Section 1: [1.1] Definitions and Dynamic Statutory Incorporation

This Declaration of Covenants, Conditions, and Restrictions is governed by the applicable State Community Association Act and Nonprofit Corporation Act, as amended from time to time. In the event of any conflict between a provision of these governing documents and mandatory state or federal statute, the controlling statute shall govern automatically.

Section 2: [2.1] Open Board Meetings and Member Notice

All meetings of the Board of Directors shall be open to all members except for executive sessions permitted by law for pending litigation, personnel matters, or contract negotiations. Written notice and agenda of all Board meetings shall be posted and delivered to members at least 14 days in advance in full compliance with statutory notice windows.

Section 3: [3.1] Official Records Inspection and Portal Access

Official records of the Association shall be maintained within the state and made available for inspection and copying by any parcel owner or authorized representative within 10 business days after receipt of a written request, and published on the secure member portal in accordance with statutory requirements.

Section 4: [4.1] Protected Homeowner Rights (Flags, Solar, OTARD Antennas & Assistance Animals)

Nothing in this Declaration or the Rules shall prohibit a homeowner from displaying the United States flag or official state/armed forces flags in accordance with 4 U.S.C. § 5, installing rooftop solar collectors or FCC-protected OTARD antennas (47 C.F.R. § 1.4000), parking personal or first-responder vehicles in driveways where protected by law, or keeping a qualified assistance animal under the Fair Housing Act (42 U.S.C. § 3604).

Section 5: [5.1] Fining and Suspension Due Process

The Board of Directors may not impose a fine or suspension unless the parcel owner is provided at least 14 days written notice and an opportunity for a fair hearing before an independent Fining and Enforcement Committee of at least three members who are not officers, directors, or employees of the Association, nor relatives of such persons.

Section 6: [6.1] Reserve Accounts and Annual Financial Reporting

The Board shall prepare and distribute an annual budget and reserve funding schedule to all members at least 30 days prior to the fiscal year, maintaining statutory structural and capital reserve accounts as required by controlling law.

ISSUE #1

Section 7: [7.1] Satellite Dishes, Antennas and Exterior Communications

No exterior television antenna, satellite dish, wireless receiver, or telecommunications aerial of any size shall be erected, mounted, or maintained on any Lot or residence without prior written approval of the Architectural Control Committee and payment of a $150 review fee. Satellite dishes are strictly prohibited on front or side elevations.

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW — BOARD & COUNSEL REVIEW

Sec. 7.1 (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:

Satellite Dishes, Antennas and Exterior Communications No exterior television antenna, satellite dish, wireless receiver, or telecommunications aerial of any size shall be erected, mounted, or maintained on any Lot or residence without prior written approval of the Architectural Control Committee and payment of a $150 review fee. Satellite dishes are strictly prohibited on front or side elevations. Kihei Shores Aoao - Declaration of Covenants, Conditions & Restrictions - Page 2

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).