

**MISTY CREEK HOMEOWNERS' ASSOCIATION, INC.  
BUILDER'S GUIDELINES**

**Introduction**

This document is primarily a reference tool and decision-making guide for the Architectural Review Committee ("ARC"). The ARC is appointed by the registered owner of the Lots ("Declarant"). In the event the Declarant wishes to appoint a new ARC, Declarant has the right to do so.

This document outlines the opportunities and constraints associated with the Misty Creek Subdivision (the "Subdivision") and provides a set of guidelines that will direct Owners, designers, and builders to building forms and details. Residence plans will be reviewed in terms of their compliance with these Builder's Guidelines (the "Builder's Guidelines").

The authority for the Builder's Guidelines and governing by the ARC is established in the Declaration of Covenants, Conditions, and Restrictions for Misty Creek Subdivision (the "Declaration") and the Restrictive Covenants of Misty Creek Subdivision (the "Restrictive Covenants"). The Builder's Guidelines are incorporated in the Restrictive Covenants and made a part thereof.

All capitalized terms defined under Article II of the Declaration and used in the Builder's Guidelines will have the same meaning as defined in the Declaration.

**Declarant will approve all initial construction of builders.** Changes to initial design require approval. Additions or changes to constructed buildings require approval.

Exceptions to the Builder's Guidelines may be granted on a case-by-case basis. No exception will constitute a precedence that will be granted in all situations. However, new and different ideas are welcome and will be evaluated as to their merit to the Subdivision.

Applicants may provide alternative details to those outlined in the Builder's Guidelines provided they are demonstrated that conformity to the overall objectives for the quality of the area is being maintained.

The Builder's Guidelines are modified from time to time as the need arises and may not be absolute. An Owner or designer should discuss the Builder's Guidelines with Declarant in advance of application if there are any questions or variations from the Builder's Guidelines.

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The ARC will use the Builder's Guidelines for the general purpose of reviewing proposed construction. The ARC will consider the merits of each project based on special considerations it believes may provide benefit to the adjacent area, the specific site, and the Subdivision as a whole.

The authority to approve specific building plans rests solely with the ARC.

Any Owner or prospective Owner in the Subdivision understands and agrees to the criteria in the Builder's Guidelines and agrees to be governed by them.

## **General Rules for All Owners and Builders**

The following rules pertain to all Owners and Builders while on the premises of the Subdivision.

1. Builders are required to keep their job sites neat and clean. All trash stockpiled for removal must be located on the street side of a Lot until removed. There will be no stockpiling or dumping on adjacent Lots or streets. The ARC will remove trash not removed, and the cost for removal will be billed to the responsible party. Builders are required to prepare and adhere to a properly filed Stormwater Pollution Prevention Plan (SWPPP) for each site. A copy of each SWPPP will be provided to the ARC. The SWPPP will be posted on the site throughout the duration of construction at the site.
2. Builders will use only the utilities provided on the immediate Lot on which they are building.
3. Any damage to streets and curbs, Common Area, utility or drainage systems, street lights, street markers, mailboxes, walls, or other Subdivision property will be repaired by ARC, and those costs for repairs will be billed to the responsibility party.
4. The established mandatory speed limit within the Subdivision is 20 miles per hour. This speed limit applies to all vehicles, including automobiles, light trucks, and construction vehicles.
5. There will be no truck washing on the streets, adjoining Lots, or in Common Area. The residue from any concrete delivery truck must be washed out on the construction site.
6. Operators of vehicles are prohibited from spilling any pollution or damaging materials within the Subdivision. If spillage of a load occurs, operators must report any spill and immediately begin cleanup. Charges for cleanups done by ARC will be billed to the responsible party.
7. If any telephone, cable TV, electrical, water, or other utility line is cut, it is the Lot Owner/Builder's responsibility to report the incident to the proper service company personnel within 30 minutes, with notice to the ARC.
8. All laborers, workmen, and service personnel in the Subdivision are required to keep all areas in which they work or through which they travel free of discarded materials (such as lunch bags, refuse materials, and other trash).
9. Loud radios or noise will not be tolerated within the Subdivision. Normal radio levels are acceptable. Mounted speakers on vehicles or outside of homes under construction are prohibited.
10. No shortcuts across Lots are permitted.
11. No vehicles (trucks, vans, cars) may be left in the Subdivision overnight. During construction, construction equipment may remain on a construction site.
12. Only bona fide workmen, service personnel, and laborers are allowed on the construction site.
13. Builders will provide portable toilets and waste dumpsters for each job site.

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14. No temporary storage trailers or buildings are permitted on the construction site, except as may be necessary to aid in construction.

15. The Owner is charged with providing required notice of the Builder's Guidelines to Builder, workmen, laborers, and service personnel and will ensure their compliance with the conditions set forth herein.

16. Residents are permitted to display one neatly painted "For Sale" sign or "Open House" sign no larger than 6 square feet. A reasonable number of open house signs is permitted for directional purposes only, and all such signs must be removed by 6:00 p.m. each day. A limit of two consecutive days that open house signs may be placed will be enforced. Residents are requested to notify their realtors that any real estate signs placed in the Common Area are strictly prohibited and will be removed. Further, no "bandit" signs are allowed at the entrance or along the exterior perimeter of the Subdivision.

17. Subject to approval by the Declarant or the ARC, a Builder Member may display a professionally designed and produced sign illustrating a rendering or floor plan of a home. Any such sign must be well maintained. Builder Member will remove any such sign upon request of the Declarant or the ARC.

18. Burning of trash is prohibited.

19. No trees, shrubs, lawns, fencing, retaining walls, buildings, or other site improvements will be allowed to fall into a state detrimental to the Subdivision.

## **SECTION 1. APPLICATION FOR APPROVAL AND APPROVAL PROCESS**

### **A. Application for Approval (at the end of this document)**

When requesting ARC approval for construction (new or remodel), Owner will complete the Application for Approval (the "Application") and submit two copies of it and the required documents. The Lot number and Owner or Builder must be stated on each attachment.

### **B. Approval Process**

The ARC will approve plans submitted by an approved Builder. To be considered for approval, the Builder must provide the ARC a copy of a current and valid Texas contractor's license and proof that it is a member in good standing of the Texas Residential Construction Commission. Only Builders approved by the ARC may construct homes in the Subdivision.

1. Initial Submission. Following receipt of 2 sets of documents provided by Owner, the ARC may recommend approval or rejection of the Application and plans based on the adherence of the plans to the Builder's Guidelines. Declarant will make the final decision regarding approval or rejection of an Application. A copy of the Application and marked-up set of plans will be made available to the Builder. The original Application and one set of similarly marked plans will be kept by the ARC for future reference.

Any changes by the Owner/Builder from approved plans must be submitted to the ARC and approved in writing. Incomplete Applications will be returned to the Builder.

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2. Elements Subject to Review. Specific architectural guidelines for the Subdivision have been promulgated to regulate new home construction and renovations and other items, including those listed in the Application.

3. Plan Approval. Before purchasing a Lot or house plans, it is strongly recommended that Owners and Builders first read the Builder's Guidelines in their entirety. To ensure that the proposed home is compatible with the Builder's Guidelines and with nearby homes, Owners and/or Builders must provide the ARC with preliminary building plans and specifications showing elevations, siting, exterior color scheme and details of exterior materials, existing trees, driveway cut-ins, electrical boxes, and other significant site influences. Site-specific height and location restrictions may apply at the discretion of the ARC in the interest of maintaining the view for other Owners.

Owners and/or Builders must provide the ARC a copy of the geotechnical report prepared by a geotechnical engineer, unless waived by the ARC, identifying the location where the building and any rock stack retaining walls may be safely constructed.

Approval or disapproval will be issued by the ARC within 30 days of receipt of plans. The ARC has the sole right of approval. All site preparation and construction of improvements on the Lots must be in accordance with such approval. Declarant can require any unapproved preparation or construction remedied or removed at Owner's expense.

In the event of major plan revisions or refusal of final construction, the Owner and/or Builder will have the opportunity to meet with the ARC to discuss proposed revisions before a formal request for changes or a final refusal is issued.

Once plans are approved by the ARC, any subsequent changes to the exterior of the home or significant changes to the interior must be approved in writing by the ARC.

4. Interim Building Review. The ARC may conduct on-site reviews of any home during construction. Periodic checks may be made to ensure conformance to approved grading plans and the Builder's Guidelines. Modifications may be requested related to actual site conditions.

5. Final Building Approval. Upon being advised by Builder of the completion of the home, including all landscaping, the ARC will conduct a site review to confirm conformance to the Builder's Guidelines and the approval previously granted.

## **SECTION 2. DESIGN GUIDELINES**

### **A. Design Guideline Objectives**

Two primary objectives are considered in the Builder's Guidelines:

1. The Quality of the Subdivision – The Builder's Guidelines provide the mechanism that encourages the Subdivision to be of high quality and reflect an image appropriate to the setting.

2. The Style of the Subdivision – The general architectural theme of the Subdivision.

- (a) Colors must be consistent with the Subdivision and/or adjacent Lots.
- (b) Massing must complement roof slopes and scale of the Subdivision.
- (c) Elevations must avoid large expanses of wall surfaces and too great a variety of materials.
- (d) Design details should incorporate more traditional elements including roof overhangs, contrasting trim materials, and traditional window treatments.

**B. Enforcement of Design Guidelines**

No construction will occur on any Lot until the Application and Plans and Specifications have been approved by the ARC. Construction documents must be in compliance with the Builder's Guidelines and clearly indicate elevations, siting, size, color scheme, and all materials to be used. The ARC has the right and power to approve or reject plans in accordance with the Builder's Guidelines.

**C. Site Planning and Siting**

1. Declarant or the transferees of Declarant will undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the Subdivision as an ongoing residential community. In order that such work may be completed and the Subdivision established as a fully occupied residential community as soon as possible, nothing in the Declaration or Restrictive Covenants will be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees, builders, or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the Subdivision owned or controlled by Declarant or Declarant's transferees or their representatives whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent Declarant, Declarant's transferees, or the employees, builders, or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the Subdivision owned or controlled by Declarant, Declarant's transferees, or their representatives such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease, or otherwise as approved by Declarant;

(c) Prevent Declarant, Declarant's transferees, or the employees, builders, or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the Subdivision owned or controlled by Declarant or Declarant's transferees or their representatives the business of completing such work, of establishing the Subdivision as a residential community, and of disposing of Lots by sale, lease, or otherwise as approved by Declarant; or

(d) Prevent Declarant, Declarant's transferees, or the employees, builders, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or other disposition of Lots as approved by the Declarant.

As used in this paragraph, the words "its transferees" specifically exclude purchasers of Lots improved with completed Residences.

2. No building will be located on any Lot nearer to the front, rear, or side Lot line than is shown or described on the Subdivision Plat or as designated by Declarant in a written instrument duly recorded in the Official Public Records of Real Property of Bell County, Texas.

3. A building site will consist of not less than one Lot, as such Lots are shown on the Subdivision Plat. Only one Residence may be constructed per building site.

4. A building site may be 2 or more adjoining Lots consolidated into one building site at the discretion of the Declarant or the ARC. All setback lines will be measured from the resulting side property lines rather than the Lots lines reflected on the Subdivision Plat.

5. No driveways will be constructed without provisions for drainage of surface water along the designated right of way or without concrete or brick paving being installed between the street or road paving and the garage slab. No building will be constructed on any Lot until provisions have been made for drainage of surface water to off-site areas that minimize draining across adjacent property and/or Lots. Drainage will be into the street or road area, or into natural drainage areas wherever possible. Driveways must be constructed of concrete or brick materials or other approved paving material. No dirt, gravel, or road base driveways will be permitted from the street or roadway to the garage slab.

6. No Lot can be used as a roadway to connect to any adjacent parcel without the Declarant's prior approval. However, Declarant reserves the right to use any of its Lots to extend roadways for any purpose and replat if necessary to accomplish connections between 2 or more parcels in or adjacent to the Subdivision.

7. No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind will be permitted on a Lot, nor will oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals will be erected, maintained, or permitted on any Lot.

8. No exterior lighting of any sort will be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except reasonable landscape lighting that has been approved by Declarant or the ARC). No exterior speakers, horns, whistles, bells, or other sound devices or video cameras (except security devices used exclusively to protect the Lot and the improvements located thereon) will be placed or used upon any Lot without approval of the Declarant or the ARC. No fuel tank or similar storage facility will be installed or maintained on any Lot unless constructed as an integral part of the main structure or installed underground and approved by the Declarant or the ARC.

9. Lot grading is to follow the natural slope of the landform and is to be consistent with the Subdivision grading plan. The lot grading must conform to the lot grading plan. Lot plans will be submitted and reviewed by the ARC prior to Application. If requested by the ARC, a final grade certificate must be prepared by a land surveyor certifying that individual Lot grades comply with the overall Subdivision Drainage Plan.

10. Drainage swales must be completed in a timely manner. If a Builder will not complete finish grading, Owner is required to show the ARC that finish grading will be done timely and by a

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builder approved by the ARC. A bond may be required if a Builder turns over the property to Owner before final grading is complete.

#### **D. Residences and Outbuildings**

1. Any Residence constructed on a Lot must have a total of 2,700 square feet of air-conditioned floor area, exclusive of open or screened porches, terraces, patios, decks, driveways, basements, and garages. Unless by the ARC to the contrary, a two-story Residence must have a minimum of 1,500 square feet on the bottom or ground floor of the Residence and a minimum of 600 square feet on the top or second floor of the Residence; however, the combination of the two must total at least 2,700 square feet.

2. All exterior wall areas (exclusive of windows) of each building (Residence or outbuilding) constructed on a Lot, including but not limited to chimney flues, will be not less than 100% brick, masonry, natural stone, or stucco unless otherwise approved in writing by the ARC. No aluminum, vinyl siding, or cement fiber siding (such as Hardiboard) will be allowed unless otherwise approved in writing by the ARC. No synthetic plaster, synthetic stucco, or EIFS-type products may be used in the Subdivision, unless approved by the ARC.

3. No roof on any Residence constructed on a Lot will have less than a 7'/12' roof slope unless otherwise approved in writing by the ARC. Unless otherwise approved in writing by the Declarant or the ARC, all roofs will be constructed or covered with clay tile, slate, or at least 30-year composition dimensional-cut or Timberline style shingles (having a manufacturer's warranty of at least 30 years) with the approximate color of either muted brown or grey. All vent pipes and flashings will be located at the rear of the roof of the Residence, when and where practical, and must be painted to match the roof color.

4. No carports may be constructed on any Lot. No add-on patio covers may be constructed on any Lot unless approved by the Declarant or the ARC.

5. Any permanent garage erected upon the Property must be constructed of permanent materials of the same type as those used for construction of the Residence on that Lot. Garages may be detached or attached to the Residence or to breezeways or covered porches attached to the Residence. A garage may not be enclosed or altered to provide additional dwelling space. Front-entry garages are prohibited, unless specifically approved by the ARC.

6. No air-conditioning apparatus or water softener system (collectively "Apparatus") will be installed on the ground or on the roof of any Residence, unless the Apparatus is:

(a) Tastefully screened from public view and is not visible from the public street or roadway, Highway FM 93, or the Common Area, and

(b) The placement of the Apparatus and screening are approved by the ARC prior to the installation of the Apparatus. No window air-conditioning apparatus or evaporative cooler will be allowed.

7. All outbuildings or storage buildings must be of new construction from the ground up. Any outbuilding or storage building constructed on a Lot within the Subdivision must be of a type, design, and material matching or harmonizing with the Residence and approved by the Declarant or the

ARC prior to construction. No portable building ( *i.e.*, metal or plastic storage building or “Morgan building”) may be moved onto any Lot within the Subdivision.

8. No in-ground flag pole may be installed on any Lot. On Federal or State holidays, an Owner may display the United States or Texas flag from a commercially purchased, standard-length flag pole attached to the Residence. The Owner must remove the flag and flag pole from its mounting within 72 hours of the end of the Federal or State holiday. The flag pole and location of the flag pole must be approved by the Declarant or the ARC prior to its installation and mounting.

9. No swimming pool, tennis court, or other outdoor recreational structure will be installed or constructed on any Lot without the prior approval of the Declarant or the ARC. No above-ground swimming pool will be installed or constructed on any Lot.

10. No swing, playground equipment, or other structure not approved by the Declarant or ARC will be installed, moved, or constructed on any Lot that is visible from a street or Common Area. A swing, playground equipment, or other structure that exceeds the height of the fence line and is visible to the adjoining Lot may be installed and maintained by an Owner, with the prior written approval of the Declarant or the ARC, so long as such swing, playground equipment, or other structure is well maintained and is not offensive to neighboring Owners. A gazebo or rock patio area that is visible to the adjoining Lot may be installed and maintained by an Owner, with the prior written approval of the Declarant or the ARC, so long as such structure is well maintained and is not offensive to neighboring Owners. In the event the Declarant or the ARC deems any outdoor structure to be offensive or poorly maintained, Owner will remove such structure within 10 days of written notice from the Declarant or the ARC.

11. No tree houses may be constructed in any tree on any Lot.

12. All improvements must be of new construction, from the ground up, and no house may be moved on any Lot or portion of the Subdivision.

13. No structure of a temporary character, trailer, mobile home, motor home, inoperative or abandoned vehicle, basement, tent, shack, garage, barn, or other outbuilding may be erected, placed, or used on any Lot at any time as a Residence.

14. No building or structure of any kind, including but not limited to mobile homes or manufactured homes, may be permanently moved onto or placed on any of the Lots except as otherwise allowed by the Restrictive Covenants.

15. Declarant or a Builder Member temporarily may move a trailer onto a Lot under construction for use as construction or materials storage during such periods of construction on the Lot. The Declarant or the ARC must first approve any trailer used for construction or materials storage and approve the length of time the trailer can remain on the Lot.

16. All decks, patios, and covers require ARC approval. Deck options that are acceptable include planters, railings, and steps. Dimensions of these options must be specified when submitting plans for ARC approval. Second story (not counting walkout floor) deck covers or roofs are not acceptable. Deck covers or roofs on decks that are added to houses with walkout basements must have ARC approval prior to installation.

(a) Visibility (Location and Impact on Neighbors). The proposed deck or patio



should relate favorably to the landscape, existing structure, and neighborhood. Primary concerns are access, view, sunlight, ventilation, and drainage (*i.e.*, unwanted shadows on an adjacent patio or infringement on a neighbor's privacy or view). When a proposed deck has possible impact on adjacent properties, input of any affected neighbor will be sought by the ARC prior to consideration of plan review.

(b) Color. The deck may be stained to match the house field color or house trim color or a clear protective (stain) finish may be used. Railings, seats, planters, vertical supports, and covering may be similarly finished.

(c) Size. Deck size will be considered on a case-by-case basis, depending on the size of the Lot and the Residence.

(d) Building Codes and Permits. In some cases, second-story decks must meet certain building standards and may require building permits. Owner should check with the appropriate governmental authority to determine if a proposed project requires such a permit. Construction of decks over easement areas is not permitted.

17. All dog runs and animal enclosures must be approved by the ARC. Dog houses meeting the Builder's Guidelines below do not need approval.

(a) Dog runs must be located in the rear yard, abutting the home and substantially screened from view. The dog run is limited to 250 square feet. Fencing for the run must be no higher than 5', cannot be taller than the yard fence, and must be constructed of materials approved by the ARC. The dog run must not be visible from any street.

(b) Dog houses are restricted to 16 square feet and must be located in a fenced back yard or in a fenced dog run. Dog houses must be installed at ground level. Dog houses must not be visible above the fence and or from any street.

18. Hot tubs and spa or "Jacuzzi" tubs must be an integral part of the deck or patio area and of the rear yard landscaping. Location must be in the rear yard and dimensions must be specified in the Application to the ARC. The equipment must be located in such a way that it is not visible to adjacent property owners, *i.e.*, hidden by fence or shrubs. ARC approval is required prior to placing any hot tub or spa.

19. Each Residence will be required to have a mailbox structure (the "Mailbox") of a type, design, and material matching or harmonizing with the Residence and designated and approved by the Declarant or the ARC prior to construction and installation. If required by the United States Postal Service, an Owner may be required to construct his Mailbox at or on the property line adjacent to the Mailbox of an adjoining Owner and may be required to place his Mailbox on a single pedestal. Multiple cluster mailboxes may be located on any Lot designated by Declarant and approved by the United States Postal Service.

The Declarant and the ARC reserve the right to designate a type or style of Mailbox for the Subdivision. Each Mailbox, regardless of style, will be in conformity with the requirements of the United States Postal Service, the City of Temple, or any other governmental authority.

The Lot Owner will be responsible for maintaining his individual Mailbox in good condition and repair. This provision applies to any original or replacement individual Mailbox.

If an Owner fails to do so, the Declarant and the Association will each have the right, but not the obligation, to make any repairs to the Mailbox, the cost of which will be reimbursed to Declarant or the Association, as the case may be, by such Owner promptly upon receipt of an invoice. The amount to be reimbursed, if not paid within 30 days after the date of the invoice, will bear interest from the date of the invoice until paid at the rate of interest stipulated in the Association's Bylaws or the Declaration to be paid on delinquent Assessments.

20. If an Owner wishes to paint the Residence a new color, the proposed paint color(s) must be applied to the Residence on the materials on which the paint will be applied for ARC review. The ideal location is on or near the garage door, in a space approximately 3' x 3'. An area of trim will be included along with the base or field color of the Residence. This will allow both the Owner and the ARC to decide if the colors are appropriate for that particular Residence, noticing such things as neighbor's paint colors, the brick/rock façade on the home, and the general acceptability of the colors.

21. Designs with approximately identical house elevations may not be repeated within Subdivision. To be different means that there is a significant change in features, such as roof slopes, size and location of windows and doors, colors, and finish materials. A change of material alone and reversing the plan is not sufficient.

#### **E. Landscape and Fencing**

1. Each front yard of a Lot must have a minimum of 4 trees of at least a diameter of 2" and height greater than 6' to create a tree-lined streetscape, unless an exception is granted by the ARC. Any required tree plantings necessary to achieve the foregoing requirement must be completed within 30 days of the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ARC. The species and variety of all planted trees must be approved by the Declarant or the ARC prior to planting.

2. All Lot landscape and hardscape must be approved by the ARC. All landscaping of each Lot must be completed within 30 days of the completion of the Residence, but in any event prior to the Owner occupancy of the Residence unless Owner has received an extension from the ARC, in a design and manner approved by the Declarant or the ARC. Each Builder Member or Owner will cause the front, side, and rear yard lawns for each Lot bearing a completed Residence to be installed with fully sodded grass and landscaping within 30 days of the completion of the Residence. Any lawn will include the unpaved area between the Lot and the curb of any street or roadway adjacent to such Lot. If, however, construction of the Residence is completed at a time of year when seasonal or other conditions make installation of the sod, grass, trees, shrubbery, or other landscaping improvements impractical, the Builder Member and/or Owner will enter into a separate written Agreement with the ARC or the Association, in form and substance required by the ARC or the Association, extending the date for installation of the lawn and landscaping and establishing a date by which such lawn and landscaping will be installed. No lawn may be installed by a method of seeding, sprigging, or hydro-mulching.

Owners may enter into voluntary agreements for joint lawn maintenance of all or any part of the lawn; however, lawn maintenance will remain the ultimate responsibility of each Owner. Builder Members will be responsible for maintaining a healthy lawn until the Residence is sold to a third party.

With the affirmative vote and approval of the Owners of 75% of the Lots in the Subdivision, a Landscaping Board may be created. If a Landscaping Board is created, it will be known as the Landscaping Board of Directors ("Landscaping Board") of the Association and it will be responsible for the initial design and ordinary maintenance of the landscaping of all Lots (up to but excluding any Patio). A "Patio" is any intimate garden, courtyard, or porch area immediately adjacent to the Residence, whether covered or not. Ordinary maintenance will include sodding (after the initial sodding), mowing, irrigation, fertilizing, weed control, and the planting, care, and replacement of trees and shrubbery (after the initial planting). The maintenance obligations of the Landscaping Board as to the Lots, as set forth in this Paragraph, will be the sole obligation of the Landscaping Board. The Owner will have no individual right or obligation to maintain, alter, add to, or replace the landscaping of the Owner's respective Lot. The Landscaping Board must approve, in advance, any replacement or modification of the landscaping of a Lot by an Owner. If an Owner-requested replacement or modification of the landscaping is approved by the Landscaping Board, the Owner will be solely responsible for the installation and planting of such replacement or modification of the landscaping; however, such replacement or modification to the landscaping must be completed, at the sole discretion of the Landscaping Board, within a reasonable period of time. The Owner will be responsible for any extraordinary care or maintenance of the replacement or modification of the landscaping upon his Lot.

No vegetables will be grown in any yard that faces a street or Common Area.

3. Removal of trees in excess of 2" in diameter or more than 6' in height is prohibited without the written permission of the Declarant or the ARC, with the exception of those trees located within the footprint of the Residence, garage, walks, drives, and patios, and on an adjacent 2' perimeter to the footprint.

4. The Association will be responsible for all maintenance, upkeep, repair, and replacement of any and all improvements located or to be located within the Common Area, including but not limited to any entrance monuments, gates, hardscape, decorative lighting, signage, water feature, pumps, underground irrigation or water sprinkling system, and landscaping, including sod, grass, trees, and shrubbery. All design changes, tree or monument changes, sign removals, or construction will be at the sole discretion and option of the Declarant. No other design changes, tree or monument changes, sign removals, or construction of any kind can be done within the Common Area without the prior written approval of the ARC.

5. All irrigation or water sprinkling systems must be approved by the Declarant or the ARC. Initial installation of the irrigation or water sprinkling system must be completed by the Builder Member or Owner within 30 days of the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ARC.

All yards (front, side and rear) of a Lot must have an underground irrigation or water sprinkling system for the purpose of providing sufficient water to preserve and maintain the landscaping of the Lot in a healthy and attractive condition.

Each Owner will be responsible for the maintenance, repair, replacement, and upkeep of his irrigation or water sprinkling system.

6. The alteration or installation of decorative or functional retaining walls requires ARC approval. Retaining walls must have the aesthetic appeal and be constructed of similar materials as used elsewhere in the Subdivision. Retaining walls cannot be constructed in such a manner as to interfere with

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or alter the established drainage pattern over any property, except as approved by the ARC. No railroad ties may be used in any retaining wall or other form of landscaping.

7. A landscape easement may be designated near the entrance of the Subdivision (the "Landscape Easement"). An easement of ingress and egress upon, over, and across the Landscape Easement is reserved for the use and benefit of Declarant, the Association, and their successors and assigns.

8. No Owner of any Lot, with the exception of Declarant, may alter, damage, deface, or mar the layout or design of the surface of any Common Area or any portion of any improvements constructed or installed within any Common Area. Neither the Association nor Declarant will be liable for any damages done by it or its assigns, agents, employees, or servants to property of the Owners situated on land covered by the Common Area.

9. Easements for installation and maintenance of utilities are reserved as shown and provided for on the Subdivision Plat and no structure (except approved fences, decks, patios, irrigation or water sprinkling systems, and driveways) may be erected upon any of said easements. Neither Declarant nor any utility company using the easements will be liable for any damage done by it or its assigns, agents, employees, or servants to shrubbery, trees, flowers, hardscape, or improvements of any Owner located on the land covered by said easements.

10. No shrub or tree planting that obstructs sight lines at elevations between 2' and 6' above the roadway may be planted or permitted to remain on any corner Lot within the triangular area formed by the curb lines of such intersecting streets and a line connecting such curb line at points 25' from their intersection, or, in the case of a rounded corner, from the intersection of the curb lines as extended. The same sight line limitations will apply on any Lot within 10' of the intersection of a street, curb line, and the edge of a driveway. No trees may be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than 6' above ground level.

11. All fence plans, designs, location, and placement must be approved by the Declarant or the ARC, which has the right to require certain types of fences and certain types of materials to be used, including but not limited to columns constructed of brick, stone, or masonry matching the house with ornamental iron in between, wood, or similar material. Initial fence construction must be completed by the Builder Member or Owner within 30 days of the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ARC.

(a) Declarant will construct a fence along the property lines of Lots 1, 2, 3, 22, 23, and 24, Block 1 of the Subdivision, that abut Highway FM 93 ("Declarant's Fence"). Declarant's Fence will be a combination of stone, rock, masonry, and wrought iron.

(b) Wood privacy fences will be allowed only at the rear lot lines of Lots 3 (except where Lot 3 abuts Highway FM 93), 4, 5, 6, 8, 9, 10, 11, and 12 (except where Lot 12 abuts Friar's Creek), and at any side lot lines with the prior written consent of the Declarant or the ARC. In any event, no wood privacy fence may be constructed in a manner so that the wood fence is visible from any street, Common Area, or Friar's Creek.

(c) All wooden fences must be approved and constructed, according to Declarant's fence plans (a copy of such fence plans may be obtained from Declarant), of 6" by 6' wooden fence pickets and galvanized poles. Wooden fence pickets must be assembled on the outside of the fence frame,

**MISTY CREEK HOMEOWNERS' ASSOCIATION, INC.  
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facing adjoining property, unless at the rear of Lots 3, 4, 5, 6, 8, 9, 10, 11, and 12. Wooden fence pickets will not be located directly on the ground but will be constructed on a 1" x 4" board lying parallel to the ground. The top of the wooden fence pickets will be topped and framed on both sides by a 1" x 4" board. All fences located between Residences must present a uniform appearance and be in line with each other. All wooden fences must be 6' in height.

(d) All wooden fences must be protected by a clear natural wood preservative; no other color or stain will be allowed, unless approved by the ARC.

(e) All other fences must be of a height, style, and design that may be approved by Declarant or the ARC.

(f) In the event that any fence intersects (the "Intersecting Fence") with any fence that is of a higher or lower height, the Intersecting Fence will be increased or decreased in height, at a steady rate, over the last 10' in length of such Intersecting Fence before it intersects with the higher or lower fence so that there is a smooth transition from the lower level to the higher level. Unless otherwise approved by the Declarant or the ARC, no two fence segments of different heights will meet without the 10' transition area required above. For purposes of this paragraph, a fence will "intersect" with another fence at any point where there is an appearance from any street or roadway that the fence segments meet or are in close proximity to each other.

(g) The rear fences of Lots 13 through 21, inclusive, and those portions of Lots 12 and 22 that abut Friar's Creek, Block 1 of the Subdivision, must be constructed of ornamental wrought iron or other Declarant or ARC approved material in order to maximize the Lot's view of Common Area A (Misty Creek), Friar's Creek, and the surrounding landscape.

(h) Each Owner will be responsible for the maintenance, repair, replacement, and upkeep of his fence.

(i) Divider fences are fences located on or parallel to a property line common with two or more Lots. Such fences may not be placed inside the property line if they will create an area that may not be properly maintained or will prevent a neighbor fence connection.

(j) Drainage and Fence Easements (defined below) created hereby permit installation and maintenance of any future drainage structures required to provide adequate drainage between Lots and for connection of divider fences. A Lot Owner may not prohibit an adjacent Lot Owner from connecting to a fence.

(k) Fences must be functional, well maintained, and in plumb, level, and square condition, with gates and pickets in place. Damaged or deteriorated fences must be repaired or replaced promptly by the Owner. If the original Owner of a divider fence is unknown, repair or replacement expense for divider fencing on a common property line is to be shared equally by the respective Lot Owners.

(l) Privately owned, street-facing fences that are not maintained, as set forth above, may be repaired or replaced by the Association at the respective Lot Owner's expense. Easements for access to Lots for such fence repair or replacement are hereby created.

(m) Drainage and Fence Easements

(1) A 5' wide easement (the "Fence Easement") will run adjacent and parallel to and on each side of a Lot's side and rear boundary lines (for a total easement area of 10') and will run the entire length of a Lot's side and rear boundary lines. An easement is hereby reserved for the use and benefit of the adjacent Lot Owner, the Declarant, and the Association to provide ingress, egress, and regress upon, over, and across the Fence Easement to the extent such Fence Easement is necessary to permit fences to connect with other fences and to allow the Declarant or the Association to repair or replace any Owner-neglected fence or Owner-neglected landscaping, including trimming of brush, vines, shrubbery, and trees that are located within or protrude into the Fence Easement, as the Declarant or the Association in its sole discretion deems appropriate.

(2) The Owner has the ultimate responsibility for the construction, installment of, and maintenance, upkeep, repair, and replacement of any and all Owner-owned improvements located or to be located within the Fence Easement, including but not limited to any fencing, decorative lighting, and landscaping. The Association, at the Association's sole discretion, will have the right and responsibility for the construction and installation of and all maintenance, upkeep, repair, and replacement of any and all Association-owned improvements located or to be located within the Fence Easement, including but not limited to any entrance walls, entrance monuments, fencing, and decorative lighting, with the exception of landscaping. The Association will have the right and responsibility for landscaping that portion of the Fence Easement that lies between any entrance wall or fence and the street running parallel to any entrance wall or fence, as shown on the Subdivision Plat.

(3) No Owner may damage, deface, or mar the surface or any portion of any improvements constructed or installed within the Fence Easement. No structure, planting, fence, or other material may be placed or permitted to remain within the Fence Easement that may damage the surface of any improvements constructed by Declarant or the Association within the Fence Easement, or interfere with the right of ingress, egress, and regress over the Fence Easement or any ingress easement granting access to the Fence Easement. Neither the Association nor Declarant will be liable for any damages done by them or their assigns, agents, employees, or servants to property of the Owners situated on land covered by the Fence Easement.

(n) Chain link fences are prohibited except for use in the construction of a fenced-in area or dog run located within the fenced rear yard of an Owner and provided that the chain link fence is not visible from any street, Lot, or Common Area.

**F. Remodeling and Additions**

Remodeling and additions to existing homes are required to meet the same criteria as new construction, including ARC approvals.

Any changes to the exterior of a home will be subject to review by the ARC. No exterior changes may be made without prior written approval of the ARC. The written approval must be received by Owner before any work is initiated.

ARC Applications are included in the Builder Guidelines or are available from the ARC. Applications must be completed with sufficient detail to permit the request to be thoroughly reviewed by the ARC. The ARC has thirty (30) days from receipt of a completed request to provide the Owner a response to a request.

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## **SECTION 3. ARCHITECTURAL FEATURES**

### **A. Building Materials**

1. Exposed surfaces of exterior walls will be at least one but no more than three of the following materials:

- (a) Stone,
- (b) Stucco on metal lathe (synthetic stucco and EIFS are prohibited),
- (c) Brick,
- (d) Wood siding (Cedar or Cypress may be stained or painted; all other wood must be painted), or
- (e) Fiber-cement siding. When using fiber-cement siding, such as Hardiboard, no more than 4" of the fascia of each piece will be visible after lapping.

2. All roofs will be constructed or covered with clay tile, slate, or at least 30-year composition dimensional-cut or Timberline style shingles (having a manufacturer's warranty of at least 30 years) with the approximate color of either muted brown or grey, as approved by the Declarant or the ARC. All vent pipes and flashings will be located at the rear of the roof of the Residence, when and where practical, and must be painted to match the roof color.

3. Exposed metal chimney flues are not permitted.

4. All windows need to be of high quality and architecturally and aesthetically pleasing. Windows visible from the street will be wood or metal clad, or Vinyl windows without grilles approved by the ARC. Vinyl windows with grilles between glass are strictly prohibited. Aluminum windows are specifically prohibited. Window frames are to be pre-finished metal, PVC, or wood in a complementary color to the residence. All window openings are to have 4" trim boards, painted or stained to match house trim. As alternatives to 4" trim boards, stone or masonry trim, moldings, window boxes, and window shutters will be considered. If muntin bars are used, these will be of solid materials (not tape).

5. Exterior shutters will be painted or stained wood and sized for their respective openings.

6. Aluminum, Masonite, or vinyl siding or shutters are specifically prohibited.

7. Exterior surfaces and finishes will be professionally color coordinated consistent with the architectural style of the Residence and Subdivision.

8. Gutters and drainpipes may be required by ARC in certain areas to alleviate drainage issues between Lots.

9. There are to be no "false fronts". The dominant material of the front elevation must be carried through on all remaining elevations. Brick or stonework is to be even-toned. There is to be no multi-colored stonework. All brick is to be standard or metric size with colored mortar as approved by the ARC.

10. Front doors will be relief panel doors of solid construction and painted or stained. Doors may include glass elements. All doors must be approved by the ARC.

11. Garages are to be finished in a similar design and materials to the Residence.

12. Garage doors must be metal or wood of high quality and in keeping with the exterior design and color of the Residence.

13. Driveways must be of concrete and maybe stamped, stained, or washed. Driveways may have stone or brick paver accents.

14. Each Lot will have at least one permanent gas flame light fixture in the front yard. No gas mantle fixtures are permitted. Location and architectural and aesthetic features of the lighting must be approved by the ARC. Electric pole lights in the front yard are prohibited.

## **B. Roof Materials**

1. All roofs will be constructed or covered with clay tile, slate, or at least 30-year composition dimensional-cut or Timberline style shingles (having a manufacturer's warranty of at least 30 years), as approved by the Declarant or the ARC. Other roof finishes will be considered if it can be shown by the applicant that these are in keeping with the overall objectives of the Subdivision.

2. Rain water leaders, eaves, troughs, and fascias should match the trim color as selected.

3. Chimneys are to be brick, stone, stucco, or the siding used on the exterior of the house. All brick or stone chimneys are to incorporate corbelled detailing and include concrete rain caps.

## **C. Fencing Materials**

1. All wooden fences must be approved and constructed, according to Declarant's fence plans (a copy of such fence plans may be obtained from Declarant), of 6" by 6' wooden fence pickets and galvanized poles. Wooden fence pickets must be assembled on the outside of the fence frame, facing adjoining property, unless at the rear of Lots 3, 4, 5, 6, 8, 9, 10, 11, and 12. Wooden fence pickets will not be located directly on the ground but will be constructed on a 1" x 4" board lying parallel to the ground. The top of the wooden fence pickets will be topped and framed on both sides by a 1" x 4" board. All fences located between Residences must present a uniform appearance and be in line with each other. All wooden fences must be 6' in height.

2. All wooden fences must be protected by a clear natural wood preservative; no other color or stain will be allowed, unless approved by the ARC.

3. All other fences must be of a height, style, and design that may be approved by Declarant or the ARC.

4. In the event that any fence intersects (the "Intersecting Fence") with any fence that is of a higher or lower height, the Intersecting Fence will be increased or decreased in height, at a steady rate, over the last 10' in length of such Intersecting Fence before it intersects with the higher or lower fence so that there is a smooth transition from the lower level to the higher level. Unless otherwise approved by the



Declarant or the ARC, no 2 fence segments of different heights will meet without the 10' transition area required above. For purposes of this paragraph, a fence will "intersect" with another fence at any point where there is an appearance from any street or roadway that the fence segments meet or are in close proximity to each other.

5. The rear fences of Lots 13 through 21, inclusive, and those portions of Lots 12 and 22 that abut Friar's Creek, Block 1 of the Subdivision, must be constructed of ornamental wrought iron or other Declarant or ARC approved material in order to maximize the Lot's view of Common Area A (Misty Creek), Friar's Creek, and the surrounding landscape.

**THE BUILDER'S GUIDELINES ARE NOT INTENDED TO AMEND, ALTER, OR SUPERSEDE THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MISTY CREEK, AS RECORDED IN THE OFFICIAL PUBLIC RECORDS OF BELL COUNTY, TEXAS. IN THE EVENT THE BUILDER'S GUIDELINES CONFLICT WITH THE DECLARATION OR RESTRICTIVE COVENANTS, THE DECLARATION WILL CONTROL.**

**NO APPROVAL OF PLANS AND SPECIFICATIONS OR THESE GUIDELINES WILL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT A STRUCTURE IS PROPERLY DESIGNED. SUCH APPROVALS AND STANDARDS WILL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY STRUCTURE WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. IT IS THE SOLE RESPONSIBILITY OF THE OWNER TO MAKE SURE THAT CONSTRUCTION MEETS THE CRITERIA OF MISTY CREEK COVENANTS AND BUILDER'S GUIDELINES.**

Neither the ARC nor Declarant can guarantee that a given Builder will provide full service to an Owner. It is the Owner's responsibility upon taking title to a Lot to ascertain compliance with all governmental regulations and the Subdivision's Governing Documents.

Neither the ARC nor Declarant certifies measurements of Builders. Owner should be aware of the legal setbacks and other measurements required. The ARC recommends that the lowest elevation opening be well above the 100-year event elevation. In any event, all finish floor elevations as reflected on the Subdivision Plat must be strictly followed.

#### **Liability of Developer**

Nothing in the Builder's Guidelines or the granting of any approval will be construed as imposing any liability on the ARC for damages resulting from structural defects in any structure erected on any Lot with the ARC's approval or any responsibility in connection with the Lot selected for any structure or for the determination of Lot boundaries.

#### **Other Liabilities**

The requirements herein contained will not be deemed to be exclusive either of the requirements of the Bylaws of Misty Creek Homeowners' Association or of the obligations and liabilities imposed by statute, regulation, common law, and the Governing Documents on Owners, all of which will be duly observed and followed. These requirements include but are not limited to height restrictions and setback requirements.

**MISTY CREEK HOMEOWNERS' ASSOCIATION, INC.  
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**Severability**

If any provision herein is determined to be voided or unenforceable in whole or in part, it will not be deemed to affect or impair the enforceability or validity of any other provision or any part thereof.

**The Builder's Guidelines may be amended or supplemented from time to time. Please have your copy of the Builder's Guidelines dated and initialed when you receive it.**

EXECUTED effective December 17<sup>th</sup>, 2007.

MISTY CREEK HOMEOWNERS' ASSOCIATION, INC.,  
a Texas corporation.

By:   
MICHAEL D. BROCK, President

This copy of the Builder's Guidelines was delivered on this the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

**MISTY CREEK SUBDIVISION  
APPLICATION FOR APPROVAL**

Architectural Review Committee  
Misty Creek Homeowners' Association, Inc.  
c/o Misty Creek Development, Inc.  
Mike Brock, President  
15 North Main  
Temple, TX 76501

Owner \_\_\_\_\_

Lot Number \_\_\_\_\_

Builder \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

Office Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_ Email \_\_\_\_\_

Anticipated Construction  
Start Date \_\_\_\_\_

Anticipated Construction  
Completion Date \_\_\_\_\_

Plan Designer \_\_\_\_\_

Plan Name \_\_\_\_\_

**Required Attachments:**

Attach 2 copies of each of the following documents. Note the Lot number and Owner or Builder name on each attachment.

- This Application completed in full
- Site Plan
- Landscape Plan
- GL Certificate
- References

**Description of Exposed Exterior Surfaces and Features**

Describe each of the following in detail, including, when applicable and available, complete product description, manufacturer, and finish color.

The following items will be regulated as to their height, shape, location, elevation, colors, types, material, visibility, style, workmanship, safety, effect on adjacent properties, view, completion timing, and conformity and harmony to existing structures and surrounding structures.

**MISTY CREEK HOMEOWNERS' ASSOCIATION, INC.  
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Item for Review	Description
Air Conditioning	
Antennas	
Arbors	
Awnings	
Basketball Goals	
Benches	
Birdhouses	
Chimneys	
Chimney Caps	
Columns	
Decks	
Doors	
Downspouts	
Driveways	
Exterior Lighting	
Fences	
Fountains	
Garage Doors	
Garages	
Gazebos	
Greenhouses	
Gutters	
Landscaping	
Mail Boxes	
Outbuildings	
Painting	

Item for Review	Description
Patios	
Pools and Spas	
Porches	
Repainting	
Reroofing	
Retainer Walls	
Roof Overhang	
Roofing	Note: Plumbing and HVAC stacks must be painted or covered with copper
Screens	
Security Devices	
Shutters	
Sidewalks	
Signs	
Skylights	
Solar Panels	
Statuaries	
Sunrooms	
Swings/Swing Sets	
Trellises	
Trim	
Walkways	
Wall Surface 1	
Wall Surface 2	
Wall Surface 3	
Windows	
Yard Art	
Other	

Compliance with applicable City, County, State, and Federal regulations is the responsibility of the Owner/Builder. Obtaining all necessary permits and payment of all fees will be the responsibility of the Owner/Builder.

Owner \_\_\_\_\_ Builder \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

Misty Creek Lot Number	
Submitted By	
Date Submitted	

APPROVED:	
APPROVED, Subject to the following:	
DISAPPROVED Reason(s):	

\_\_\_\_\_  
Signed:  
As Representative of the ARC