association shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees, and then to delinquent assessments. Each such assessment, together with interest, costs, the administrative late fee and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to successors in title.

4.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide for the management, care and maintenance of the Common Area and any improvements constructed thereon, if any, including provision for appropriate insurance against casualty and liability. The Association shall have the obligation to maintain the Common Area (including, without limiting the generality of the foregoing, any and all easements, drainage facilities, landscaping, structures, holding and retention ponds, and the like, whether denominated as such or otherwise) and shall pay all ad valorem property taxes assessed upon them.

4.03 Annual Assessments. To provide the total sum necessary for the insurance purchased by the Association hereunder, the maintenance, repair and replacement (as applicable) of any improvements located on the Common Area, and any and all other expenses of the Association, each Member for each Lot owned shall pay a portion of the total amount necessary for such purposes to the Association. The portion to be paid by each Member for each Lot owned shall be calculated as set forth in the Articles of Incorporation. The amount of assessment assessed against each Member as provided under the foregoing sentence shall be assessed by the Association as a lien at the beginning of each annual assessment period.

4.04 Special Assessments for Capital Improvements Upon Common Area. In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and any entrance wall or signage, including fixtures and personal property related thereto; provided, however, that the total of all such special assessments for any given calendar year shall not exceed \$200 per Lot, unless such special assessments in excess of such total are approved by the affirmative vote of the Members holding a majority of the voting rights in the Association.

4.05 Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to a particular Lot upon conveyance of the Lot to any Owner or a Builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot 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. The due dates shall be established by the Board of Directors, and one-fourth (1/4<sup>th</sup>) of any annual maintenance or other special assessment shall be due each calendar quarter. Notwithstanding the foregoing, DSLD Homes, LLC shall be exempt from Annual Dues.

4.06 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest thereon at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, foreclose a lien against the property or seek injunctive relief. Interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to or other conveyance of an interest in a Lot, hereby expressly vests in the

Association the right and power to bring all actions against such Owner personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of said Owner's Lot. The Board of Directors may also suspend the use rights of any Owner of the Common Area in the event of a failure to pay any assessment within thirty (30) days of the applicable due date.

4.07 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein, except for any Governmental Assessment, shall be subordinate to the lien of any first mortgage on a Lot. Sale or transfer of any Lot shall not effect the assessment lien; provided, however, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage on said Lot or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, except any Governmental Assessment. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof or relieve the prior Owner from any personal liability for any unpaid assessments occurring prior to said sale or transfer.

4.08 Estoppel Letter. The Association shall, within thirty (30) days after receiving a written request therefor and for a reasonable charge, as established by the Board of Directors, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

## ARTICLE FIVE MAINTENANCE AND REPAIR

5.01 Maintenance. The Association shall provide maintenance of the Common Area. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Subdivision and to enter into easement and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. Each Owner shall maintain his or her respective Lot and shall also maintain and repair, at such Owner's sole cost and expense, said Owner's House, patio and yard area keeping the same in good condition and making all structural repairs and maintenance, external and internal, as may be required from time to time, including, but not limited to maintenance and repairs of any enclosed patio area, screens and screen doors, exterior door and window fixtures, glass, and other hardware. Each Owner shall also be responsible for the maintenance and repair of any fence or fences erected on such Owner's Lot and gates appurtenant thereto.



5.02 Failure to Maintain. In the event an Owner shall fail to maintain and repair his Lot and the improvements situated thereon, as provided for herein and provided that the failure to so maintain shall cause damage or injury to the adjoining Lot or to common structural elements which affect an adjoining Lot, the Association, after approval by a majority vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the House and any other improvements erected thereon. The cost of the same shall be added to and become part of the assessment to which such Lot is subject; provided, however, if a dispute arises concerning the foregoing between the Owner and the Association, the matter may be submitted to arbitration in accordance with the mutual agreement of the parties.

5.03 Damage to Common Area. Notwithstanding anything contained in this Article Five to the contrary, each Owner shall be personally responsible and personally liable for any damage to the Common Area, or any portion thereof, caused by the Owner and/or the Owner's family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Owner, the Owner's family members, guests, invitees, lessees or licensees shall be a special assessment against the Owner responsible therefor and the Lot of such Owner.

## **ARTICLE SIX** **ARCHITECTURAL CONTROL**

6.01 Submission of Plans and Specifications. No House, building, fence, wall, or other structure or improvement shall be constructed, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications of the same shall have been submitted by an Owner to and approved in writing as in harmony with this Declaration by the Architectural Review Committee. Two (2) copies of the building or construction plans and specifications (collectively, the "Plans") shall be submitted to the Architectural Review Committee. Prior to commencement of any construction activities on a Lot, an Owner's Plans must be approved by the Architectural Review Committee as to conformity and harmony with this Declaration. The Architectural Review Committee may, from time to time, establish additional written design guidelines for the Subdivision, and a copy of any such guidelines then in effect shall be made available to any Member requesting a copy of same from the Association.

6.02 Approval or Disapproval. The Architectural Review Committee shall indicate its approval or disapproval of such plans and specifications by delivering, in writing, notice of such approval or disapproval to the requesting Owner. In the event the Architectural Review Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed automatically given.

6.03 Right of Inspection. The Architectural Review Committee shall have the right, but not the obligation, to inspect the Owner's Lot and improvements during construction and prior to occupancy to insure construction in accordance with the construction plans submitted and approved by the Architectural Review Committee. Failure of an Owner to comply with the

provisions of this Section 6.03, or failure of an Owner to carry out construction in accordance with the provisions of this Article, shall subject such Owner to such remedies as might be available at law or in equity (including, but not limited to, specific performance and injunction, payment of the prosecuting parties' reasonable legal fees and expenses).

6.04 Limited Review. The scope of review by the Architectural Review Committee is limited to appearance only and does not include any responsibility for structural soundness, suitability of construction or materials, compliance with building or zoning codes or standards, this Declaration, or any other similar or dissimilar factors.

6.05 Waiver of Liability. Neither the Architectural Review Committee nor any architect nor agent thereof nor the Association nor any agent or employee of any of the foregoing shall be responsible in any way for the failure of any improvements to comply with the requirements of this Declaration, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to herein and further agree to and do hereby release said entities and persons for any and every such cause.

## ARTICLE SEVEN USE RESTRICTIONS

7.01 Residential Use. Each Lot is hereby restricted to a private, single-family dwelling for residential use.

7.02 Subdivision of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof, to easements and rights-of-way, and matters of public record. No Lot may be subdivided into a smaller Lot or Lots unless approved by the Association; provided, however, that an entire Lot may be combined with an entire adjacent Lot and occupied as one Lot but assessed and governed as two Lots.

7.03 Signs. No sign of any kind shall be displayed on any Lot, except (i) that any Owner actively attempting to sell his Lot may place a "for sale" sign of less than four (4) square feet on his Lot; (ii) during the building of homes in the Subdivision, the Declarant and/or the Builders in the Subdivision may place signs at the entrance and/or on any Lot to advertise the Subdivision and the Lots for sale therein and (iii) any Owner may display a sign of reasonable size provided by a contractor for security services within (ten) 10 feet of any entrance to the home.

7.04 Noxious and Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Owner.

7.05 Design Criteria; Structure. All improvements to be constructed or otherwise located on a Lot by an Owner shall comply with the following requirements:

- (a) Any House on an Estate Lot shall contain a minimum of Two Thousand Six Hundred (2,600) square feet of heated and cooled living space.
- (b) Any House on a Cottage Lot shall contain a minimum of One Thousand Four Hundred (1,400) square feet of heated and cooled living space.
- (c) Any House on a Manor Lot shall contain a minimum of Two Thousand (2,000) square feet of heated and cooled living space.
- (d) The main body of all dwellings on Estate Lots shall have a roof pitch of 8/12 or greater.
- (e) The main body of all dwellings on Cottage Lots and Manor Lots shall have a roof pitch of 7/12 or greater.
- (f) No House may exceed three (3) habitable stories above grade.
- (g) All sidewalks shall be constructed along the street right-of-way of each Lot in accordance with a uniform plan established by the Declarant. Accordingly, each site Plan submitted to the Architectural Review Committee shall show the location and material to be used for construction of the sidewalk, all as required and approved by the Architectural Review Committee. Each Owner shall construct or cause to be constructed on his or her Lot the approved sidewalk upon completion of the House on his or her Lot and before occupancy thereof.
- (h) The residential structure may contain a garage or carport; provided however, that no garage or carport may have a flat roof and any such garage or carport shall be in conformity with the general architecture of the primary residential building or structure.
- (i) Air-conditioning and heating units, blowers, towers, condensers or structures related thereto, when erected between the side of any building or structure and the side Lot line of the Lot on which said building or structure is located, shall be enclosed in conformity with the general architecture of the primary residential building or structure, or shielded by shrubbery. No window air-conditioning units shall be permitted on the front or sides of any residence so as to be visible from the front line of such Lot.
- (j) Underground electrical distribution facilities are required and no overhead electrical or similar wiring or lines shall be permitted.
- (k) All outside radio and T.V. antennas (including satellite dishes and other signal receiving/transmitting equipment) shall be installed in such a way as to minimize

visibility from the front of the Lot and shall be placed on the back or side of any roof.

- (l) No plumbing or heating vent shall be placed on the front side of any roof.
- (m) Driveway must be made of concrete, or if not, the alternative surface must be approved by the Architectural Review Committee.
- (n) During construction, all vehicles, including those delivering supplies, must be parked on the building lot where the construction is under way so as not to unnecessarily damage trees.
- (o) All building debris, stumps, trees, etc., must be removed from each Lot by the Owner thereof as often as necessary to keep the House and Lot attractive. Such debris shall not be dumped in any area of the Subdivision.
- (p) Fences constructed or erected on any Lot shall be of decorative wood and shall be stained "Tobacco". Any fence constructed of materials other than decorative wood must be approved by the Architectural Review Committee. No wall or fence shall be constructed from the front property line to 20 feet behind the corner of the house nearest front property line. All Lots shall be grassed in the entire designated yard area by sodding and the yard shall be landscaped upon the completion of construction and before occupancy. It shall be the Owner's responsibility to maintain any landscaping, walls or fences situated on a Lot so that such improvements remain in an attractive, well-kept condition.
- (q) No outside clothes lines shall be permitted.
- (r) Existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot.
- (s) Any roof constructed over any structure on any Lot must be covered with composite shingles or such other types of roof coverings of a higher grade and quality than composite shingles as are approved by the Architectural Review Committee.
- (t) All dwellings and permitted accessory buildings constructed on any Lot shall have an exterior with approved materials per the Architectural Guidelines, such as brick, stone or hardiplank. Vinyl is allowed on soffits, gables and facing. If vinyl is used on gables or facing it must be of decorative nature (i.e., hardiplanks or shakes).
- (u) Any House constructed on an Estate Lot shall be built on a stem wall, crawlspace or basement.

- (v) Any House constructed on a Cottage Lot or Manor Lot shall be built on a stem wall, crawl space, basement or monolithic slab.

7.06 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, and other household pets may be kept subject to the rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose. Pets must be kept leashed and/or under control at all times.

7.07 Waste. No rubbish, trash, garbage, or other waste material shall be kept or permitted upon any Lot except in sanitary containers located in appropriate area, screened and concealed from view.

7.08 Miscellaneous. Except as otherwise provided for herein, no patio cover, building or storage unit of any kind shall be erected, placed or set on any Lot unless such structure is attached to the House erected on the same Lot and the architecture and character of such structure matches that of said House. Notwithstanding the foregoing, one (1) accessory building may be erected, placed or set on any Lot if such structure is: (a) no more than eight (8) feet in height; (b) located upon the back yard of such Lot; (c) enclosed on all sides by a wooden fence of at least six (6) feet in height; (d) of the same architecture and character of the House located on such Lot; and (e) approved by the Architectural Review Committee.

7.09 Temporary Structures. No structure of a temporary character, trailer, mobile home, motor home, modular building unit, basement, tent, shack, garage, barn, or other outbuilding shall be used at any time on the Lots as a residence, either temporarily or permanently.

7.10 Vehicles.

- (a) No inoperative cars, trucks, trailers, boats, campers or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in an enclosed garage.
- (b) No trucks larger than a one-ton pickup shall be parked in the Subdivision, except those reasonably necessary to complete approved improvements.
- (c) Recreational vehicles and campers shall not be parked or stored on any Lot. Boats shall be parked in garages or basements or shall be stored out of sight from all neighbors and fully screened by a privacy fence of no less than six (6) feet in height.
- (d) No permanent parking on streets is allowed. Parking in yards is strictly prohibited.
- (e) There shall be no major repair performed on any motor vehicle on or adjacent to any Lot unless performed inside an enclosed garage.

- (f) No noxiously loud or dangerous vehicles shall be allowed to be operated on any Lot.

7.11 Construction.

- (a) When the construction of any improvement upon any Lot has begun, work thereon shall be pursued diligently and continuously until full completion. During construction on any Lot, all vehicles involved in such construction, including those delivering materials and supplies, shall enter upon such Lot only at such a location as to not interfere with the flow of traffic in the Subdivision, and such vehicle shall not be parked on the streets and roads of the Subdivision. All construction sites must be kept clean, and debris shall not be allowed to accumulate. During construction, the use of dumpsters for routine cleaning of construction sites is permitted.
- (b) No residence constructed on any Lot may be occupied prior to its substantial completion.
- (c) Landscaping shall be completed within sixty (60) days after completion of construction.
- (d) In addition to compliance with the requirements set forth under this Declaration, any and all improvements on any Lot shall comply with the standards and provision of the County of Madison, and its applicable building code.

7.12 Pollution. There shall be no noxious emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or magnetic disturbance, detectable at the lot line or beyond.

7.13 Commercial Activity. No commercial activities of any kind whatsoever shall be conducted in any building or in any portion of any Lot; provided, however, that a Lot Owner may conduct a business entirely within his Home so long as such business uses only ten percent (10%) of the total square footage of such Home and so long as such business is secondary to the use of the Lot for residential purposes.

7.14 Outdoor Lighting. All outside lights shall be of an intensity not to exceed 100 watts and shall be placed so as to avoid an annoyance to any neighbor. Said lighting shall be turned toward the ground and shall be shielded completely or by frosted glass or plastic in all directions so that it does not shine toward neighboring Lots. Flood lights which shine all night are specifically prohibited.

7.15 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or waste. All storage equipment for such material shall be kept in a clean and sanitary condition.

7.16 Oil and Mining Operations. No activity or hardware used for the purpose of exploration or extraction of minerals, oil, or gas shall be allowed on any Community Property at any time.

7.17 Firearms and Fireworks. The display or discharge of firearms or fireworks on any Lot or any Common Area is prohibited; provided, however, that the display of lawful firearms on the Common Area is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Area to or from an Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

7.18 No Hanging of Items. No clothes, sheets, blankets, towels, laundry of any kind or other articles shall be hung out or exposed on any balconies, patios, or railings. Notwithstanding the foregoing, in the event the Association purchases any flags or other decorative items, each Owner shall hang any such flag or other decorative item from the exterior of such Owner's Home, at the location, in the manner and at such times as shall be required by the Association in the Association's sole and absolute discretion.

7.19 Hazardous Items. No one shall use or permit to be brought onto any Lot or upon any of the Common Area any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed hazardous to life, limb or property, without the written consent of the Board of Directors.

7.20 Water and Sewer Service. The Owner of each Lot shall be required to connect to and use the central water distribution system and central sanitary sewage disposal system serving the Subdivision, and shall be responsible for paying all connection fees and assessments. No septic tanks or wells will be permitted.

7.21 Windows and Window Treatments. Reflective glass shall not be permitted on the exterior of any House, or other structure. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or for other purposes. All exterior window styles, materials, and colors must be approved by the Architectural Review Committee; provided, however, that in no event shall burglar bars and/or wrought iron doors be permitted.

7.22 Lots on Wetland Areas, Body of Water. No Lot shall be increased in size by filling in of any wetlands, body of water, creek or any waterway on which it may abut without appropriate governmental permits (if any are required) and prior written approval of the Architectural Review Committee.

7.23 Compliance With Law. In all cases, each Owner shall comply in all respects with all applicable laws, rules and regulations (including, without limitation, applicable zoning ordinances) promulgated by any governmental authority having jurisdiction over the Lots and the Common Area.

**ARTICLE EIGHT**  
**ADDITIONAL RESTRICTIONS**

8.01 Leasing. Homes and Lots may be leased by an Owner for residential purposes only; provided, however, that such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Lots and Homes and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. No such lease shall be for less than one (1) year. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. Any Owner who leases his Home or any portion thereof shall be responsible for the acts of his tenants, including, without limitation, the violation of this Declaration and/or any rules and regulations promulgated by the Association hereunder.

8.02 Restrictions on Mortgaging Lots. Nothing contained herein shall be construed to place any restrictions on an Owner's right to mortgage his Lot.

8.03 Regulations. Reasonable regulations concerning the use of the Lots and the Common Area may be made and amended from time to time by the Board of Directors.

8.04 Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot securing its mortgage.
- (b) Any sixty (60)-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

**ARTICLE NINE**  
**ENFORCEMENT; DURATION; AMENDMENT**

9.01 Enforcement. The Association, the Board of Directors, the Architectural Review Committee and/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 imposed by the provisions of this Declaration. Failure by the Association, the Board of Directors, the Architectural Review Committee and/or 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.

9.02 Enforcement by Owners. An Owner may file a legal action for the violation of this Declaration (the "Complainant"), provided that the following procedure is strictly followed:

- (a) The Complainant must first give the Association written notice of the alleged violation of this Declaration together with a demand seeking that the Association enforce the terms of this Declaration as against said violator; and



- (b) The Association must fail to cause a cure of the alleged violation or, if the alleged violation has not been cured, fail to commence legal proceedings against said violator for the enforcement of the terms and conditions of this Declaration within one hundred twenty (120) days of the date of the Association's receipt of the notice referenced in subsection (a) hereof.

9.03 Attorneys' Fees. In any action (whether in advance of or prior to the initiation of any legal or equitable proceeding, in arbitration, in trial, in any administrative or other similar proceedings, or in any appeal from any of the same) pertaining to any condition, restriction or covenant herein contained (due to their alleged violation or breach) or for the enforcement of any lien against any Lot or against any Person, unless otherwise expressly provided in this Declaration to the contrary for specific instances and conflicts, the prevailing party shall be entitled to recover all costs, including reasonable legal fees and expenses.

9.04 Term. This Declaration is to take effect upon recordation and shall be binding upon the Association and all Owners and all persons and entities claiming title under and through them for fifty (50) years after the date this Declaration is recorded in the public records, after which it shall be automatically extended for successive ten (10) year periods unless an instrument in writing, signed by Members holding at least eighty percent (80%) of the voting interests in the Association, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

9.05 No Additional Burden. Except as provided in Article Ten, no amendment of this Declaration shall place an additional burden or restriction or requirement on any Lot where the Owner of such Lot does not join in said amending instrument.

9.06 Amendments. Except as provided in Article Ten, this Declaration may be amended by vote of the Members having sixty-seven percent (67%) of the voting interests in the Association, or by a written instrument signed by the same percentage of Members. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration.

## ARTICLE TEN RESERVED DECLARANT RIGHTS

10.01 General Reserved Rights. Until Turnover, Declarant reserves unto itself, its successors and assigns:

- (a) A right-of-way and easement for ingress and egress and easement for utilities, drainage, maintenance, repairs and other related uses over, along, and across the

Common Area for all purposes relating in any manner to the subdividing, developing or aiding in the development of the Subdivision or any parts or parts thereof or additions thereto by Declarant or others.

- (b) The right to grant easements and rights-of-way of ingress and egress and for drainage, utilities, maintenance and repairs along, over, across and under the Common Area to any person, firm, corporation or entity for use as ingress or egress or for drainage, utilities, maintenance and repairs.
- (c) The right to maintain, and grant Builders the right to maintain, a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the Subdivision therein and therefrom.

All of the above rights and interests reserved by Declarant may be exercised by Declarant without the consent or concurrence of the Association or any Member.

10.02 Right to Annex Property. Declarant hereby reserves the right, exercisable in its sole and absolute discretion, to (a) make any real property adjacent to the Subdivision (the "Additional Property") subject to all or any of the terms and conditions of this Declaration and/or (b) permit owners of Additional Property to become Members of the Association. No assurances can be made as to whether any Additional Property will be annexed. Furthermore, Declarant expressly reserves the right to exercise this right on multiple occasions until such time as all Additional Property has been annexed into the Subdivision and made subject to this Declaration. No assurances can be made with respect to the boundaries of any portions of any Additional Property that might be annexed. Declarant's option to annex any Additional Property in accordance with this Section shall expire upon Turnover. The Additional Property may be annexed in accordance with this Section by an amendment to this Declaration, which amendment may be made and entered into by Declarant in its sole and absolute authority and discretion without the consent, approval or signature of the Association or any Member. Notwithstanding anything contained in this Section to the contrary, (a) no Additional Property shall be subject to this Declaration unless and until Declarant executes an amendment to this Declaration affirmatively exercising Declarant's rights hereunder and records such amendment in the office in which this Declaration is recorded, and (b) in the event Declarant exercises its right to annex any Additional Property in accordance with this Section, Declarant shall also have the sole and exclusive right to alter, or otherwise replace with other terms, the terms of Section 7.05 hereof as those terms pertain to any Lots created out of such Additional Property.

10.03 Amendment of Declaration by Declarant. Until Turnover, Declarant reserves unto itself the right, authority and power to amend this Declaration in any manner Declarant deems necessary and appropriate. Any amendment to this Declaration made in accordance with this Section shall require only the signature of Declarant and shall not require the signature of any other Owner or any Mortgagee of any Owner.

10.04 Turnover. All rights of Declarant hereunder shall automatically terminate upon Turnover, except those rights that Declarant holds as an Owner and not by virtue of being the declarant under this Declaration, which shall continue as long as Declarant is an Owner.

## **ARTICLE ELEVEN** **INSURANCE; CASUALTY**

11.01 Insurance on Common Area. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Subdivision. Accordingly, the Board shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Area, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall obtain a public liability policy applicable to the Common Area covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board. In addition to the other insurance required by this section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

11.02 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

11.03 Damage and Destruction – Insured by Association. Not later than ninety (90) days after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or

destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within 120 days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the voting interests of the Members. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred eighty (180) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

11.04 Damage and Destruction – Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction.

## ARTICLE TWELVE MISCELLANEOUS

12.01 Savings. If any provision or provisions of this Declaration, or any article, section, sentence, clause, phrase, or word herein, or the application thereof, is in any circumstances held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

12.02 Captions. The captions in this Declaration are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions of this Declaration.

12.03 Applicable Law. The laws of the State of Alabama shall govern this Declaration. All actions or proceedings in any way, manner or respect, arising out of or from or related to this Declaration shall be litigated only in courts having situs within the county in which the

Subdivision is located. Each Owner hereby consents and submits to the jurisdiction of any local, state or federal court located within said county and state and hereby waives any rights it may have to transfer or change the venue of any such litigation. The prevailing party in any litigation in connection with this Declaration shall be entitled to recover from the other party all costs and expenses, including without limitation fees of attorneys and paralegals, incurred by such party in connection with any such litigation.

12.04 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations hereunder is not a consent or waiver to or of any breach or default in the performance by that Person of the same or any other obligations of that Person. Failure on the part of a Person to complain of any act or to declare any Person in default hereunder, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default.

12.05 Headings. The headings and captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

12.06 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a subdivision in accordance with Alabama law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

12.07 Notice. All notices required or desired under this Declaration to be sent to the Association shall be sent certified mail, return receipt requested, by hand delivery or by a recognized overnight courier who maintains verification of delivery, to the Secretary of the Association, at such address as the Association may designate from time to time by notice in writing to all Owners. All notices to any Owner shall be delivered by hand delivery, by a recognized overnight courier who maintains verification of delivery in person, or sent by first (1<sup>st</sup>) class mail to the address of such Owner's Lot, or to such other address as he may have designated from time to time, in a writing duly received, to the Association.

12.08 Conflict Between Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles of Incorporation, the Bylaws or any rules and regulations promulgated hereunder, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles of Incorporation and the terms and conditions of the Bylaws or any rules and regulations promulgated hereunder, the terms and conditions of the Articles of Incorporation shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of any rules and regulations promulgated hereunder, the terms and conditions of the Bylaws shall control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has executed this Declaration by and through its duly authorized representative as of the date first set forth above.

**DECLARANT:**

SMART LIVING LLC, a Delaware limited liability company

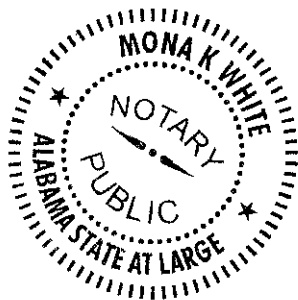
By: \_\_\_\_\_  
Name: Louis W. Breland  
As Its: Manager

STATE OF ALABAMA :  
COUNTY OF MADISON :

I, the undersigned Notary Public, in and for said State and said County, hereby certify that **Louis W. Breland**, whose name as Manager of SMART LIVING, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily as and for the act of said limited liability company on the day the same bears date.

Given under my hand and official notarial seal this the 11<sup>th</sup> day of April, 2018.

{SEAL}



Mona K. White  
NOTARY PUBLIC  
My Commission Expires: 9-22-21

**EXHIBIT "A"**  
**DESCRIPTION OF THE SUBDIVISION PROPERTY**

All property within the Phillips Cove Subdivision as shown on the plat recorded as Document No. 2018-00020164 in the Office of the Judge of Probate of Madison County, Alabama, and any additional real property made subject to the Declaration in accordance with the terms of the Declaration.

Filed/Cert: 04/11/2018 01:28:00 PM  
Fee Amt: \$80.75 Page 23 of 23  
Madison County, AL  
TOMMY RAGLAND Probate Judge  
File **2018-00021523**