

## COMMON AREA ENCROACHMENTS

1. **Introduction.** From time to time, Members and Designated Occupants request to modify the Common Area outside the Manors and the Exclusive Use Common Area patios. This Common Area Encroachments Policy ("Encroachments Policy") establishes a protocol for reviewing such requests and the obligations regarding any approved modifications. Capitalized terms shall have the meaning set forth in the Bylaws and Occupancy Agreements. Once adopted by the Board, this Encroachments Policy shall replace and supersede Sections 1(A) through 1(B) of the Private Gardens; Landscaping Policy that was last revised on September 26, 2014. To the extent that there is a conflict between the terms of this Encroachment Policy and the Bylaws or the Occupancy Agreements, the terms of this Encroachment Policy shall control.
2. **Scope.** This Encroachments Policy addresses modifications impacting the general Common Area including, but not limited to: (a) maintaining and installing plants and irrigation systems in landscaped areas; and (b) installing or extending fences and pavers beyond the boundaries of the original patio area. This Encroachments Policy does not address modifications that solely impact Exclusive Use Common Area. This Encroachments Policy supplements the Governing Documents, including the Alterations Policy, all of which continue to apply to modifications of Common Area, including Exclusive Use Common Area.
3. **General Prohibition; Board Approval.** No portion of the Common Area, other than Exclusive Use Common Area, shall be monopolized by any Member, group of Members, or occupants without the prior written approval of the Board of Directors. In addition, no encroachments or modifications of any type shall be made to or installed upon the Common Area without the express prior written approval of the Board, including but not limited to the installation of plants of any nature (including flowers, grasses, shrubs, vegetables, and trees), irrigation systems, pavers, fences (including the extension of existing fences), pergolas, arbors, patio umbrellas, and similar improvements. The Board has no obligation to approve any request to modify the Common Area. The Board may exercise its reasonable discretion to approve such modifications in limited circumstances where the proposed modification meets the criteria set forth in Paragraph 5. "Alteration Application" below, but the Board has no obligation to do so.
4. **Unapproved Modifications.** Subject to California law, any unapproved modification to the Common Area may be removed by the Mutual without prior notice.
5. **Alteration Application.** Members seeking approval of a proposed modification to/encroachment on the Common Area shall submit an Alteration Application to the Board for its review and approval, including plans and specifications clearly

describing the proposed modification, its location, and dimensions in accordance with the procedures set forth in the Mutual's Alteration Policy (contained in Section 1.0 of the Mutual's Policy Manual) for physical modifications to the property, and procure an Alteration Permit prior to installation or modification of the Common Area.

In reviewing a Member's Alteration Application to modify the Common Area, the Board may consider any relevant factors including, without limitation, the following:

- i. The historical use of the area and whether the proposed modification would take away from others' current enjoyment of the area;
- ii. Whether the proposed modification would be consistent with the standards and aesthetics of the surrounding area as to quality of workmanship, design and materials, harmony of exterior design with the existing improvements and structures, and location with respect to topography and finished grade elevations;
- iii. Whether the proposed modification is consistent with Civil Code section 4600, including any applicable exceptions to membership approval identified in Civil Code section 4600(b); and
- iv. Any potential legal and financial risks associated with the proposed modification.

6. **Authorized Contractors.** All work performed on the Common Area in connection with any approved modification, including, but not limited to, construction, installation, maintenance, repair, removal, and restoration, must be performed by licensed, insured contractors.

7. **Financial Responsibilities.** Except as may be required by law, the construction, installation, maintenance, repair, and removal of the modification (and restoration of the Common Area) shall be at the Member's expense. In addition, the requesting Member shall be responsible for reimbursing the Mutual for any legal fees that the Mutual incurs in connection with the Member's request to modify the Common Area, including, but not limited to, any legal fees associated with the drafting of any agreement regarding the use, maintenance, indemnity, and restoration of the Common Area. To the extent that the Governing Documents, including this Encroachments Policy, require the Member to reimburse the Mutual for any expenses it incurs in connection with the modification of the Common Area (such as legal fees and restoration costs), such costs may be the subject of a Reimbursement Assessment following notice and a hearing. Alternatively, in the context of a sale, such costs may be submitted to escrow for payment.

8. **Maintenance of Approved Common Area Modifications.** Unless otherwise agreed to in writing by the Board, upon written Board approval of a proposed modification, Members are responsible for maintaining any modifications to the Common Area. Should the Member be unable or unwilling to maintain the modification at a level acceptable to the Mutual, in the Board's sole discretion, the Mutual's approval may be revoked and the Mutual may remove and/or alter the modification to blend with the surrounding area.
  - i. **Hearing.** Except in the context of sale or transfer of membership, the Member will have an opportunity to meet with the Mutual Board to discuss the condition of the modification, with the possibility of being given a reasonable time to restore the modification to an acceptable condition.
  - ii. **Board's Decision.** The Member will be bound by the Board's written decision on whether the Mutual will remove and/or alter the modification and what charges, if any, the Member will be responsible for, or whether the Member will be given a 30-day grace period to restore the area to an acceptable condition.
9. **Indemnity.** Members who modify the Common Area with or without the Mutual's prior written approval shall defend, indemnify, and hold harmless the Mutual, its members, employees, and agents from all claims, liabilities, obligations, and damages arising out of or related in any way to the modification of the Common Area and the maintenance of such modification.
10. **Revocability.** Any approval of a modification to the Common Area may be subject to specified conditions and may be revoked by the Mutual, with or without cause, upon reasonable written notice. At that time, the Member shall be responsible for removing the modification and restoring the affected area to the satisfaction of the Mutual at the Member's expense. The Mutual may, at its option, remove the modification and charge the costs thereof to the responsible Member as a Reimbursement Assessment following notice and a hearing as required by the Governing Documents.
11. **No Real Property Interest.** The approval of a modification to the Common Area constitutes a revocable license, and shall not be construed to create an interest in real property or any form of easement, exclusive or otherwise.
12. **Sale or Transfer of Membership.** When a membership is transferred, the following rules shall apply:

i. No Transferability. The Board's approval of a modification to the Common Area is personal to the Member and shall not be assigned or transferred to the Member's successor in interest without the Board's express written approval.

ii. Member's Disclosure Obligation. Members shall disclose to prospective purchasers that the sale does not include the exclusive right to use or occupy any existing modifications of the Common Area. Such modifications may not be taken over by a new Member or occupant without the Board's prior written approval.

iii. Removal of Modification. Upon sale or transfer of a membership, the Board may require the removal of any previously approved modifications that encroach upon the Common Area, including so-called "Private Gardens," prior to the close of escrow. In determining whether to require the removal of an existing modification, the Board may take into consideration the following factors:

A. The criteria listed in Paragraph 5. "Alteration Application" i. through iv. above;

B. The cost of restoring the area balanced against the risk of damage to the surrounding area;

C. Whether the modification was installed prior to January 1, 2006 (the effective date for the membership approval requirement to grant exclusive use of Common Area where applicable);

D. Any potential liability risk to the Mutual; and

E. Any other relevant factors that the Board, in its reasonable discretion, may wish to consider.

iv. Inspection. An inspection conducted by the FWCM Landscape Maintenance Division at the time of listing a Manor for sale will determine the charges for restoring any landscaping encroachments to blend with the surrounding area and for removing any fencing or irrigation systems.

v. Cost. The cost of removing the encroachment and restoring the Common Area to the Board's satisfaction will be borne by the transferring Member or the estate of the transferring Member. Those charges will be held in escrow and paid to the Mutual when escrow closes. The FWCM Landscape Maintenance Division or the Mutual's contractor will perform the work; such work may not be performed by the seller or the buyer.

The foregoing Common Area Encroachments Policy was adopted by the Board of Directors of First Walnut Creek Mutual at an open meeting of the Board held on \_\_\_\_\_, 2026, following notice to the members, the opportunity for member comment and Board consideration of member comments pursuant to Civil Code section 4360.

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

FIRST WALNUT CREEK MUTUAL

By: \_\_\_\_\_

Its: \_\_\_\_\_