

Prepared by and Return To: Wayne R. Hadler, Beemer, Hadler, Willett & Lin, P.A., 1829 E. Franklin St., Suite 800B, Chapel Hill, NC 27514.

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ARRAY
SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ARRAY SUBDIVISION (hereinafter, "Declaration"), is made this ____ day of _____, 2021, by JODI BAKST, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the record owner of all that certain property (hereinafter, the "Property") located in Chapel Hill Township, Orange County, North Carolina, more particularly described as follows:

BEING All of that additional 54.10 acres parcel on a map and survey for "Stephen M. Burt & Sharon C. Burt" prepared by R.S. Jones & Associates, Inc., and recorded in Plat Book 122, Page 128, Orange County Registry, to which reference is made for a more particular description of same (Orange County PIN No. 9840-43-5353). The Property shall not include Lot R1, as shown on the aforementioned Plat; and

WHEREAS, Declarant desires for themselves, their heirs, successors and assigns, and all future owners of any part of the subject property, to establish a general plan and uniform scheme of development and for improvement of the Property, and to preserve and enhance the value of the Property, except that Lot R1 shall not be subject to this Declaration and is not considered part of the Property; and

WHEREAS, Declarant desires to provide for the permanent protection and preservation of the landscape, ecosystems, flora and fauna of ARRAY SUBDIVISION (hereinafter, "ARRAY"), and the stewardship, maintenance and sustainable use of the common land, as set forth herein, and the opportunity for residents to live in harmony with these natural life forms, to

promote environmentally sound building practices on the Property, and to develop an atmosphere of conversation and sustainability; and

WHEREAS, Declarant wishes to provide for preservation and enhancement of property values, amenities and opportunities within the Property in order to contribute to the personal and general health, safety and welfare of the Owners and residents, and to provide provisions for the maintenance of the roads and common areas, and to this end wishes to subject the Property to the covenants, conditions, restrictions, easements, reservations, assessments, charges, liens and other provisions hereinafter set forth; and

NOW, THEREFORE, Declarant hereby makes the following declaration as to limitations, restrictions, and uses to which the Property may be put, and hereby specifies that such declarations shall constitute restrictions and covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming unto them and shall be for the benefit of and in limitation on all future Owners and residents of the Property.

ARTICLE I DEFINITIONS

- 1.1 “Accessory Building” shall mean any detached garage, storage building, barn, or other building not attached to the Dwelling.
- 1.2 “Association” shall mean and refer to ARRAY HOMEOWNERS’ ASSOCIATION, INC., its successors and assigns.
- 1.3 “Dwelling” shall mean a building designed for or used for human occupancy.
- 1.4 “Home Business” shall mean consulting, crafts, woodworking shop, artist studio, the practice of law, medicine, psychology, other healing arts, teaching and similar professions, and other businesses conducted within the residence operated by resident Owners.
- 1.5 “Lot” shall mean any residential Lot located within the Property as shown on the recorded Plat or Plats.
- 1.6 “Owner” shall mean the record owner, whether one or more persons or entities, of the fee simple title to the Lots comprising the Property, excluding, however, any mortgagee.
- 1.7 “Mobile Home” shall mean trailers, single-wides, double-wides, and any home primarily manufactured and assembled off the premises, and is movable on wheels regardless of whether the wheels are attached to the structure.
- 1.8 “Plats” shall mean the recorded plats of the Property, including the Plat recorded in Plat Book ____, Page ____, and Plat Book ____, Page ____, Orange County Registry.

- 1.9 “Declarant” shall mean Jodi Bakst, her successors, heirs and assigns, including any entity which may purchase or otherwise acquire her remaining interests in and to the development known as ARRAY.
- 1.10 “Member” shall mean and refer to any person or entity entitled to membership in the Association as provided for herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to an assessment by the Association. The owner of a Lot shall become a member of the Association merely by virtue of being an Owner of a Lot. In the event of multiple ownership of any given Lot, each Owner shall be a member of the Association but only one vote shall be accorded to each Lot.
- 1.11 “Common Areas” shall mean and refer to all real property (including any improvements thereto and including any Common Area Road) owned in fee simple by the Association or for which the Association shall have been granted by Declarant easement rights for the common use and enjoyment of all the Owners of Lots in ARRAY, subject to this Declaration and By-Laws.
- 1.12 “Common Area Road” shall mean the 50’ private right-of-way known as “_____ Road” and shown on the Plat recorded in Plat Book ___, Page ___, Orange County Registry, for the common use of all Owners which shall provide unimpeded and uninterrupted access, ingress, egress and regress to each Lot and constitute part of the Common Area.

ARTICLE II PROPERTY RIGHTS

2.1 Owners’ Easements of Enjoyment: Each Owner of a Lot in ARRAY shall have a right and easement of benefit in common with every other Owner of a Lot in ARRAY, in and to the Common Area and to any easements shown on the recorded Plat or Plats now and in the future for ARRAY, subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against said Owner’s Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving any easements and/or Common Areas shown on the recorded Plat or Plats, or for any expenditure related to the improvement of the neighborhood, to mortgage said property, and the rights of such mortgagees in said properties shall be subordinate to the rights of the homeowners hereunder.

(c) The right of the Association to publish rules and regulations for the use and enjoyment of the Common Area and the right to amend from time to time such published rules and regulations.

(d) The right of the Declarant and/or Association, as applicable, to dedicate or transfer all or any part of the Common Area to a public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

2.2 Delegation of Use: Subject to this Declaration and the By-Laws of the Association, an Owner may delegate his or her right of enjoyment to his or her heirs and assigns, members of his or her family, invitees, agents, licensees, guests, tenants, or contract purchasers who reside on the Property.

2.3 Conveyance of Common Area: On or before such time as Declarant no longer owns any Lot within ARRAY, Declarant shall convey fee simple title to the Common Areas to the Association free and clear of all encumbrances [except for rights of way, access, utility, and other easements and reservations as the Declarant deems appropriate. Subject to Declarant's reserved rights, the Association shall be solely responsible for maintaining and insuring the Common Area.]

ARTICLE III USE RESTRICTIONS

All Lots created from the division of the Property shall be subject to the following conditions, restrictions, and covenants:

All Lots shall be used only as private residential Dwellings and shall not be used for Business or Agricultural purposes except to the extent permitted by this Declaration as described herein and for no other purpose. No business or commercial buildings may be erected on any lot and no business may be conducted on any part thereof, except as specifically permitted herein.

3.1 Dwellings and Lots:

(a) No Lot shall be further subdivided, and no road shall be constructed through the Property to additional lands. Notwithstanding the foregoing, Owners shall have the right to adjust Lot lines with adjacent Lot Owners so long as any adjustment of any Lot does not violate the provisions of this Declaration or any Local or County regulations.

(b) Dwellings shall be limited to single family homes, provided, however, an Accessory Dwelling Unit within the structure or upon the Lot shall be permitted, subject to relevant Town and County ordinances or regulations, if any.

(c) Dwellings in ARRAY shall be no smaller than 1,200 square feet living space. There shall be no maximum square footage requirement for Dwellings constructed within ARRAY.

(d) A maximum of one (1) Dwelling per Lot is allowed. Notwithstanding the foregoing, one (1) Accessory Dwelling Unit is allowed, provided it is in compliance with relevant Local and/or County regulations, if any. Accessory Dwelling Units shall not be a Mobile Home. An Accessory Dwelling Unit may be attached to the main Dwelling, included in an accessory building, or constructed as a separate structure, subject to relevant Town and County ordinances or regulations, if any.

(e) Any Dwelling or Accessory Dwelling Unit constructed upon any Lot shall be subject to the Building, Design and Approval provisions contained in Article VI of this Declaration.

(f) Any Boats, Recreational Vehicles, or other similar large vehicles or machinery, with the exception of automobiles kept for daily use, shall be parked out of view of other Owners.

3.2 Commercial and Business Use Limitations: Except as provided for herein, no manufacturing, commercial or business enterprise, or enterprises of any kind shall be maintained on the Property. The purpose of this provision is to preserve the quiet nature of the Property and minimize traffic by prohibiting business or other services that cater to the public in unspecified intensity. This restriction shall not be construed, however, as preventing Owners from practicing a Home Business, as defined in Article I herein, provided that:

(a) No more than two (2) non-resident persons shall work on site in the business;

(b) Clients of Owners practicing a Home Business shall be seen on an appointment-only basis;

(c) No Home Business shall be permitted that is inconsistent with County and/or Local regulations, if any; and

3.3 Environmental Restrictions:

(a) Trees six (6) inches in diameter or greater shall be preserved except that such trees may be cut when necessary when dead, severely damaged, for construction of a driveway, a

Dwelling, an Accessory Dwelling Unit, or when necessary for solar access. Other trees may be cut at the Owner's discretion for the purposes of creating open space or reforestation with hardwood trees, or when necessary for solar access.

(b) Any clearing of Lots for building sites, drives, pastures, or for other purposes shall be done with reasonable erosion control safeguards including seeding, silt fences, and other measures so as to minimize soil erosion.

(c) No firearms of any kind shall be discharged on the Property. No hunting, trapping, or other taking of wild game shall be allowed on the Property.

(d) Outdoor fires are forbidden upon Lots, except for small camp fires, small supervised fires for disposal of vegetative debris, and fires in recreational fire pits and outdoor fireplaces., any permitted outdoor fires shall be consistent with County and Local regulations, if any.

(e) Organic waste shall be disposed of in an environmentally sensitive way such as mulching, composting, or recycling.

(f) No Lot shall be used or maintained in an unsightly manner or as a dumping ground for rubbish, trash, or debris.

(g) In an effort to preserve the nature and quality of the Property and any water wells located thereon, the use of non-organic pesticides upon any Lot shall be prohibited.

3.4 Animals:

(a) No more than four (4) dogs and four (4) cats shall be kept on any Lot. Dogs shall be restrained under physical or verbal control at all times such that they may not enter another Owner's Lot without prior permission, except that they may be walked under physical or verbal control on the roads, walking trails, and other common areas. Any outdoor housing for Dogs and other pets shall be constructed and maintained in such a way as to provide that barking dogs or other loud animals shall not be a nuisance to other Owners. Commercial kennels shall not be permitted within the Property.

(b) No hooved animals shall be housed or kept on any Lot.

(c) No more than ten (10) chickens shall be housed or kept on any Lot. Any Owner keeping chickens on a Lot shall keep the chickens in a contained area and shall not allow chickens to roam free upon the Lot. Roosters shall not be kept on any Lot.

3.5 Nuisances: No use or practice which is either an unreasonable annoyance to Owners or is an unreasonable interference with the peaceful possession and use of the Property by Owners shall be permitted. No Owner shall commit or permit any nuisance or illegal activity on or about their Lot. No Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise, disturbance, light or odor which destroys the peace, quiet and/or comfort of the Owners, or allow any such noise, light, odor or disturbance to be made on or about said Owner's Lot. This provision includes, but is not limited to, the following:

(a) Outdoor Lights. Outdoor lighting shall be no brighter than necessary and shall minimize blue light emissions. To the extent possible, Owners are encouraged to use solar powered or other energy efficient light sources;

(b) Signage. No signs, billboards, or other advertising device of any kind shall be placed or otherwise installed upon any Lot, except as provided in Section 3.6 below; and

(c) Sound. There shall be no excessive electric or electronic amplification of sound or music at a volume which may be heard from any adjoining Lot, provided, however that with the permission of the affected adjacent Lot Owners, Owners may make and amplify sound in excess of the above restrictions for special occasions.

3.6 Signage: No signs, billboards, or other advertising device of any kind may be placed or otherwise installed upon any Lot except as specified below:

(a) Sign(s) of not more than ten (10) square feet in area may be placed upon a Lot to designate the Owner and address;

(b) Sign(s) of not more than five (5) square feet in area may be placed upon a Lot to designate a Lot for sale;

(c) Sign(s) of not more than two (2) square feet in area may be used to give notice of restrictions to hunters, trespassers or others.

ARTICLE IV ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

4.1 Association: All Association membership shall be appurtenant to and inseparable from Lot Ownership within the Property (every Owner of a Lot within ARRAY shall be an Association member).

4.2 Voting Rights: The Association shall have two classes of voting membership as follows:

(a) Class 1 Members: Class 1 members shall be all Owners with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event may more than one (1) vote be cast for any single Lot.

(b) Class 2 Member: The Class 2 member shall be the Declarant and shall be entitled to five (5) votes for each Lot owned. When Declarant sells a lot, the Membership for that Lot shall be converted from Class 2 to Class 1. Class 2 members shall have five (5) votes per Lot and Class 1 members shall have one (1) vote per Lot.

4.3 Board of Directors: The Association shall establish a Board of Directors. The rights, duties, obligations and structure of the Board of Directors shall be laid out in the By-Laws of the Association.

ARTICLE V ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments: Except for the Declarant, each Owner within the Property hereby covenants, and by each Owner's acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association (1) an Annual assessment for costs determined by the Association, including but not limited to any entrance feature costs (e.g. maintenance, landscaping, lighting and signage) and reserves, and (2) a Special Assessment for capital improvements, both such assessments to be established and collected as hereinafter provided. The Annual Assessment and, as applicable, the Special Assessment, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

5.2 Purpose of Assessments: Assessments levied by the Association shall be used for the following purposes:

(a) to promote the health, safety, and welfare of the residents of ARRAY;

(b) to be spent for general maintenance of the Common Areas or Easements, as shown on the recorded Plat or Plats now and in the future for ARRAY, or any subdivision signage or mail kiosk that is part of ARRAY. General Maintenance of the Common Areas by the Association

includes, but is not limited to, maintenance of any community garden(s) within ARRAY, maintenance of any community gathering place(s) within ARRAY, maintenance of the Common Road, maintenance of any pond embankment(s) and drip system(s) within ARRAY, and maintenance of any trees and/or other vegetation located upon the Common Areas within ARRAY.

(c) to the extent applicable, to be spent by the Association Board of Directors to procure and pay premiums for extended casualty insurance and general liability insurance over the Easements and Common Areas of ARRAY.

5.3 Maximum Annual Assessment: Until July 1, 2024, the maximum Annual Assessment shall be _____ Dollars per Lot, payable on an annual basis on the 1st day of July, each year. In addition to the Maximum Annual Assessment, the initial capital assessment fee, which shall be equal to the annual assessment fee, shall be due from each Lot buyer upon closing, whether the Lot is improved or not.

(a) From and after July 1, 2024, the maximum Annual Assessment may be increased each year, without a vote of the Owners, in an amount equal but not greater than the increase in the Consumer Price Index (as published by the United States Department of Labor) for the preceding calendar year.

(b) From and after July 1, 2024, the maximum Annual Assessment may be increased above that total increase established by the Consumer Price Index for the preceding calendar year only by a vote of two-thirds of the Owners who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Association Board of Directors may fix the Annual Assessment at any amount not in excess of the maximum.

5.4 Special Assessments for Capital Improvements: In addition to the Annual Assessment authorized above, the Association 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, if any or any necessary repair, which shall be used to defray unanticipated or other one-time costs, shall be due from one or more Owner in accord with the terms set by the Association Board of Directors. Any such Special Assessment shall require the assent of two-thirds (2/3) of the votes of all of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

5.5 Notice and Quorum Requirements: Written or electronic notice of any meeting called for the purpose of taking any action authorized under Section 5.3 or 5.4 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of said meeting. At the first such meeting called, the presence of the Owners or of the proxies

entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quota at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.6 Uniform Rate of Assessment: Both Annual and Special Assessments must be fixed at a uniform rate for each Lot.

5.7 Date of Commencement of Annual Assessment: The Annual Assessment provided for herein shall commence as to all Lots as of the date upon which the first Lot is purchased by a third-party purchaser. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Association 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. In the event the Annual Assessment is increased, written notice of the increase shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

5.8 Nonpayment of Assessments: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum, plus a one-time late payment penalty of Ten (\$10) Dollars. The Association shall retain all rights to file a claim of lien against any Lot for any unpaid assessments pursuant to N.C.G.S. § 47F-3-116, the terms and provisions of which are incorporated herein. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments.

5.9 Subordination of Lien: The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure 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 that such an extinguished lien may be reallocated and assessed to all of the Lots as a common expense. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

5.10 Reserve: In addition to the above, the Annual Assessment provided for herein shall be allocated in part to a reserve fund for the emergency repair or other agreed upon improvements to any Common Areas.

ARTICLE VI
ARCHITECTURAL REVIEW AND GUIDELINES

- 6.1 Declarant Approval: No site preparation or initial construction work shall be commenced upon any Lot until the plans and specifications for the proposed construction have been approved by Declarant or its designated appointee. The Declarant or its designated appointee shall have the sole approval authority of all exterior designs, colors, specifications and locations for each proposed dwelling and any associated structures. Declarant authority to approve or disapprove all proposed dwelling and associated structures shall continue until such time as Declarant no longer owns any Lots or property in ARRAY, as further described in Section 6.3 below.
- 6.2 Applications: Applicants for proposed dwelling and associated structures shall follow and comply with the Building Standards, which are attached as Exhibit “A” hereto and incorporated herein by reference. Declarant shall use the Building Standards as a basis for approval or disapproval of plans and specifications of proposed dwelling and associated structures. Declarant shall respond to a complete submission of plans and specifications within thirty (30) days of the application, and the application will be considered approved if a response is not provided in writing. If, however, the plans and specifications reflect inaccurate or incomplete information when submitted, they shall not be deemed to be approved notwithstanding the foregoing. Denial of approval of any plans by either the Declarant or Declarant’s designated appointee may be based upon any grounds, including purely aesthetic and environmental.
- 6.3 Guidelines Review Committee: At such time as Declarant no longer owns any real property within the Property (or earlier if the Declarant shall surrender this right in a written statement in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of construction improvement approval on Lots. The Association Board of Directors shall then establish a Guidelines Review Committee (hereinafter “GRC”) to review, interpret, maintain, promulgate and enforce the Guidelines. The GRC shall be comprised of two (2) to three (3) GRC members. One member shall be the Declarant, unless Declarant waives its right to be a member, in writing. All other members shall be nominated and appointed by the Association Board of Directors for two-year terms.. Whenever a GRC member resigns or departs, the remaining GRC members may select a new GRC member by majority vote. The GRC may recommend changes to the Building Standards for Association Board of Directors approval. The GRC members shall exercise their own judgment in making decisions and shall abstain from any vote, deliberation or action involving an interest of that member.

Owners must obtain prior written approval from the GRC for any lot improvements, except for circumstances wherein Declarant Approval is required, as set forth in section 6.1. Owners must submit all requests for approval in writing in accord with the Building Standards.

The GRC shall review such requests in accord with the Building Standards, but ultimately must rely on its judgment in interpreting the Building Standards and making a determination.

6.4 Violations: The Declarant or GRC shall notify the Owner and Association Board of Directors of any violation of the Building Standards. The Association Board of Directors shall give the Owner at least ninety (90) days to correct the violation and verify the Owner's corrective actions. If the Owner fails to take suitable corrective action within ninety (90) days, the Association Board of Directors may take suitable measures until such time the violation is cured, including assessing fines, filing liens, and filing legal claims for non-compliance and Association-incurred attorney fees. The Association Board of Directors also may subject the matter to mediation. All mediation costs shall be shared equally by the parties and agreements reached in mediation, if any, shall be enforceable in any court of competent jurisdiction. Any dispute not resolved through mediation may then be litigated.

ARTICLE VII

Easements and Common Areas

7.1 General: All of the Property, including the Lots and Common Areas, are subject to private and public easements for utilities, public services or common needs, as shown on the recorded plat of the Subdivision. Declarant and/or the Association Board of Directors shall have the right to amend and/or create additional easements upon the Property for utilities and/or public services, as determined by Declarant and/or the Association Board of Directors. The Association is entitled to an easement to any Lot for Association-approved common area element or easement maintenance. Each Owner shall have the right to use any common areas or common elements (to the extent they are provided) and such right shall be appurtenant to and run with the title to every Lot. The Owner's rights shall include access, ingress and egress, subject to federal, state and local law.

Each Owner shall review all relevant documents (e.g. plats) to locate any easements, buffers or other restrictions on the Owner's Lot and is prohibited from making any improvements that encroach upon easements or other restrictions. Any structures or other improvements encroaching on an easement, buffer, common area or other designated element shall be removed upon GRC request at the Owner's sole cost. Owners are prohibited from altering or installing any items or plantings, diverting water, storing property and leaving debris on common areas, elements or easements. Owners are responsible for any damages or costs arising from actions by the Association Board of Directors or its agents to rectify such violations.

7.2 Walking Trail Easement: A nonexclusive Walking Trail Easement, as identified on the recorded Plat or Plats now and in the future for ARRAY, is hereby granted to each Owner hereunder and the Declarant, their successors and assigns (but not including any mortgagee) and their guests for the purposes of walking, hiking, running and bicycling. No other uses shall be permitted upon the Walking Trail Easement. All persons engaging in these activities

do so entirely at their own risk and agree to hold Owners harmless for any injury or property damage sustained while using the Walking Trail Easement. Use of the Walking Trail Easement is subject to the following limitations:

- (a) All users of the Walking Trail Easement shall, to the extent reasonably possible, avoid damage to the trail;
- (b) It is the responsibility of the Association to maintain the Walking Trail Easement, therefore, Owners shall not be held liable for the negligence or gross negligence of other Owners in maintaining and/or repairing any portion of the Walking Trail Easement located upon another Owner's Lot. Further, Owners shall not be liable for damages sustained by other individuals while using any portion of the Walking Trail Easement located upon that Owner's Lot.
- (c) Any Owner, guest, or invitee using the Walking Trail Easement to walk a dog or dogs shall keep the dog(s) leashed at all time while using the Walking Trail Easement.

7.3 Solar Easement: Each Owner of any Lot within ARRAY shall have, give and grant to the Owners of any other Lot within ARRAY a solar easement for the solar access necessary for initial Dwelling construction to achieve net-zero energy and thereafter to sustain net-zero energy and to comply with the Building Standards described in Exhibit "A" attached heret. Notwithstanding the foregoing, no Owner shall demand or otherwise require that another Owner remove any tree or trees from the other Owner's Lot unless said tree removal is reasonably necessary for adequate solar access. Furthermore, should any Owner require that another Owner remove trees from their Lot for the purposes of solar access, then in that event the Owner requiring the removal shall be responsible for all costs associated with said tree removal.

7.4 Orange County Conservation Easement:

ARTICLE VIII 50' COMMON AREA ROAD

8.1 Use of the Common Area Road: The Common Area Road shall be for the use and benefit of all Lot Owners as defined in section 1.12 of the Declaration.

8.2 Cost of Initial Road Improvements and Subsequent Maintenance, Repair and Insurance: Declarant shall complete all initial construction costs of the gravel Common Area Road, shown as a 50' right-of-way on Plat Book ____, Page ____, Orange County Registry, and pay all costs of the initial construction improvements, all improvements to comply with Orange County regulations for the 50' Common Area Road. The third-party purchasers of Lots shall not bear any cost associated with the construction of the road, however, all costs associated with the driveway improvements for each lot shall be borne in full by the Lot Owners. Upon Declarant's completion of the construction of the 50' private class A standard Common Area

Road, and approval of the road by Orange County regulators, the Association shall at their sole cost and expense, (a) cause the Common Area Road to be kept and maintained in good and serviceable condition, and state of repair, free of garbage, refuse or unsightly appearance, and (b) keep and maintain public liability insurance over the Common Area Road. In the event damage to the Common Area Road is due to the construction activities related to a Lot Owner's improvements, that Lot Owner shall be responsible for the repair or maintenance of damage caused by the construction activity related to the construction project on the Lot. The Association shall have the right to assess a charge against the Lot Owner for the repair and maintenance of the Common Area Road when damage has been caused by the construction improvement activities on a Lot.

- 8.3 No Barriers: At no time shall the Association permit the erection of any fence or other barrier or obstruction on, within or over the Common Area Road or any part thereof that will in any way interfere with the continuous and uninterrupted use of the Common Area Road by Lot Owners, or their tenants, guests, invitees and licensees, and the Common Area Road shall be kept open at all times for the free use thereof as contemplated in this Declaration.

ARTICLE IX General Provisions

- 9.1 Enforcement: These covenants shall be construed pursuant to the laws of North Carolina. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 9.2 Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. In the event of any contradiction, real or apparent, between the Articles of Incorporation and the By-Laws, the By-Laws shall control and in the event of any contradiction, real or apparent, between the By-Laws and this Declaration, then the terms and conditions of this Declaration shall control.
- 9.3 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than two-thirds (2/3) of the Owners. The Declarant shall have the right to unilaterally amend this Declaration of Covenants without consent of the Owners at any time while the Declarant still owns any portion of the Property. Any amendment to this Declaration shall be recorded with the Register of Deeds.

- 9.4 Reserved Rights of Lot Owners: No Owner shall be subject to a restraint imposed by the Association upon the Owner's right to sell, transfer, or otherwise convey its Lot. Under no circumstances shall the Association have a right of first refusal upon the sale and conveyance of any Lot. No Owner shall be subject to any restraint imposed by the Association upon its right to mortgage its Lot with whomever or whatever institution and upon those terms and conditions the Owner is willing to accept. Each Owner is entitled to likewise inspect the books and records and other related documents of the Association during normal business hours or under other reasonable circumstances.
- 9.5 Contracts: Any contract, lease or agreement entered into by the Association on its own behalf or by Declarant on behalf of the Association must be terminable by either party without cause upon not more than ninety (90) days' notice to the other party and with cause upon not more than thirty (30) days' notice to the other party. If so terminated, no termination fee shall be required to be paid to the party so terminated. This provision shall include, but not be limited to, contracts for professional management of the project.
- 9.6 Captions: Captions are inserted only as a matter of convenience and shall not be construed to define or limit the scope or applicability of any provision.

IN TESTIMONY WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

[SIGNATURE AND NOTARY PAGE(S) TO FOLLOW]

_____(SEAL)
Jodi Bakst, Declarant

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, _____, a notary public for the County of _____, State of North Carolina do hereby certify that Jodi Bakst, Declarant, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the ____ day of _____, 2021.

Notary Public

My commission expires: