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MARKUP #1 ->

ISSUE #1

SECTION 24. Antennas. No antenna shall be erected on or about any residence or any Lot without the prior written approval of the ARB in accordance with the provisions of Article VIII hereof.

SECTION 25. Outdoor Lighting. All outdoor lighting shall be so shaded and directed such that the light therefrom is directed to fall only on the same premises where light sources are located.

SECTION 26. Fences. No fence or similar improvement shall be constructed without the prior written approval of the ARB, in accordance with the provisions of Article VIII of this Declaration. In no event shall such fence, wall or similar structure exceed four feet (4') in height above existing finished grade, nor shall any such fence, wall or similar structure be constructed any closer to the street than the rear wall of the residence on that same Lot. The ARB shall have the right to further restrict the areas within each Lot where fences, walls or similar structures may be erected, in accordance with Article VIII.

ARTICLE XI

PARTY WALLS OR PARTY FENCES

SECTION 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction and any replacement of townhomes upon any Additions to Existing Property.

In the event that any portion of any townhouse structure, as originally constructed by Developer, including any party wall or fence, shall protrude over an adjoining Lot, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining Lot, and the affected Owner shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event there is a protrusion, it shall be deemed that said affected Owner has granted a perpetual easement to the adjoining Owner for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements of any structures, party walls or fences if same are constructed in conformance with the original structure, party wall or fence constructed by Developer. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

SECTION 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who make use of the wall or fence in proportion to such use.

SECTION 3. Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence must restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use without preju-

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 24. (p. 43): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

Antennas. No antenna shall be erected on or about any residence or any Lot without the prior written approval of the ARB in accordance with the provisions of

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).