

Declaration of Restrictive Covenants of
The Mitchell Acres Subdivision

Basic Information

Effective Date: September 28th, 2023

Declarant: Jaz Land, LLC and Pierce Liberty Fund, LLC,
a Texas limited liability company

Declarant's Address: Jaz Land, LLC and Pierce Liberty Fund, LLC
Attn: Jon Jasniak
404 Wimberly Street
Fort Worth, Texas 76107

Property Owners Association: Mitchell Acres Association, Inc.,
a Texas nonprofit corporation

Property Owners Association's Address: Mitchell Acres Association, Inc.
404 Wimberly St
Fort Worth, Texas 76107

Property: 150.457 acres, more or less, situated in Midland County, Texas,
being the Mitchell Acres Subdivision in Section 26, A-128 and
Section 27, A-231, Block 39, T-4-S, T & P RR Co Survey

Definitions

"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. Common Area includes private roadways depicted on the Plat as SCR 1188, ECR 304, and SCR 1185. Declarant will convey the Common Area to the Property Owners Association.

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

"Declarant" means Jaz Land, LLC and Pierce Liberty Fund, LLC, Texas limited liability companies, 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.

“Easements” means easements within the Property for utilities, drainage, and other purposes as shown on the Plat of record; and “Easement” means any one of the Easements.

“Governing Documents” means this Declaration and the Certificate of Formation, Bylaws, and any rules and regulations of the Property Owners Association, as amended.

“Lot” means each tract of land designated as a lot on the Plat.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property to be recorded in Midland County, TX Plat Records, for the Mitchell Acres Subdivision consisting of 150.457 Acres out of Section 26, A-1128 and Section 27, A-231, Block 39, T-4-S, T&P RR Co Survey in Midland County, TX and any replat of or amendment to the Plat made in accordance with this Declaration.

“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 maintenance 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 Governing Documents 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 use 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. *Prohibited Use.* Lots and the Common Area may not be used for any prohibited activities.

2. *Common Area Prohibited Activities.* Activities prohibited upon the Common Area are—

- a. any activity that is otherwise prohibited by the Governing Documents;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any shooting or use of firearms; and
- e. any use of motor vehicles for purposes other than access to or maintenance of the Subdivision.

3. *Prohibited Activities.* Activities prohibited upon Lots are—

- a. any activity that is otherwise prohibited by the Governing Documents;
- b. any illegal activity; and
- c. any shooting or use of firearms upon a Lot by anyone other than an Owner and their family, guests, or invitees (e.g., no operation of a commercial shooting range or leasing of a Lot for hunting with firearms); provided, however, that (i) the discharge of firearms is not condoned or recommended by Declarant, (ii) the discharge of firearms must be made in compliance with all applicable laws, ordinances, statutes, rules, and regulations promulgated by any governmental body with jurisdiction, and (iii) the Owner of a Lot on which a firearm is discharged must take every precaution to ensure that neighboring Lots, improvements, and Owners (and their respective families, guests, and invitees) are protected from discharged ammunition projectiles.

D. Lot Standards

1. *Consolidation of Lots.* An Owner of adjoining Lots may consolidate those Lots into one Lot subject to the following: (i) such Owner shall be responsible for any platting and administrative obligations required for such consolidation imposed by the state and county in

which the Lots are located; (ii) any Assessment (see Section F, below) that may be levied against such newly-consolidated Lot shall be no less than the total of the Assessments that may be levied against the individual Lots consolidated at the time of such consolidation; and (iii) the newly consolidated Lot shall be treated as one (1) Lot for voting purposes (see Section E.3, below).

2. *Subdivision of Lots.* An Owner of a Lot may subdivide a Lot into one or more new Lots, subject to the following: (i) such Owner shall be responsible for any platting and administrative obligations required for such subdivision imposed by the state and county in which the Lot is located, (ii) a Class A Member Owner that subdivides a Lot in this manner shall remain entitled to only one (1) vote, collectively, for all such Lots created by the subdivision; however, upon the transfer of a new Lot created by such subdivision to a third party, the transferee of such a Lot will be vested with the voting rights appurtenant to an individual Lot in the Subdivision (see Section F, below); and (iii) new Lots created by such subdivision will be subject to Regular Assessments of \$100 per year, subject to the authority of the Board to change the amount of such Regular Assessments as set forth in Section F.5.b herein.

3. *Maintenance.* Each Owner must keep their Lot(s) and all landscaping, residences, and structures in a reasonable condition.

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 of Formation, 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 Governing Documents.

2. *Rules.* The Board may adopt rules and regulations that do not conflict with law or the other Governing Documents. On request, Owners will be provided a copy of any rules and regulations.

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 (1) vote per the Lot they own. 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 two (2) votes for each Lot owned. The Class B membership ceases and converts to Class A membership on the earlier of—

i. when the Class A Members' votes match or exceed the total of Class B Member's votes, or

- ii. the third (3rd) anniversary date of the lawful commencement date of the Property Owners Association as an incorporated entity.

From and after the conversion of Class B membership to Class A membership, all Members of the Property Owners Association shall be Class A Members, and Class A Members shall have one (1) vote per the Lot they own as provided in a., above. A person's or entity's membership in the Property Owners Association shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Property Owners Association or the Declaration during the period of such ownership, or impair any rights or remedies which the Property Owners Association or any other Owner has with regard to such former Owner.

F. 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 Area, including the private roadways depicted in the 60 foot right of way on the plat of Mitchell Acres Subdivision.

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 the Declarant and 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; Exempt Property.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant. The Common Area and all properties dedicated to and accepted by a local public authority shall be exempt from any and all Assessments.

5. *Regular Assessments*

a. *Rate.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessments shall be levied pursuant to the Regular Assessment Schedule attached as Addendum "A" hereto and made a part by reference.

b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner.

Collections. Regular Assessments will be collected annually in advance, payable (i) for the year in which any Lot is first sold to an owner other than

Declarant, within thirty (30) days following such change in ownership, with the rate of the Regular Assessment being prorated as of the date of the change in ownership, and (ii) on the tenth (10th) day of January of each year thereafter.

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 benefiting 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 two-thirds (2/3) vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Governing Documents 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.

G. Remedial Rights

1. *Late Charges and Interest.* A late charge of five percent (5%) of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of (i) ten percent (10%) per year, or (ii) the maximum amount permitted by law, whichever is less. 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 Governing Documents.

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 Governing Documents. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Governing Documents.

4. *Remedy of Violations.* The Property Owners Association may access an Owner's Lot to remedy a violation of the Governing Documents.

5. *Suspension of Rights.* If an Owner violates the Governing Documents, the Property Owners Association may suspend the Owner's rights under the Governing Documents in accordance with law until the violation is cured.

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

H. 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 two-thirds (2/3) 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 Governing Documents.

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.

I. General Provisions

1. *Term.* This Declaration runs with the land and its binding for a term of twenty (20) years, and thereafter, this Declaration automatically continues for successive terms of ten (10) years each, unless within three (3) months before the end of a term fifty percent (50%) of the Members at a meeting in accordance with the Bylaws elect not to extend the term.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Governing Documents 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 sixty-seven percent (67%) of the Members of the Property Owners Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

5. *Conflict.* This Declaration controls over the other Governing Documents.

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 shall be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Property Owners Association's records, and the Property Owners Association, the Board, 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 Governing Documents, actual notice, however delivered, is sufficient.

8. *Annexation of Additional Property.* On written approval of the Board and not less than sixty-seven percent (67%) of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject such property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.


[signature follows on next page]

Midland County Clerk Unofficial Copy

EXECUTED to be effective as of the Effective Date.

Declarant

Jaz Land, LLC,
a Texas limited liability company

By: 
Jonathan Jasniak
Managing Member

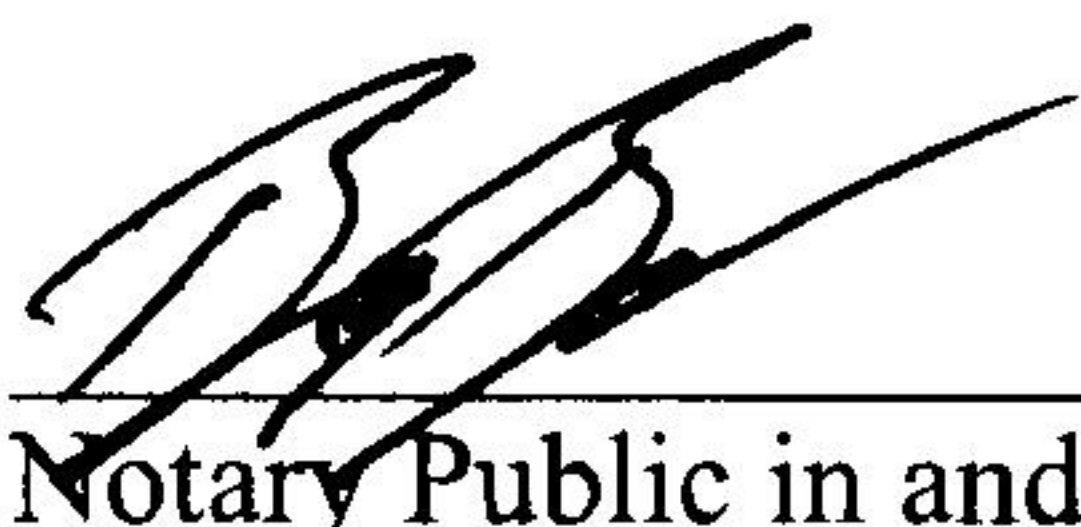
ACKNOWLEDGMENT

STATE OF TEXAS

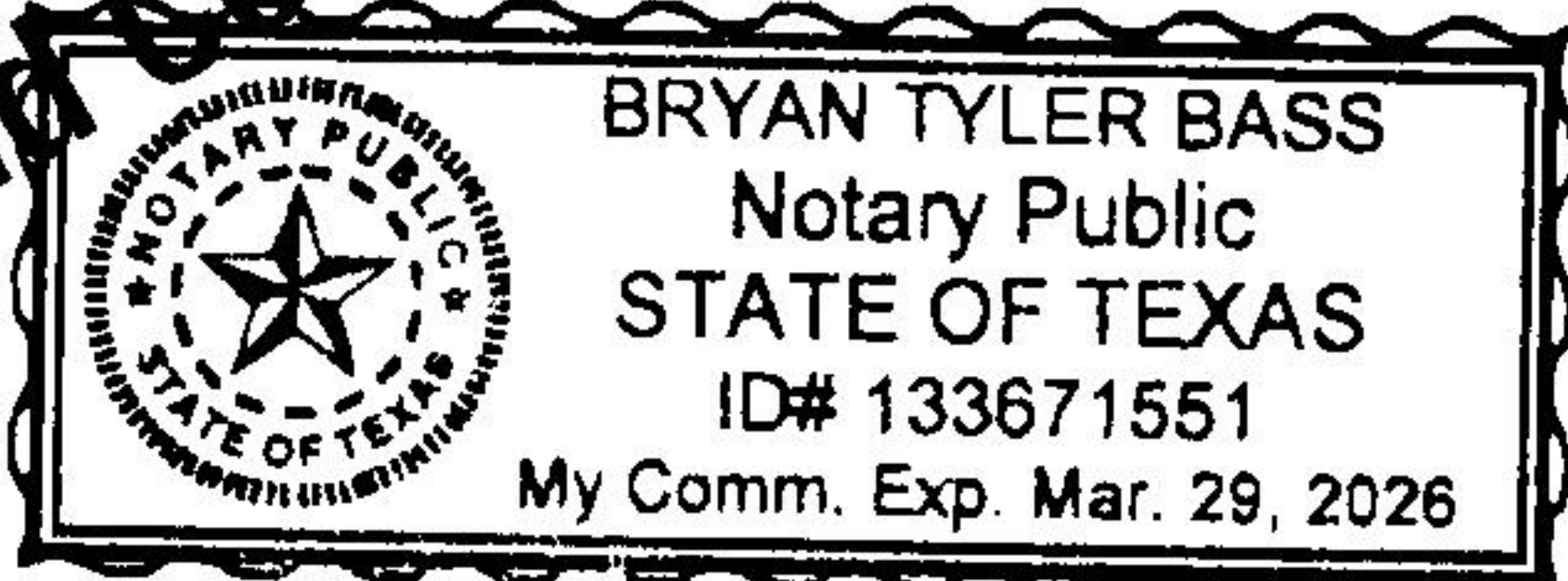
COUNTY OF Tarrant

§
§
§

The foregoing instrument was acknowledged before me on this 28th day of September, 2023, by Jonathan Jasniak, Managing Member of Jaz Land, LLC, a Texas limited liability company, on behalf of said company.



Notary Public in and for the State of Texas



EXECUTED to be effective as of the Effective Date.

Declarant

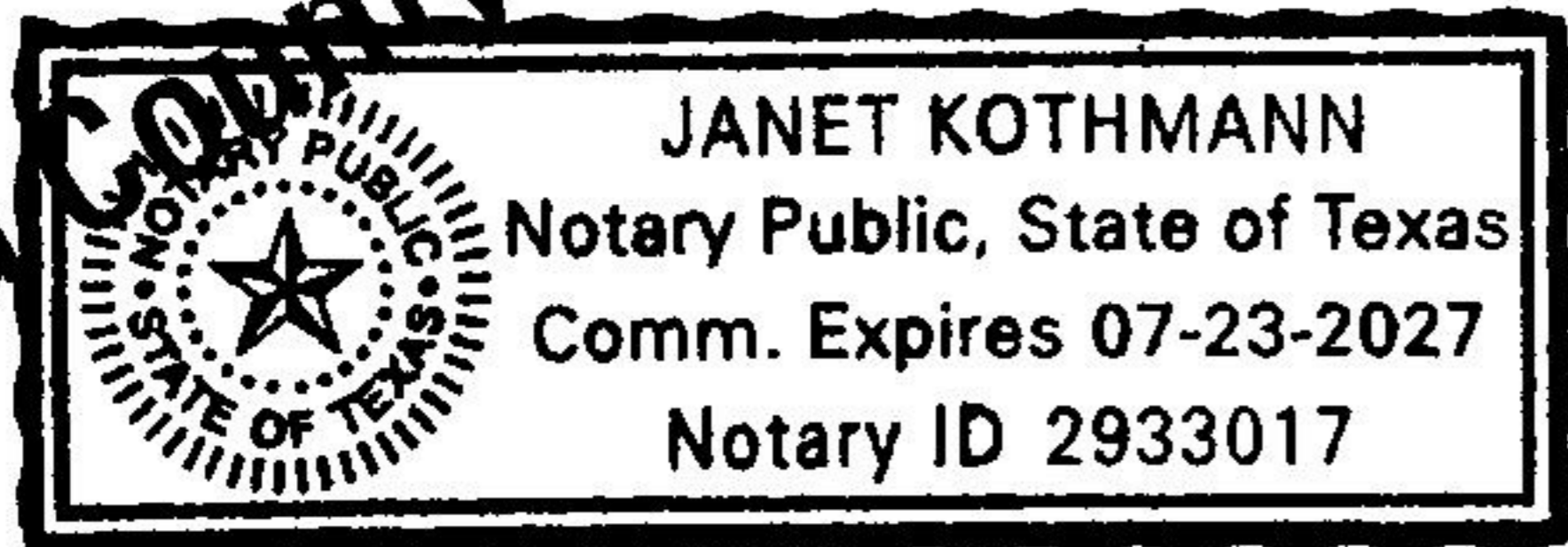
Pierce Liberty Fund, LLC
a Texas limited liability company

By: 
Michael Mitchell
Managing Member

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Lubbock §

The foregoing instrument was acknowledged before me on this 27th day of September, 2023, by Michael Mitchell, Managing Member of Pierce Liberty Fund, LLC, a Texas limited liability company, on behalf of said company.




Notary Public in and for the State of Texas

After recording, please return to:

Jaz Land, LLC
Attn: Jon Jasniak
404 Wimberly Street
Fort Worth, Texas 76107

ADDENDUM "A"

Initial Regular Assessment Schedule

Blk 1 Lots 1-34	\$100/lot every year
Blk 2 Lots 1-26	\$100/lot every year

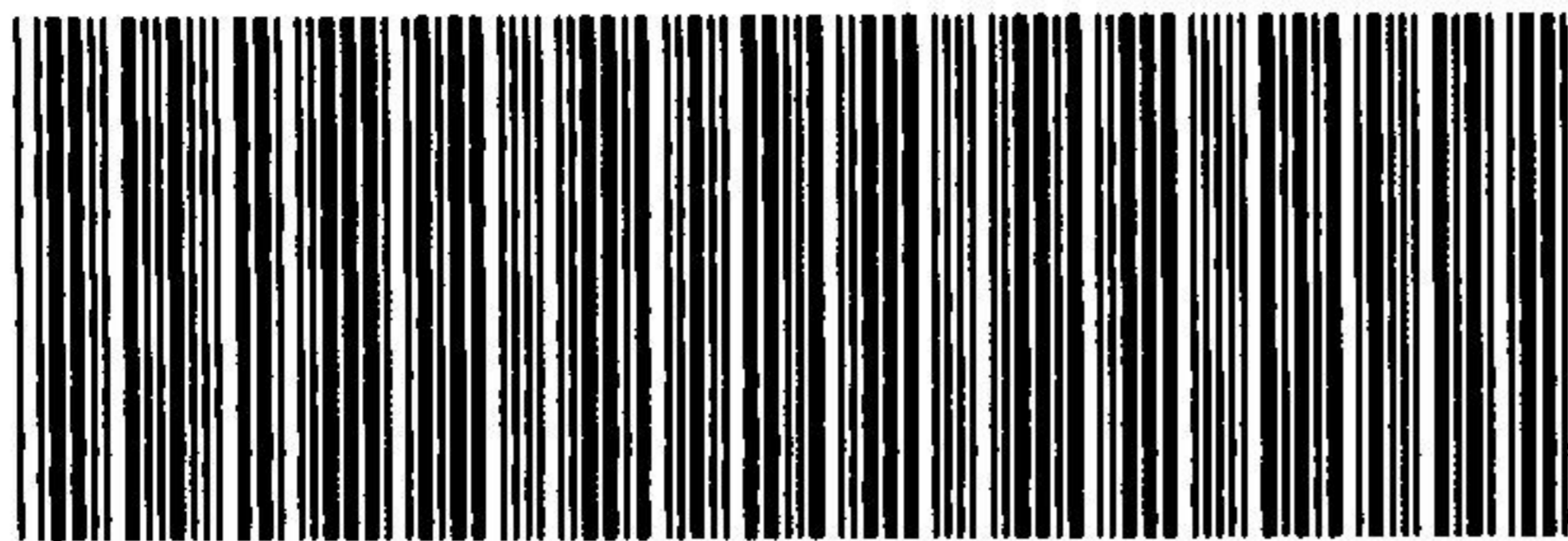
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VG-83-2023-23494

Midland County
Alison Haley
Midland County Clerk

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

Instrument Number: 23494

Real Property Recordings

Recorded On: September 29, 2023 08:47 AM

Number of Pages: 12

" Examined and Charged as Follows: "

Total Recording: \$66.00

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

***** THIS PAGE IS PART OF THE INSTRUMENT *****

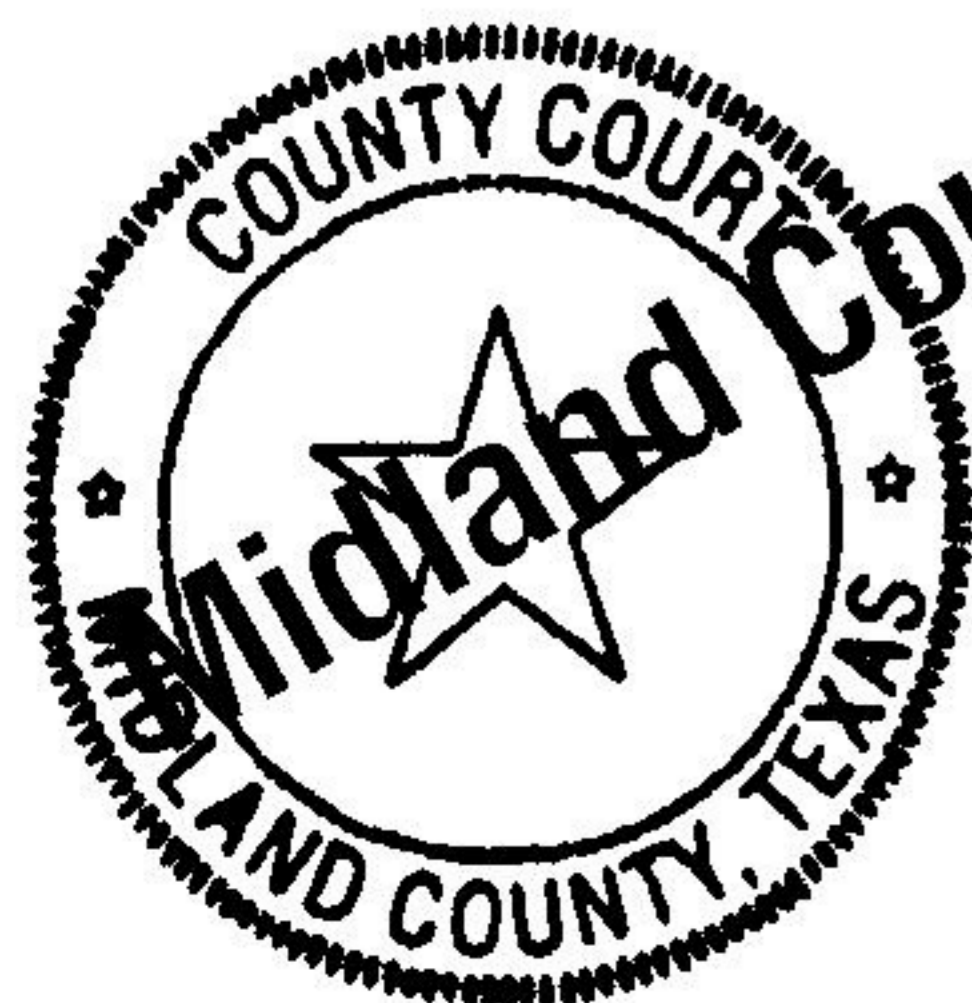
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 23494
Receipt Number: 20230929000018
Recorded Date/Time: September 29, 2023 08:47 AM
User: Amanda D
Station: CC12030

Record and Return To:

JAZ LAND LLC
404 WIMBERLY ST
FORT WORTH TX 76107-2256



STATE OF TEXAS
Midland County

I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Midland County, Texas

Alison Haley
Midland County Clerk
Midland County, TX

Midland County Clerk Unofficial Copy

Alison Haley