

**Declaration of Restrictive Covenants of the  
Whispering Oaks Subdivision  
Subdivision**

**Basic Information**

**Date:** March 15, 2022

**Declarant:** JP LAND DEVELOPMENT, LLC a Texas limited liability company

**Declarant's Address:**

1188 S. Berlin Rd.  
Brenham, Texas 77833

**Property Owners Association:** Property Owners Association of Whispering Oaks Subdivision, a Texas limited liability company, a Texas nonprofit corporation

**Property Owners Association's Address:**

**Property:** Property recorded in Plat Cabinet Slide 157 A and B, of the real property records of Gonzales County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

**Definitions**

"ACC" means the Architectural Control Committee established in this Declaration.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Board" means the Board of Directors of the Property Owners Association.

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot on the Plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Property Owners Association.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means J-P DEVELOPMENT, LLC , a Texas limited liability company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of

development and is named as successor in a recorded document.

"Dedictory Instruments" means this Declaration and the Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

"Easements" means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

"Guest House" means a detached building from the Residence designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Lot" means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

"Member" means Owner.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded in Plat Cabinet Slide 157 A and B, of the real property records of Gonzales County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Short Term Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration for a period of time less than 365 days.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Structure" means any improvement on a Lot (other than a Residence), including a ~~\*(Don't include sidewalks and driveways in this.)~~ sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

## **Clauses and Covenants**

## **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

## **B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

## **C. Use and Activities**

1. *Permitted Use.* A Lot may be used only for an approved Residence and guest house approved Structures for Single Family residential use.

2. *Prohibited Activities.* Prohibited activities are -

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping or burning of trash or rubbish;
- e. any storage of -

- i. building materials except during the construction or renovation of a Residence or a Structure;
  - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
  - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry, except for FFA or 4-H project common domesticated household pets, such as dogs and cats, not to exceed three (3) confined to a fenced yard or within the Residence; said dogs shall not be of an aggressive breed including but not limited to pit bulls, chows, or rottweilers.
- h. any commercial or professional activity except reasonable home office use;
- i. the Renting of a portion of a Residence or Structure for a term of less than one year;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except –
  - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale;
  - ii. political signage not prohibited by law or the Dedicatory Instruments; and
  - iii. children’s activities that are no more than six square feet.
- l. installing a R.V., mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;
- o. hunting and shooting firearms;
- p. occupying a Structure that does not comply with the construction standards of a Residence; and

q All vehicles, including but not limited to cars, trucks, RV's, and boats vehicles have to be parked on an improved driveway.

r. No more than three (3) vehicles, including but not limited to cars, trucks, RV's, and boats shall be located on the Property outside of a garage for longer than three \*days.

**D. Construction and Maintenance Standards**

1. *Lots*

a. *Subdivision Prohibited.* No Lot may be further subdivided.

b. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

\*house on lot one(should be lot 13), has to be remolded within twelve months.

2. *Residences and Structures*

a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.

\*b. *Maximum Height.* The maximum height of a Residence is forty (40) feet.

c. *Required Area.* The total area of a Residence and Guest House, exclusive of porches, garages, or carports, must be at least 1,200 square feet and must not exceed 4,500 square feet.

d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown 35 feet from the front property line and 20 feet from the side and back Property lines. Each Residence must face the front Lot line. All Structures must be located behind the back wall of the Residence.

e. *Garages.* Each Residence must have at least a two-car garage accessed by a driveway. Said garage shall not exceed three-car size and may be detached.

f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within ninety (90) or within a period approved by the ACC and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within ninety (90) days and the Lot restored to a clean and attractive condition.

g. *Fences and Walls.* No fence or wall may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC.

\*h. *Landscaping.* Landscaping must be installed within forty-five (45) days after occupancy.

i. *Storage buildings.* Each Residence may have one new construction storage building less than 1,200 square feet and shall not exceed the height of the Residence.

j. *Lot Thirteen.* The Residence on lot thirteen, shall to be remolded within twelve months from the date of the deed conveying the Property from Declarant.

3. *Building Materials for Residences and Structures*

a. *Roofs.* Only shingle or metal roofs may be used on Residences and \*Structures. (Leave out the sentence about the color of the vent stacks) All vent stacks must be painted to match the roof color.

Nothing herein shall be interpreted to prohibit or restrict a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that are (1) designed primarily to be wind and hail resistant, (2) provide heating and cooling efficiencies greater than those provided by customary composite shingles or (3) provide solar generation capabilities; and that, when installed: (A) resemble the shingles used or otherwise authorized for use on property in the subdivision; (B) are more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use on property in the subdivision; and (C) match the aesthetics of the property surrounding the owner's property.

b. *Air Conditioning.* Window-type air conditioners may not be used in a Residence.

c. *Exterior Walls.* All Residences must be 100% percent masonry on the front and sides of their exterior walls, including exposed foundation, minus windows and doors, unless otherwise approved by the ACC, provided however, the Residence located on Lot 13 shall be exempt from the 100% percent masonry on the front and sides of their exterior walls.

d. *Color Scheme.* All Residences must be in a white, black or earth tone color scheme, unless otherwise approved by the ACC.

d. *Color Changes.* No change to the color of the exterior walls, trim, or roof

of a Residence will be permitted, unless otherwise approved by the ACC.

e. *Driveways and Sidewalks.* All driveways and sidewalks within twenty-five (25) feet of residence must be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.

f. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

#### **E. Property Owners Association**

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

2. *Rules.* The Board may adopt rules with a majority vote of the members that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.

b. *Class B.* The Class B Member is Declarant and has the number of votes for each Lot owned specified in the Bylaws. The Class B Membership ceases and converts to Class A Membership on the earlier of –

i. when the Class A Members' votes exceed two-thirds of the total of Class B Member's votes; or

ii. March 1, 2026

#### **F. ACC**

1. *Establishment*

a. *Purpose.* The ACC is established as a committee of the Property Owners

Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.

b. *Members.* The ACC consists of at least three persons appointed by the Board. The Board may remove or replace an ACC member at any time.

c. *Term.* ACC members serve until replaced by the Board or they resign.

d. *Standards.* Subject to Board majority vote of the members approval, the ACC may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.

## 2. *Plan Review*

a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.

### b. *Procedures*

i. *Complete Submission.* Within thirty (30) days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within thirty (30) days after complete submission, the submitted plans and specifications are deemed approved.

c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within fifteen (15) days after the ACC's action. The Board shall determine the appeal within thirty (30) days after timely notice of appeal is given. The determination by the Board is final.



d. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

e. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

f. Declarant shall act as the ACC until a board is established.

## **G. Assessments**

1. *Authority.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

### **5. Regular Assessments**

a. *Rate.* Regular Assessments are levied annually by the Board to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is \$300.00.

b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by a majority vote of the member of the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.

c. *Collections.* Regular Assessments will be collected yearly in advance, payable on the first day of January of each year.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose

benefitting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a sixty percent (60%) vote of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within thirty (30) days after it is due is delinquent.

## **H. Remedial Rights**

1. *Late Charges and Interest.* A late charge of \$30.00 is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of 1% percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.

5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

6. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## **I. Common Area**

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to -
  - a. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
  - b. dedicate or convey any of the Common Area for public purposes, on approval by a vote of majority of the Members at a meeting in accordance with the Bylaws.
2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.
3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

## **J. General Provisions**

1. *Term.* This Declaration runs with the land and is binding in perpetuity.
2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.
3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.
4. *Amendment.* This Declaration may be amended at any time by vote of 67 percent of Owners entitled to vote on the amendment. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.
5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.
6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.
7. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property


Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

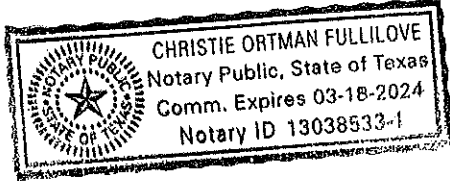
J-P DEVELOPMENT, LLC, a Texas limited liability company

  
Glen Pat Johnson, Manager

STATE OF TEXAS )  
COUNTY OF Gonzales )

This instrument was acknowledged before me on March 15, 2022, by Glen Pat Johnson, Manager, J-P DEVELOPMENT, LLC, a Texas limited liability company on behalf of said nonprofit association.

  
Notary Public, State of Texas  
My commission expires: 3-17-2024



After recording, please return to:

ORTMAN FULLILOVE LAW, PLLC  
403 SAINT GEORGE  
GONZALES, TEXAS  
Brenham, Texas 77833