



# Makani Kai Marina

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## EXHIBIT C - SATELLITE TV INSTALLATION

(Revised 10 / 2019)

### I. ANTENNAS

#### I. Background

This Antenna Installation Policy is adopted by the Board of Directors of the Association of Apartment Owners of Makani Kai Marina in conformance with the Over-The-Air Reception Devices (“OTARD”) rule of the Federal Communications Commission (47 C.F.R. Part 1, Subpart S. § 1.4000 et seq.), as amended [“FCC Rule”] governing installation of certain antennas described below.

This Antenna Installation Policy shall be binding upon all owners, occupants, tenants, and other persons using the condominium project and shall supersede any previously adopted rules on the same subject matter.

#### Antenna Installations Affected by the FCC Rule

The only antennas which are covered by the FCC Rule are:

- (1) Dish antennas one meter or less in diameter used to receive direct broadcast satellite service, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite; or
- (2) Antennas one meter or less in diameter or diagonal measurement used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, otherwise known as “wireless cable” services or to receive or transmit fixed wireless signals other than via satellite; or
- (3) Antennas used to receive over-the-air television broadcast signals.

The FCC Rule also covers masts supporting any antenna described above.

For purposes of this section, “fixed wireless signals” means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Examples include wireless signals used to provide telephone service or high-speed internet access to a fixed location. Fixed wireless signals do not include, among other things, AM radio, FM radio amateur (“HAM”) radio, Citizen's Band (CB) radio, and Digital Audio Radio Service (DARS) signals. Thus, for example, any broadcast antennas (e.g., ham radio antennas) will continue to be subject to the existing restrictions in the Association's governing documents and Chapter 514B, Hawai'i Revised Statutes. Furthermore, the FCC Rule only covers

antennas installed “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property.” Antennas installed on property that is not within the exclusive use or control of the antenna user or property in which the antenna user does not have a direct or indirect ownership interest are not covered by the FCC Rule or this Policy.

As used in this Antenna Installation Policy:

- a. “Preclude reception (or transmission) of an acceptable quality signal” means that reception (or transmission) would be impossible or would be substantially degraded. An acceptable quality signal need not be the best possible signal.
- b. “Antenna” and “mast” mean and include the device itself and any related or ancillary equipment or fixtures, including without limitation, any cables, boosters or amplifiers, splitters, conduits, stays or supports, electrical wiring or connections, or mounting devices and hardware, as the context may require.
- c. “Antenna user” or “user” means the owner or occupant of any apartment served by an antenna, other than persons occupying an apartment for a period of less than 30 days as a transient vacation rental.

## 2. Restrictions on Antenna Installations Subject to FCC Rule

Antennas covered by the FCC Rule may be installed only in accordance with the following restrictions:

- A. Any person who wants to install an antenna shall immediately provide the Board of Directors with written notice of their intent. The notice shall include: a) the type of antenna including dimensions and other specifications; b) the name of the television service provider; c) an adequate depiction of the location of installation and the manner in which the antenna will be installed and cables will be run. The person shall also provide the Association with a copy of any applicable governmental permit.
- B. Except as provided herein with respect to limited common elements, no antenna or mast shall be installed, used, or maintained on or in the common elements of the project. No antenna or mast may encroach upon any common element, any limited common element not within the antenna user's exclusive use and control, any other owner or occupant's apartment, or the air space of another owner or occupant's apartment or the air space of any limited common element that is not within the antenna user's exclusive use and control.
- C. Except as otherwise provided herein and subject to the other provisions herein, antennas covered by the FCC Rule may be installed, used, and maintained on or in limited common elements (as defined in the Declaration) which are appurtenant to and adjacent to the person's apartment, provided, however, that:
  1. No antenna shall be installed, used, or maintained on or in a limited common element that is not within the exclusive use or control of the antenna user;
  2. No antenna shall be installed, used, or maintained, without the prior written consent of the Board of Directors, on or in any limited common element if the installation, use, or maintenance will involve a penetration through, alteration of, addition to, or modification of any limited common element that is not within the exclusive use or control of the antenna user and/or any common element (general or limited) that the Association is required or permitted to repair and/or maintain.
- D. Subject to the provisions herein, antennas may be installed, used, and maintained in the apartments (as defined in the Declaration); provided, however, that no antenna shall be installed, used, or maintained in any apartment without the prior written

consent of the Board of Directors, if the installation, use, or maintenance will involve a penetration through, alteration of, addition to, or modification of any limited common element that is not within the exclusive use or control of the antenna user and/or any common element (general or limited) that the Association is required or permitted to repair and/or maintain.

- E. If acceptable quality signals can be received (or transmitted) by placing antennas and masts inside an existing apartment without causing an unreasonable delay or an unreasonable increase in cost, then outdoor installation is prohibited. In any event, antennas and masts shall be placed in locations which are not visible from either the exterior of the apartment or limited common elements appurtenant to the apartment, or the exterior of the project, unless such placement would impair the installation, maintenance, or use of the antennas, in which case the following requirements shall apply:
1. Antennas and masts shall not block the view plane of other units, and shall be placed in the least visually obtrusive location, which would not preclude reception (or transmission) of an acceptable quality signal.
  2. Antennas or masts may not extend beyond a railing or fence unless no acceptable quality signal may be received (or transmitted) from this location.
  3. Antennas visible from the street, the common elements, or from other apartments shall be placed so as to be camouflaged by existing landscaping, fencing, or other structures if an acceptable quality signal may be received (or transmitted) from such placement.
  4. If no existing landscaping or screening exists, the Board of Directors may require antennas to be screened by new landscaping or screening of reasonable cost in such a manner as to blend in with the surrounding background surfaces or to minimize visibility of the antennas.
  5. The antennas and masts shall be painted to blend in with the surrounding background surfaces to the extent that this will not preclude reception (or transmission) of an acceptable quality signal. No bare metal may be exposed.
  6. Exterior antenna wires shall be installed so as to be minimally visible.
  7. Antennas and masts shall be no larger nor installed higher than is absolutely necessary for reception of an acceptable quality signal.
- F. Any installer of an antenna, other than the owner or occupant, shall provide the Association with proof of such insurance as may be required by the Board from time to time. Masts shall be installed by licensed contractors providing proof of insurance with the following minimum limits:
- a. Commercial General Liability (including Completed Operations): \$1,000,000.00 and
  - b. Workers' Compensation: Statutory Limits
- G. Owner or occupants shall not permit their antennas or masts to fall into disrepair or to become safety hazards. Antenna users shall be responsible for maintenance and repair of antennas and masts. Antenna users shall be responsible for repair or replacement if the exterior surface of the antenna or mast deteriorates.
- H. Installation shall be performed in such a manner that it does not damage the common elements, limited common elements or apartments of other owners or occupants, or void any warranties of the Association or another owner or occupant. Antenna users are responsible for all costs associated with the antenna, including but not limited to

costs to:

- a. Place (or replace), repair, maintain, and move or remove antennas;
  - b. Repair damages to the common property, other lots, and any other property damaged by antenna installation, maintenance or use;
  - c. Pay medical expenses incurred by persons injured by antenna maintenance or use;
  - d. Reimburse residents or the Association for damages caused by antenna installation, maintenance, or use.
- I. In the event that the Board of Directors reasonably determines that it needs to perform maintenance which will require removal of any antenna, the antenna user shall remove the antenna. The Board of Directors shall give the antenna user at least thirty (30) working days prior written notice, where practical to do so, in order that the antenna user may coordinate with his/her service provider. Any removal or relocation of an antenna required under this provision shall be performed by the antenna user at his/her sole cost and expense, and the Association shall not be liable for loss or inconvenience to the antenna user arising from the removal or relocation.
- J. No more than one antenna of each type of service may be installed by an antenna user.
- K. Antenna installations shall not present any structural or safety concerns and shall comply with all applicable statutes, ordinances, codes, rules, and regulations promulgated by any governmental authority, including, without limitation, the obtaining of any permits required by such authorities unless those statutes, ordinances, rules or regulations have been preempted by the FCC Rule.

No mast may be installed which exceeds 12 feet in height or whose height exceeds the distance to neighboring property or public rights of way measured from the point of installation without prior Association approval. Any request for approval of a mast which exceeds 12 feet in height or whose height exceeds the distance to neighboring property or public rights of way measured from the point of installation shall include a detailed description of the structure and anchorage of the antenna and mast, as well as an explanation of the necessity for a mast of this size. If the installation will pose a safety hazard to Association residents or personnel, then the Board of Directors may prohibit such installation. The notice of rejection shall specify the safety risks.

Antennas and masts shall not be located in the vicinity of power lines or other electric light or power circuits and in no event shall antennas or masts be placed where they may come into contact with such power lines or circuits. The purpose of this requirement is to prevent injury or damage resulting from contact with electrical power lines or circuits. In order to prevent electrical or fire damage, antennas shall be permanently and effectively grounded.

Antennas are required to withstand winds of 80 mph.

- L. If these rules are violated, the Association may bring action for declaratory relief with the FCC or any court of competent jurisdiction after notice and an opportunity to be heard is given. If the court or FCC determines that the Association position is enforceable, a fine of \$100.00 shall be imposed by the Association for each violation. If the violation is not corrected within a reasonable length of time, additional fines may be imposed. To the extent permitted by law, the Association shall be entitled to reasonable attorney fees, costs, and expenses incurred in the enforcement of this policy.

- M. Antennas shall not be installed in any fashion that will obstruct access to or from any apartment, walkway, electrical service equipment, or any other areas in which access is necessary for the safe operation of the condominium project. The purpose of this requirement is to ensure safety of Association residents and personnel.
- N. Antenna users shall reimburse the Association for any damage to the common elements or Association property caused by the installation, maintenance, or use of any antenna. Antenna users shall reimburse other owner or occupants, residents, and persons for damage to their property caused by the installation, maintenance, or use of the antenna user's antennas or masts. Antenna user shall pay any medical expenses incurred by persons injured by the installation, maintenance, or use of the antenna user's antennas or masts.
- O. Any antenna user permanently removing any antenna shall, at his/her sole cost and expense, restore the installation location to its original condition.
- P. Pursuant to the FCC Rule, the Association reserves the right to petition the Federal Communications Commission for a waiver allowing the adoption of restrictions on antennas which would otherwise be preempted. In the event that such a waiver is granted, antenna installations which are not in compliance with such restrictions may be required to be brought into compliance within a reasonable time as determined by the Association, acting through its Board of Directors.
- Q. If any term, provision, or part of this Antenna Installation Policy or the application thereof to any person or to any circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Antenna Installation Policy, or the application of such term, provision, or part to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision, or part of this Antenna Installation Policy shall be valid and may be enforced to the fullest extent permitted by law.
- R. If an antenna installation poses a serious, immediate safety hazard, the Association may seek injunctive relief to prohibit or seek removal of the installation.

**I have read the guidelines above and agree to abide by the outlined guidelines:**

Signed: \_\_\_\_\_ Unit: \_\_\_\_\_

Date: \_\_\_\_\_