

Section 1: [Section 1] Purposes: Developer's Absolute Right to Amend Development Plan Without Notice & Buyer Waiver

MARKUP #1 ->

1. PURPOSES: The said lots within the Real Property shall be used for residential purposes as set out on the development plan of Developer, including as Developer may hereafter amend such development plan. In this regard, Developer shall have the absolute right and ability to amend and change the development plan without notice, in the sole discretion of Developer. Every person who purchases a lot in the above-described Real Property waives any and all objection to such development, and consents to such development, as well as all amendments and changes thereto. Such waiver and consent shall bind all transferees and future owners of any lot in the said Real Property.

Section 2: [Section 3(D)(3) & Section 3(E)] Concealment of Solar Devices/Satellite Dishes and Blanket Immunity/Indemnification

D(3) Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools, pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns... E. In spite of the above provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Committee shall have any liability, responsibility, or obligation, whatever, for any decision or lack of a decision, in the carrying out of duties as a member of the Committee... Each homeowner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the Committee relating to the owner's property or buildings to be constructed on his or her property.

Section 3: [Section 4(E)] Total Prohibition on Signs (Except One For-Sale or Builder Sign)

E. No sign of any kind shall be displayed to public view on any building site, except for one sign limited to the builder or advertising the property for sale. There shall be no restriction on signs used by Developer during the period of development of this addition.

ISSUE #1

Section 4: [Section 4(F)] Ban on TV/Radio Antennas, 18-Inch Satellite Dish Cap, and Ban on Front-Yard Flagpoles

F. ...No television or radio antenna or aerial shall be installed. Television satellite disks may be installed but not to exceed eighteen (18) inches in diameter. Flagpoles may not be constructed or placed on the property that exceed twenty (20) feet in height and may only be placed in the backyard. No flagpoles may be erected in the front yards.

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 4 (p. 1): 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:

[Section 4(F)] Ban on TV/Radio Antennas, 18-Inch Satellite Dish Cap, and Ban on Front-Yard Flagpoles F. ...No television or radio antenna or aerial shall be installed. Television satellite disks may be installed but not to exceed eighteen (18) inches in diameter. Flagpoles may not be constructed or placed on the property that exceed twenty (20) feet in height and may only be placed in the backyard. No flagpoles may be erected in the front yards.

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).