

AFTER RECORDING, RETURN TO:  
BAIRD, CREWS, SCHILLER & WHITAKER, P.C.  
ATTN: THOMAS C. BAIRD  
15 North Main Street  
Temple, Texas 76501

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**RESTRICTIVE COVENANTS  
OF MISTY CREEK SUBDIVISION,  
A SUBDIVISION IN THE CITY OF TEMPLE,  
BELL COUNTY, TEXAS**

MISTY CREEK DEVELOPMENT, INC., a Texas corporation (“Declarant”), is the owner of that certain tract of land situated in Bell County, Texas, more particularly described by metes and bounds in an exhibit entitled “Legal Description” attached to these Restrictive Covenants and designated as Misty Creek Subdivision, a subdivision in the City of Temple, Bell County, Texas (sometimes referred to as the “Subdivision”). Declarant does hereby adopt the map and final plat of Misty Creek Subdivision, a subdivision in the City of Temple, Bell County, Texas, said map and plat being recorded in the Plat Records of Bell County, Texas (the “Subdivision Plat”).

The Subdivision will contain those Lots and blocks described as:

Block 1     Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, and Common Areas A, B, and C (the “Property”). Common Areas A, B, and C are sometimes collectively referred to as the “Common Area”.

Declarant does hereby dedicate to the City of Temple, Bell County, Texas, and to the public use and for public purposes the streets, avenues, and roadways shown on the Subdivision Plat and the said Declarant does hereby agree that all future sales and conveyances of said property will be by reference to the Subdivision Plat and dedication.

Declarant does further give, grant, and convey the easements as shown on the Subdivision Plat for the installation of public utilities, including but not limited to electric power, water, sewer, gas, and telephone, and reference is hereby made to the Subdivision Plat for the location of such easements. All drainage easements shown on the Subdivision Plat are specifically dedicated, along with the right of maintenance, repair, and replacement in all easements, including the right of ingress and egress thereto, for the purpose of erecting, maintaining, and repairing said utility lines and drainage structures.

For the purpose of further assuring the orderly and uniform development of the Subdivision as a residential subdivision of good and desirable character, and in order to carry out a general plan of development for the benefit of each and every purchaser of a Lot in the Subdivision, Declarant makes and imposes the following restrictions, covenants, conditions, and limitations (collectively the “Restrictive Covenants”) with reference to the use of the properties of the Subdivision that will be covenants running with the land.

Except as otherwise noted in the “Declaration of Covenants, Conditions, and Restrictive Covenants – Misty Creek Subdivision, a subdivision in the City of Temple, Bell County, Texas” (the “Declaration”) to be recorded in the Official Public Records of Real Property of Bell County, Texas, or in

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these Restrictive Covenants, so long as there is a Class B membership (as defined in the Declaration), Declarant or the Architectural Review Committee (the "ARC") will have the authority to approve, disapprove, and enforce the Restrictive Covenants. Upon the expiration of the Class B membership, the ARC will have the sole authority to approve, disapprove, and enforce the Restrictive Covenants.

All capitalized terms defined under Article II of the Declaration and used in these Restrictive Covenants will have the same meaning as defined in the Declaration.

**ARTICLE I  
BUILDER APPROVAL AND ARCHITECTURAL REVIEW**

The identity of the builder and all plans and specifications must be submitted to the ARC in accordance with the terms and provisions of Article IV of the Declaration. The ARC, in its sole discretion, must approve any and all builders that will construct improvements upon a Lot within the Subdivision.

**ARTICLE II  
SINGLE-FAMILY RESIDENTIAL CONSTRUCTION**

No building or structure will be erected, altered, or permitted to remain on any Lot other than one single-family residential dwelling not to exceed two stories in height, exclusive of basement, unless approved by the ARC, and a private enclosed attached or enclosed detached garage for no fewer than two cars. Any enclosed attached or enclosed detached garage will be constructed of permanent materials that will be the same as the residential dwelling ("Residence") erected on the Lot in question. No other detached structures of any kind will be allowed except as specifically approved by the Declarant or the ARC. Front-entry garages are prohibited, unless specifically approved by the ARC. The attached or detached garage on any Lot may not be enclosed or altered to provide additional residential dwelling space.

**ARTICLE III  
USE RESTRICTIONS**

The Subdivision will be occupied and used only as follows.

1. No business of any kind will be conducted in any Residence with the exception of "in home" offices as provided in Number 2 below and the business of Declarant and the transferees of Declarant in developing all of the Lots as provided in Number 13 below.
  
2. Except as herein provided, no activity, whether for profit or not, will be conducted on any Lot that is not related to single-family residential purposes. No noxious or offensive activity of any sort will be permitted nor will anything be done on any Lot that may be or become an annoyance or a nuisance to the Subdivision. Declarant may maintain in or upon such portions of the Subdivision as Declarant determines such facilities as, in its sole discretion, may be necessary or convenient, including but without limitation construction or sales offices, storage areas, model units, and signs. During the construction of a Residence and at the discretion of Declarant or the ARC, a Builder Member may maintain a temporary construction or sales office upon the same Lot that is under construction when the prior written consent of the Declarant or the ARC is obtained. The construction or sales office must be removed within 30 days after the Residence is completed or when the Residence is sold or leased to a third party, whichever

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comes first. A Builder Member may not maintain a permanent model unit or show home on any Lot within the Subdivision; however, this will not prevent a Builder Member from showcasing a Residence on a temporary basis for the purpose of marketing and selling such Residence, *i.e.* a “Parade” home. No professional business or commercial activity will be conducted on any Lot, except for “in home” offices having prior written consent of the Declarant or the ARC for the “in home” office and only when the “in home” activity is in harmony with the quality of the Subdivision and will protect the value, attractiveness, and desirability of the Lots in the Subdivision.

3. 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.

Subject to approval by the Declarant or 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.

Declarant and the ARC will have the right to remove any sign, billboard, or other advertising structure that does not comply with the above paragraphs and in so doing will not be subject to any liability for trespass or any other liability in connection with such removal.

4. Nothing will be done or kept on a Lot that would increase the rate of insurance relating thereto, and no Lot owner (individually “Owner” or collectively “Owners”) will permit anything to be done or kept on his Lot that would result in the cancellation of insurance on any Residence or that would be in violation of any law.

5. No activities will be permitted that unreasonably will disturb the quiet enjoyment of the Owners and their guests, invitees, and tenants.

6. 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 the approval of the 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. Telephones will be allowed outdoors. 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. No firearms (including air rifles) or fireworks of any kind or make may be discharged in the Subdivision. There will be no hunting, fishing, or trapping within the Subdivision.

7. No animals, livestock, poultry, or Exotic or Dangerous Animal (as defined below) of any type may be raised, bred, or kept in the Subdivision, except for cats, dogs, or other generally recognized household pets (collectively “Pet(s)”). An “Exotic or Dangerous Animal” is an animal that may pose a safety or health threat to the Owners of the Subdivision, their guests, invitees, or tenants, and includes:

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- (a) The dog breeds of pit bull, Rottweiler, and Doberman pincher, regardless of whether the animal is purebred, a mixed breed, or registered with the AKC or similar registration organization;
- (b) Poisonous insects, amphibians, or reptiles;
- (c) Boa constrictors and other constrictor reptiles;
- (d) Animals considered “feral” or wild by nature except guinea pigs, hamsters, and gerbils;
- (e) Ferrets; and
- (f) Alligators.

Additional breeds of animals may be added to the definition of Exotic or Dangerous Animal from time to time, as determined necessary by the Board, in the Board’s sole discretion, and the Rules and Regulations will be amended to include such breed of animal.

No more than four Pets may be kept on a Lot. No Pet may be bred, kept, or maintained for any commercial purpose on a Lot.

All Pets must be kept in strict accordance with all local and state laws and ordinances (including leash laws), and in accordance with all rules established by the Association. All Pets must be vaccinated in accordance with local custom and laws. Each Pet should wear a tag provided by a licensed veterinary to evidence the up-to-date rabies vaccination. All Pets must be kept indoors, in a fenced area (fenced with standard materials in compliance with the Restrictive Covenants or by an electronic animal control device except as otherwise limited in the Restrictive Covenants) or on a leash. No electronic animal control device may be installed in any front yard of an Owner’s Lot or in any side or rear of an Owner’s Lot that abuts a street or Common Area. It will be the responsibility of the owner of the Pets to prevent the animals from running loose or becoming offensive or a nuisance to other Owners or occupants. Offensive barking or howling is considered an “offensive activity” and is not permitted. It will be the responsibility of the owner of the Pet to clean up after the Pet when in the Common Area, on the private property of others, or on the streets and public walkways of the Subdivision.

No Pet will be permitted in the Common Area except on a leash.

The Association may notify the Owner, in writing, of any offensive activity or other violation of the covenants of these Restrictive Covenants and the steps required by Owner to correct the violation. If the Owner does not correct the violation and the violation continues, or if any Pet endangers the health of an Owner, his guests, invitees, or tenants, or creates a nuisance or an unreasonable disturbance, or is not a common household pet, as may be determined by the Board, in the Board’s sole discretion, the Pet must be permanently removed from the Subdivision upon 7 days’ written notice by the Board to the offending Owner. The Board may exercise all of its remedies allowed under the Declaration or by law to have the Pet or animal permanently removed from the Subdivision. If the offending Owner does not correct a violation and the violation continues, or does not remove the Pet or animal upon written request made by the Board, the offending Owner will be in violation of the Restrictive Covenants and the Declaration and subject to any fine imposed by the Board in accordance with the Declaration.

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8. During construction of the Residence, the Builder Member will keep the Lot clean and clear of unused building materials, rubbish, trash, garbage, or other waste material. The Builder Member will make arrangements to have construction debris removed from the Property within a reasonable period of time. No Owner or Builder Member may dump unused building materials, construction debris, rubbish, trash, garbage, or other waste material on any Lot within the Subdivision.

9. No building materials will be stored on any Lot, except temporarily during continuous original construction or construction of an improvement.

10. No effluent from any sewage system or other sewage discharge is to be discharged onto any Lot or Common Area within the Subdivision. No cesspools will be permitted. Every structure will be served by a sewage system built in accordance with the requirements of all governmental sanitation standards and all other applicable ordinances and/or standards. All building plans submitted to the ARC for approval must include sewage layout.

This provision will not prevent the Builder Member from providing its workers and subcontractors with a sanitary facility or port-a-let during the construction of a Residence.

11. 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.

12. 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 these Restrictive Covenants.

13. 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.

14. 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.

15. No motor vehicle, including automobiles, vans, SUVs, or motorcycles, may be parked in a front yard, except in the driveway of any Lot. Vehicles cannot be maintained, repaired, serviced, rebuilt, or dismantled on any Lot, except within the confines of the garage. No vehicle can be painted in any garage. This provision does not prevent a vehicle from being washed or polished in the driveway of any Lot.

16. Motorized vehicles are not to be driven in the Common Area. This includes ATVs, snowmobiles, motorcycles, minibikes, go-carts, golf carts, mopeds, motorized scooters, and delivery

trucks. Specifically excluded are lawn cutting, snow removal, or maintenance equipment as retained by the Association to maintain Association property or responsibilities.

17. No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs and trailers), towed trailer unit, motorcycle, disabled junk or abandoned vehicle, motor home, mobile home, recreational vehicle, pickup trucks in excess  $\frac{3}{4}$  ton, or any other vehicle, the primary purpose of which is for recreational, sporting, or commercial use, will be parked or stored in, on, or about any Lot or street within the Subdivision, unless such vehicle is approved by the Board for storage within a garage. These vehicles must be removed from the Subdivision within 72 hours of notice from the Board.

18. An Owner may park the Owner's personal vehicle in the street or roadway in front of such Owner's Lot for periods of time not to exceed 12 continuous hours. Passenger automobiles, passenger vans, or pick-up trucks that:

- (a) are in operating condition;
- (b) are qualified by current vehicle registration and inspection stickers;
- (c) are in daily use as motor vehicles on the streets and highways of the State of Texas;
- (d) comply with current mandatory insurance under the laws of the State of Texas; and
- (e) have no commercial advertising located thereon

may be parked in the driveway of a Lot.

No vehicle will be parked so as to obstruct or block a sidewalk or be parked on a grassy or gravel area.

19. No Lot will be used for parking or storage, temporary or otherwise, of any junked vehicle, abandoned or inoperable vehicle, trailer, or boat, or any part thereof. Vehicular repair and maintenance (other than washing) is permitted only when performed inside garages.

20. 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.

21. 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.

22. 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.

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23. No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind will be permitted on any 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.

24. During construction of any Residence, no alcohol may be brought into the Subdivision and consumed by the Builder Member, workers, or subcontractors.

25. 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.

26. 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 be 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.

**ARTICLE IV  
RESIDENCE, GARAGE, AND OUTBUILDING CONSTRUCTION**

1. 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.

2. 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.

All driveways or drives, regardless of location, must be approved by the Declarant or the ARC.

3. 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.

4. 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.

5. 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.

6. 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 abuts 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, 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 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.

(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 with or protrude into the Fence Easement, as the Declarant or the Association in its sole discretion deems appropriate.

(2) Each Owner has the ultimate responsibility for the construction and 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

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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.

7. 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 front, side, and rear yards of Lots must have an underground irrigation or a 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.

8. Removal of trees in excess of 2" 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.

9. 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.

10. 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.

11. 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 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.

12. 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.

13. 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

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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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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.

21. 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

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the top or second floor of the Residence; however, the combination of the two must total at least 2,700 square feet.

22. 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.

23. 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.

24. 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.

#### **ARTICLE V OWNERS' OBLIGATION TO REPAIR**

1. Owner solely will be responsible for exterior maintenance upon each Lot and associated building, fence, structure, underground irrigation or water sprinkling system, or improvement that is subject to assessment hereunder, including paint, repair, replace and care for roofs, gutters, downspouts, exterior fence or wall surfaces and structures, exterior building surfaces (including glass, windows, light bulbs, awnings, door fixtures, and hardware), outdoor lighting, walks, driveways, parking areas, and other exterior improvements. In addition, the Owners of Lots 1, 2, 3, 22, 23, and 24 will be solely responsible for the maintenance of any area that lies between the respective Owner's rear or side property line and the Declarant's Fence, which area and Declarant's Fence lie within the Common Area that is adjacent to the respective Owner's property line. The Association will be responsible for the maintenance of any area that lies between the Declarant's Fence and Highway FM 93. The Owners of Lots 12, 13, 14, 20, 21, and 22 will be solely responsible for the periodic removal of trash and debris of any area that lies along the respective Owner's rear property line and Friar's Creek.

2. Maintenance and repair of all such areas and items set forth above as the Owner's responsibility will be the sole responsibility of the individual Owner, unless the Association, in the Association's sole discretion and in accordance with the provisions of the Restrictive Covenants or the Declaration, deems that maintenance, repair, or care of other items or areas by the Association or its representative would be in the best interest of the Association and the Subdivision. In the event that the need for maintenance or repair is caused through the willful or negligent action or inaction of the Owner, his family, or guests, invitees, or tenants, the cost of such maintenance or repairs will be added to and become a part of the assessment to which such Lot is subject in accordance with the provisions of the Declaration. The Association or its representative has the right to enter any Lot for the purpose of performing its duties hereunder.

3. Each Owner will, at his sole cost and expense, repair his Residence, keeping the same in a condition comparable to the condition of such Residence at the time of its initial construction, excepting only normal wear and tear.

#### **ARTICLE VI OWNERS' OBLIGATION TO REBUILD**

If all or any portion of a Residence is damaged or destroyed by fire or other casualty, it will be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such Residence in a manner that will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction must be undertaken within 3 months after the damage occurs and must be completed within 9 months after the damage occurs, unless prevented by causes beyond the control of the Owner. The ARC will approve all plans for repair or reconstruction.

#### **ARTICLE VII LOT MAINTENANCE**

1. The Owners or occupants of all Lots will in no event use any Lot for storage of materials or equipment unless incident to construction of improvements thereon as herein permitted. No Owner or occupant of a Lot will permit the accumulation of garbage, trash, or rubbish of any kind thereon or burn anything during the construction phase of the improvements, except as permitted by the Declarant or the ARC. Garbage, trash, or rubbish and other waste materials must be kept only in containers designed for such purpose. Containers must be kept clean and sanitary and must be concealed and stored from the view of any street, Lot, or Common Area, away from front yards, except on trash collection day. All trash containers will be placed for collection no more than 12 hours prior to the scheduled collection time and will be promptly returned to the storage location within 12 hours of collection.

2. After the completion of the original improvements, no burning is allowed except in interior or exterior fireplaces designed for such use. Nothing in this paragraph will prevent the use by an Owner of an exterior fireplace or bar-b-que provided such items are used solely for their intended purpose.

3. The exterior drying of clothes, sheets, rugs, or other linens is prohibited. Clotheslines are specifically prohibited.

4. In the event of default on the part of the Owner or occupant of any Lot in observing any terms or conditions of these Restrictive Covenants, and such default continues after written notice thereof in accordance with the Declaration, the Declarant, the ARC, or, if applicable, the Association (or its assignee) will, without liability to the Owner or occupant in trespass or otherwise, be allowed to enter upon said Lot or cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash, and rubbish or do any other thing necessary to secure compliance with these Restrictive Covenants so as to place said Lot in a neat, attractive, healthful, and sanitary condition and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupation of any Lot to pay such statement immediately upon receipt thereof. If payment is not made to the Association in accordance with the written notice, the Association may seek all remedies available to it through the Declaration and by law.

**ARTICLE VIII  
PROTECTION OF ADJACENT PROPERTY**

During the construction of any improvements to a Lot, the Builder Member will take all reasonable precautions as specified by the Declarant or the ARC to prevent erosion of soil onto adjoining property. During any such construction, the Builder Member will make provision for and provide a port-a-let facility.

**ARTICLE IX  
USE OF COMMON AREA**

1. The entrance of the Subdivision will contain Common Areas B and C as defined in the Declaration or any conveyance document to the Association. Misty Creek will be for the use and benefit of the Owners and their guests, invitees, and tenants. Each Owner and his guests, invitees, and tenants must abide by the Restrictive Covenants relating to the use of Misty Creek and by any Rules and Regulations established by the Association from time to time.

2. Misty Creek will be available for use from dawn to dusk or as determined by the Association. Use of Misty Creek outside of the posted hours must be approved by the Association in writing and in advance of such use. No alcohol may be brought into Misty Creek without prior approval of the Board. No motorcycles or motorized vehicles may be brought into Misty Creek. The water features contained within the Common Area may not be used for any kind of fishing, swimming, wading, or boatcraft.

3. All gatherings or celebrations of any kind, including but not limited to family reunions, birthday parties, or other gatherings of more than the Owner and his immediate family held within Misty Creek must have the prior written approval of the Association.

**ARTICLE X  
VARIANCES**

1. The Declarant and the ARC, each in its sole discretion, has the authority to grant variances of any setback line, to alter any setback line, to waive any encroachment across or into any setback line or easement (to the extent that the Declarant or the ARC has the authority to waive such encroachment into an easement), or to alter any Restrictive Covenant so long as the variance, alteration, or encroachment does not, in the sole opinion of the Declarant or the ARC, diminish the value or overall integrity of the Subdivision. Such variance, alteration, or waiver will be by written instrument in recordable form.

2. In the event a variance is requested, Owner, his builder, or a Builder Member must submit to the ARC, in duplicate:

(a) A complete copy of the final Plans and Specifications, together with any supporting materials and a survey showing the encroachment across or into any setback line or easement, or other basis or grounds for the variance request;

(b) A written request for the variance; and

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(c) Contact information for the Owner and, if applicable, its builder or the Builder Member.

3. The request for a variance may be by direct delivery or by certified mail to the ARC. The ARC will send its written decision to the Owner or its builder or the Builder Member within 30 days of the ARC's receipt of a request for a variance. If a request for a variance is made prior to the construction of improvements and such variance is granted, the ARC's approval will be conditional and preliminary until all improvements are constructed. Upon final completion of the improvements, the Owner or its builder or the Builder Member must submit to the ARC, in duplicate, an "as built" survey reflecting the location of all improvements and the encroachment or subject of the variance. The "as built" survey may be submitted to the ARC by direct delivery or by certified mail. The ARC will send its written decision to the Owner or its builder or the Builder Member within 15 days of the ARC's receipt of the "as built" survey. Final ARC approval and granting of the variance will not be given until the ARC receives the final submissions. In the event the encroachment or subject of the variance differs from or exceeds the original request for a variance, the Owner will be subject to a fine. Any fine assessed by the ARC must be paid in full before the ARC approves the request and grants the requested variance.

If there is a conflict between the decision of the Declarant and the decision of the ARC, the decision of the ARC will control.

#### ARTICLE XI ADDITIONAL PROVISIONS

These Restrictive Covenants set forth above, and each of them, will be covenants running with the title to the Subdivision and every part thereof, and every re-subdivision thereof, until 20 years from the date of this conveyance, after which time the Restrictive Covenants will be automatically extended for successive periods of 10 years thereafter unless a recordable instrument signed by the then Owners of 75% of the Lots within the Subdivision changes the Restrictive Covenants in whole or in part.

These Restrictive Covenants are and will be, in part, an amendment to any Declaration. The Subdivision is included in any property owners' association formed for the benefit of the Subdivision, including but not limited to the Association and is subject to all terms, conditions, and provisions of the Declaration and all governing documents of the Association. By its signature below, Declarant under the Declaration has approved and consented to the annexation of the Subdivision into the Association.

Every record Owner of a Lot located in the Subdivision will be a member of the Association and will be subject to all of the terms, conditions, and provisions of the Declaration and governing documents of the Association, including but not limited to the payment of any annual, membership, special assessment, member charge, and fines and late fees assessed by the Association upon a Lot within the Subdivision.

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

MISTY CREEK DEVELOPMENT, INC.,  
a Texas corporation

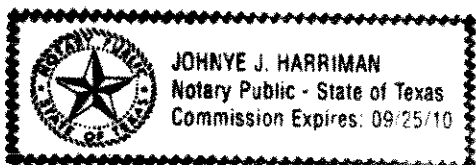
By:   
MICHAEL L. BROCK, President

RESTRICTIVE COVENANTS  
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ACKNOWLEDGMENT

STATE OF TEXAS           §  
COUNTY OF BELL         §

This instrument was acknowledged before me on December 17<sup>th</sup>, 2007, by MICHAEL L. BROCK, in his capacity as President of MISTY CREEK DEVELOPMENT, INC., a Texas corporation, on behalf of said corporation.



*Johnye J. Harriman*  
NOTARY PUBLIC

PREPARED IN THE LAW OFFICE OF:  
crm  
BAIRD, CREWS, SCHILLER & WHITAKER, P.C.  
ATTN: THOMAS C. BAIRD  
15 North Main Street  
Temple, Texas 76501

RESTRICTIVE COVENANTS  
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## **LEGAL DESCRIPTION**

All lots and blocks within MISTY CREEK SUBDIVISION, a subdivision in the City of Temple, Bell County, Texas, according to the map or plat of record in the Plat Records of Bell County, Texas.