Report on Common Area Fences

The purpose of this report is to correct the misconceptions that have arisen over the years about common areas and the fences that pertain to them and to clarify the responsibilities of the Chantarelle Home Owners Association (the Association) and the individual homeowners in this regard. In this context, a common area fence is one that runs along a boundary between an individual lot and part of the common area, as defined in section II below.

I. Background

During the course of 2011 it became obvious to the Board of Directors (the board) that considerable confusion exists among members as to what constitutes "common area" at Chanterelle. This in turn has led to misunderstandings among members as to whether the maintenance of certain fences on their property was their individual responsibility or a responsibility shared with the Association.

Having identified this problem, the board reviewed the Declaration of Covenants, Conditions and Restrictions (CC&Rs) and the Sonoma County Assessor's maps to ascertain precisely the boundaries of the common area at Chantarelle and identify the location of all common area fences. Please note that the board is not creating new rules about which areas and fences are or are not common. The board is merely identifying the rules that are in the CC&Rs and have existed since the CC&Rs were created. (However, the board did adopt new alternative procedures for using contractors to replace common area fences, see section V, below.)

The primary objective has been to identify more precisely the fences for which the Association is obligated to share the cost of maintenance and to avoid future expenditure on maintenance for which the Association is not legally obligated. Also note that the association's Reserve Budget has been adjusted properly to reflect the findings of this report, resulting in reduced estimates for future cost of replacing common area fences.

II. Definition of Common Area

Article I of the CC&Rs defines Common Area as follows:

1.6 "Common Area" shall mean the portions of the Property (and all improvements thereon) owned by the Association for the common use and enjoyment of the owners consisting of Parcels A, B, C, and D as shown on the map.

"The Map" referred to is actually two maps filed with the Sonoma County Assessor:

Assessors Map Book 142 page 30, entitled "Country Meadows" (defines Parcel D)

Assessors Map Book 142 page 31, entitled "Vista Hermosa" (defines Parcels A, B, & C)

Parcel A is the park area adjacent to the clubhouse and pool, including the pathways leading to it from South Temelec and Saint James.

Parcel B is the walkway opposite the clubhouse that runs from Saint James to South Temelec.

Report on Common Area Fences

Parcel C is the land alongside Arnold Drive and Watmaugh Road. Parcel C contains the sound wall running from Avenida Sebastiani around to Hermosa Parkway.

Parcel D is the land alongside Arnold Drive to the north of Avenida Sebastiani. Parcel D contains the continuation of the Arnold Drive sound wall north of Avenida Sebastiani.

This definition of Chantarelle's common areas has been in place since the first edition of our CC&Rs. Please note that there are no other common areas within our perimeters. Specifically the following areas, which in the past have been assumed to be common by various parties, are not part of our common area:

Front lawn areas (and, in the case of corner lots, side lawn areas): although the Association assumes responsibility for the landscaping in these areas, they are not "common areas". In fact they belong to the individual homeowners.

The areas bordering Avenida Sebastiani: these are examples of side lawn areas, as defined immediately above.

III. Location of Common Area Fences

Parcel A: Common area fences here are located to the rear of the homes that back up to the park area adjacent to the clubhouse and pool. These homes are found:

On South Temelec: the even-numbered homes in the range 120 through 176 -- and
On Saint James: the odd-numbered homes in the range 135 through 181.

In addition, #148 & #158 South Temelec and #121, #135 & #181 Saint James have Common area fences alongside the pathways leading into Parcel A and #159 & #175 Saint James have Common area fences adjacent to the clubhouse.

Parcel B: Common area fences here are located alongside homes at #272 & #278 South Temelec and #162 & #170 Saint James adjacent to the walkway.

Parcel C: The Common area fences here comprise the sound wall running from Avenida Sebastiani around to Hermosa Parkway. In this case, common area fences are found to the rear of homes that back up to this sound wall. These homes are found:

On Saint Patrick Court #11, #17, #23 & #29 Saint Patrick Court
On South Temelec odd-numbered homes in the range 133 through 265 South Temelec and 21261 Hermosa Parkway.

Parcel D: Common area fences here are found to the rear of homes that back up to the continuation of the Arnold Drive sound wall north of Avenida Sebastiani. These homes are located at #10, #16, #22 & #28 Saint Matthew Court.

IV. Responsibility for Common Area Fences

The responsibility for maintaining, repairing and replacing common area fences is shared equally between the Association and the individual homeowner. This is supported by wording in sections 5.1A(3) and 7.13 of the CC&Rs, which read as follows:

5.1 Duties: In addition to the duties enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

A. **Maintenance:** The Association shall maintain and repair the following:

(1) The Common Area, all Improvements and landscaping thereon, and all property owned by the Association, including without limitation, the pool, pool equipment, recreational facilities, irrigation systems, lighting fixtures, and utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district.

(2) Landscaping in the unfenced areas of the front yards of each Lot (excluding the walkways, sidewalks, and driveways which shall be maintained, repaired and replaced by the Lot Owner), including regular fertilization, irrigation and other garden management practice necessary to promote a healthy, weed-free environment for optimum plant growth and the reasonably prompt removal and replacement of any dying or dead vegetation; and

(3) Periodically repainting or restaining the exterior side of the soundwall located adjacent to the rear boundary lines of some of the Lots (the restaining or repainting of the interior side of the fence itself shall be the responsibility of the Lot Owner as described in section 7.13). Structural repairs and replacement of the soundwall shall be performed by the Association and the costs of such soundwall repair and replacement shall be shared equally by the Association and the owners of Lots bounded by the portion of the soundwall being repaired or replaced.

If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or an Owner's agents, occupants, Invitees, or pets and such cost was not covered by insurance maintained by the Association, the Association shall levy a Reimbursement Assessment against the responsible Owner in accordance with section 4.7.

7.13 Owner's Right and Obligation to Maintain and Repair: Except for those portions of the project which the Association is required to maintain and repair, each Lot Owner shall, at his sole cost and expense, maintain and repair his Lot and all Improvements and landscaping thereon, keeping the same in good condition. Owner shall be responsible for periodic inspection of his Lot for the presence of wood-destroying pests or organisms and for the treatment and repairs resulting from the presence of wood-destroying pests or organisms. Except as provided in section 5.1 A(3) each Owner shall be responsible for maintaining the fences located on the Owner's lot including structural repairs and repainting or restaining. Any Lot Owners that share a fence along a common boundary line shall jointly maintain and repair the fence and the cost shall be allocated equally between the Lots unless circumstances warrant a different allocation so that the cost is allocated equitably. Any disputes between the Owners regarding the need for maintenance and repair, the type of maintenance and repair, the allocation of cost or related issues shall be submitted to Internal Dispute Resolution or to the Board or a committee selected by the Board for resolution. The decision of the Board or committee shall be conclusive and binding on the Owners and may be enforced in any court with appropriate jurisdiction.

In the event an Owner of a Lot shall fail to maintain his Lot and the improvements thereon as required herein, the Association's agents may, after Notice and Hearing as provided in section 9.1, enter the Lot and perform the necessary maintenance. The cost of such maintenance shall be charged to the Owner as a Reimbursement Assessment in accordance with section 4.7.

V. Common Area Fence Replacement Requirements/Procedures

At the June 2011 Board Meeting the board adopted the following new procedures for replacement of common area fences on their property.

STANDARD PROCEDURES

1) Homeowner must submit an application for fence replacement to the Architectural Committee.
2) Contractor replacing a common area fence must be licensed and insured.
3) The Association will obtain quotes for the fence replacement per the fence replacement specifications.
4) The Board of Directors will review fence replacement proposals and approve one.
5) The owner of the common area fence will sign agreement agreeing to pay for one half the cost of the fence replacement.

ALTERNATIVE PROCEDURES

6) The homeowner of the common area fence may obtain their own quote using the approved fence replacement specifications.
7) Homeowner's contractor will be required to sign a hold harmless agreement with the Association.
8) The contractor will provide local references.
9) Homeowner will submit their application with copy of the proposal, hold harmless agreement signed by contractor and list of local references to the Architectural Committee.
10) Homeowner will pay contractor in full and submit copy of invoice for one half reimbursement.

VI. Summary

By re-examining the CC&Rs, the board has found that some areas previously assumed to be part of the common area are not in fact common (e.g. the front lawn areas and the areas bordering Avenida Sebastiani).

The only common area fences are: the soundwalls adjacent to Arnold Drive and Watmaugh Road and the fences bordering the clubhouse/pool area and the pathways leading to it.

The cost of maintaing and replacing common area fences is shared equally between the Association and the individual homeowner.