

Encroachment on Common Area

There are several units which have decks and patios (concrete slabs) that encroach on or overhang the Common Area. To the best of our knowledge, we do not have any foundations which exceed the lot lines.

The governing documents of the Homeowners Association are:

1. Recorded map, plat or plan
2. Declaration; covenants, conditions and restrictions; master deed
3. Articles of Incorporation
4. Bylaws
5. Board Policies

None of the above documents provide any authority for the Board of Directors to authorize an individual property owner to build anything on the Common Area. We have been further advised by our attorney that the Whispering Meadows Board of Directors is not authorized to approve any modifications to townhomes or villas that would extend the unit beyond the lot lines as platted. This would apply to the extension of decks as well as to actual additions to the unit involving the integration of the roof line.

While the developer/builder created some encroachments in the building of decks and patios, it is the policy of the Whispering Meadows Homeowners Association not to seek to force removal of the encroachments. It should be noted that there is a Missouri Statute prohibiting the forced removal of the structures that have existed for over two years. However, the Board will not consent to any further building of any kind on the Common Area or beyond the lot limits of each townhome or villa, and the Board will enforce the prohibition against encroachment on the Common Area if any future owners attempt to construct such an encroachment; an exception being the latest approved Board Policy on Deck Stairs No. 402.

Structures which exist on the Common Area may require repair (more than 50% of the structure is damaged) and/or replacement. Such repair and/or replacement requires the submission of the Request Form and the approval of the Board of Directors and shall conform to the following conditions: 1) the dimensions shall remain the same as the existing structure, 2) and the materials shall be of equal or better quality 3) the homeowner and the Board President have executed and have notarized the License Agreement that is attached to this policy statement. This agreement does not convey any property rights to the homeowner or create any liability for the Whispering Meadows Homeowners Association.

Approved by the Board of Directors April 19, 2004

Revised and Approved by the Board of Directors May 17, 2004; February 18, 2013; November 16, 2015; and February 17, 2020.

**LICENSE & EASEMENT AGREEMENT
FOR CONSTRUCTION AND MAINTENANCE OF DECK STAIRS PLACED
WMHOA COMMON GROUND**

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THIS AGREEMENT, made in Independence, Missouri on this _____ day of _____ 20____, by and between Whispering Meadows Homeowners Association, Inc., a not-for-profit corporation having its place of business at 4455 S. Davidson Dr., Independence, Missouri 64055 (herein WMHOA) and “name” residing at “address” (“Lot #”) in Independence, Missouri 64055 (herein “name”).

WHEREAS, “name” desires to obtain an exclusive license and easement to be used for the construction and maintenance of deck stairs on WMHOA Common Ground located adjacent to the property named above; and

WHEREAS, “name” wishes to construct, with permission of WMHOA, a deck stairs which the parties acknowledge shall require maintenance on common ground owned by WMHOA adjacent to the property named above; and

WHEREAS, “name”, owners of the land legally described as

All of Lot “Lot #” in Whispering Meadows, a subdivision in Jackson County, Missouri, also known as “address”, Independence, Missouri 64055.

and further, that “name” is willing to be legally responsible for and burden the property and subsequent owners of the aforesaid Lot, legally described above, with the legal responsibility for maintenance, repair and/or removal of the aforesaid deck stairs; and

WHEREAS, the WMHOA is willing to grant such a license and easement agreement to “name” for construction and maintenance of the improvement and performance of the work detailed above.

THEREFORE, it is mutually agreed as follows:

1. The WMHOA hereby grants to “name” an exclusive license and easement to be used for the construction and maintenance of a deck stairs on the following land in Independence, Jackson County, Missouri:

WMHOA Common Ground located _____ from the back lot line of _____ Lot _____ (also known as WMHOA and “address”)

2. “name” hereby agrees that the duties for construction, maintenance and/or replacement or removal of the aforesaid “permanent improvement” shall be assignable to and binding upon any subsequent assignees, purchasers and owners of the property at “address”.
3. This License and Easement Agreement shall be effective for a period of ten (10) years following the date of execution, and shall automatically renew for one (1) year periods thereafter, unless terminated pursuant to the provisions of Paragraph 13.

4. "name" shall not assign this Agreement nor sublet the licensed premises or easement to be used, or any part thereof, to any other party without first obtaining the written consent of the WMHOA.
5. "name" shall be responsible for all maintenance and good care of the licensed premises and shall properly maintain the "permanent improvement", which is the subject matter of this Agreement, and all real property adjacent to same. Further, the aforesaid owners acknowledge they shall be responsible for all damage created to the common ground and construction or maintenance of the aforesaid improvement and shall repair same to the satisfaction of the General Manager or other designated representative of the WMHOA, and if they fail to do so, following proper notice, shall be liable to the WMHOA for cost of said repair and maintenance incurred by the Association to repair said improvement, and agrees that said cost may be assessed as a special lien against the "name" lot.
6. This License and Easement Agreement shall be assignable and binding upon any subsequent purchasers of the property at "address". In absence of notification of termination of this agreement by WMHOA, the renewal shall automatically occur upon transfer of the property at "address" to said transferee.
7. "name" agrees to construct the deck stairs only in materials authorized by and approved by the WMHOA, and agrees that a building permit shall be obtained from the City of Independence, prior to construction, for any improvement requiring such permit.
8. "name" further represents to the WMHOA that they will insure, maintain and indemnify the WMHOA from any claims arising out of use, maintenance or ownership of the aforesaid deck stairs.
9. "name" and the WMHOA agree that, upon request, "name" shall provide, at their expense, a legal survey with location of the corners of their lot adjoining the common area, and will have same marked with monumentation approved by WMHOA. In the alternative, "name" may request to submit alternative evidence of the existence of said corners for marking of the property, if said corners may be located and determined from a recent survey or other reasonable evidence satisfactory in the opinion of WMHOA or its representative.
10. The WMHOA represents and warrants to "name" that they are the owners of the common area described above and adjacent to the real property owned by "name", and that the WMHOA is duly authorized to grant the above easement and license to "name" and do so of their own free will and knowledge.
11. "name" represents and warrants to the WMHOA that they are owners of Lot # _____ described above, and are authorized to execute this License and Easement Agreement, with the understanding that it will encumber and run with the land on their lot and impose certain maintenance obligations, and they do execute same of their own free will and knowledge. "name" and WMHOA acknowledge that the WMHOA remain the owners of the common area upon which the aforesaid improvement has been constructed, and in the event maintenance of the common area requires modification, disturbance or removal of the aforesaid improvement, then "name" shall remove and/or repair same at his cost and WMHOA shall not be liable for any damage thereto or may remove same on thirty (30) day written notice if owners fail to comply with this provision.

12. "name" and the WMHOA agree that the deck stairs described above shall not totally block ingress and egress over the common area behind "address". In addition, if the deck stairs shall deteriorate and have the effect of blocking all ingress and egress over the common area, "name" shall improve or correct said condition upon thirty (30) days written notice, or in the alternative the WMHOA is granted permission to repair or remove same at their cost and the cost of said removal or repair shall be billed as a lien against the property owned by "name".
13. This Agreement shall terminate upon thirty (30) days written notice by WMHOA to "name" or upon thirty (30) days written notice by "name" to WMHOA, so long as "name" has reached agreement with respect to removal or replacement of the "permanent improvement". In absence of any such agreement, the WMHOA shall have the legal authority to remove or retain said deck stairs at their option, with cost of the removal of same to be billed as a lien against the property owned by "name".
14. "name" and WMHOA understand and acknowledge that in the event "name" shall fail to maintain, improve or correct any condition with respect to the permanent improvement, which is the subject matter of this Agreement, following written notification by the WMHOA, then the Board President may issue citations to the offending member or owner of the property in question responsible for the improvement, or owning the land adjacent to the improvement, pursuant to the procedures of the Whispering Meadows Rules & Regulations. The Association then may proceed with legal action to sue the member to remove the offending improvement and enforce the fines and lien, and the member involved agrees to be responsible for all attorney's fees, costs and expenses incurred by the Association.

WHISPERING MEADOWS
HOMEOWNERS ASSOCIATION, INC.

HOMEOWNERS

WMHOA President

"name"

"name"

Attest:

WMHOA Secretary

My Commission Expires