



**TOWN OF SHADY SHORES
ZONING BOARD OF ADJUSTMENTS
REGULAR SESSION
JANUARY 9, 2023; 6:00 PM
SHADY SHORES COMMUNITY CENTER
101 S. SHADY SHORES ROAD
SHADY SHORES, TX 76208**

TO VIEW THE MEETING LIVE: <https://shadyshorestx.civicclerk.com/>

AGENDA

1. CALL TO ORDER
2. ROLL CALL
 Establish a quorum
3. MINUTES:
 1. Consider and act on approval of the Zoning Board of Adjustments Meeting held on November 7, 2022.
4. PUBLIC HEARINGS
 1. PUBLIC HEARING – Conduct a public hearing relative to a request made by Austin Youngblood for a variance to the 15' side yard setback for the property more legally known as 116 Dogwood Trail.
 - A. Open Public Hearing
 - B. Applicant
 - C. Those in Favor
 - D. Those Opposed
 - E. Rebuttal
 - F. Close Public Hearing
5. REGULAR AGENDA
 1. Action Regarding Public Hearing (Youngblood) - Consider and act on approval or denial of a request made by Austin Youngblood for a variance to the 15' setback line for the property more legally known as 116 Dogwood Trail.
6. ADJOURN

I, Wendy Withers, Town Administrator of the Town of Shady Shores do hereby certify that the above notice of the Zoning Board of Adjustments was posted on the bulletin board at the Community Center, 101 S. Shady Shores Road, Shady Shores, Texas on 5th Day of January, 2023, at 10:59 A.M.

Wendy Withers
Wendy Withers, Town Secretary



SHADY SHORES ZONING BOARD OF ADJUSTMENTS
NOVEMBER 7, 2022; 7:00 PM
SHADY SHORES COMMUNITY CENTER
101 S. SHADY SHORES ROAD
SHADY SHORES, TX 76208

MINUTES

Cindy Aughinbaugh	Mayor	Present
Tom Newell	Mayor Pro Tem	Absent
Charles Grimes	Councilmember	Present
Jeff Belton	Councilmember	Present
Bill Emsoff	Councilmember	Present
Mike Nowels	Councilmember	Present

Staff Present: Wendy Withers, Town Administrator; Amber Schuler, Deputy Town Secretary; Katie Klein, Communications Admin

1. CALL TO ORDER

Mayor Aughinbaugh called the meeting to order at 7:15 pm.

2. ROLL CALL

Establish a quorum

Mayor Aughinbaugh called the roll and a quorum was established for the record.

3. MINUTES:

1. Consider and act on approval of the minutes of the March 21, 2022 Zoning Board of Adjustments Meeting.

Bill Emsoff made a motion to approve. Charles Grimes seconded the motion.

Discussion: None

Ayes: Grimes, Belton, Emsoff, Nowels

Nays: None

The motion passed unanimously.

4. PUBLIC HEARINGS

1. PUBLIC HEARING –Conduct a public hearing relative to a request made by Rudy Sstantio for a variance to the lot coverage and rear yard setbacks for the property known as 104 Brown Terrace #4 located in the Keatings Kove Subdivision.

A. Open Public Hearing

Mayor Aughinbaugh opened the public hearing at 7:12 PM

B. Applicant

C. Those in Favor

Deborah Milliken 104 Brown Terrace #23 signed up to speak and stated she was not opposed to the request however she was interested to hear what the owner was proposing for the property

Paxton Ellis 107 Brown Terrace, state that he didn't want to be difficult but felt that the area was already small and limited and that if the board granted this variance, it may not match what Shady Shores desires for buildings. Mr. Paxton further expressed that he felt like matching the setbacks on such a small lot would be difficult .The public hearing was closed at 7:14 pm.

D. Those Opposed

E. Rebuttal

F. Close Public Hearing

Mayor Aughinbaugh closed the public hearing at 7:14 pm.

5. REGULAR AGENDA

- 1. Action Regarding Public Hearing- Consider and act on a request for a variance made by Rudy Sustantio for a variance to the lot size coverage and the rear yard setbacks.

Bill Emsoff made a motion to table this agenda item pending further information from Mr. Sustantio regarding a building plan. Mike Nowels seconded the motion.

Discussion: None

Ayes: Grimes, Belton, Emsoff, Nowels

Nays: None

The motion passed unanimously.

6. ADJOURN

The meeting was adjourned at 7:40 pm.

Passed and approved this the _____ day of _____, 2023.

Attest:

Cindy Aughinbaugh, Mayor

ATTEST:

Wendy Withers, Town Administrator



AGENDA MEMORANDUM

DATE: January 9, 2023
TO: Zoning Board of Adjustment
FROM: Wendy withers, Town Administrator
SUBJECT: PUBLIC HEARING – Conduct a public hearing relative to a request made by Austin Youngblood for a variance to the 15' side yard setback for the property more legally known as 116 Dogwood Trail.

BACKGROUND/INFORMATION: The applicant has requested a variance to the side yard setback from 15' to 10'. The current side yard setbacks for the R-2000 zoning are 10' on the side. Mr. Youngblood began doing his due diligence several months ago and began discussing his building plans with staff at that time. It was unclear to staff during this time that the Arbor Shores subdivision was originally platted as a Planned Development rather than the Standard R-2000 zoning. The neighborhood covenants call for different restrictions on the properties than are standard for other lots in the Town of Shady Shores. The Town of Shady Shores does not enforce deed restrictions and over the years, the subdivision has not maintained a homeowner's association and therefore there has not been a separate entity to enforce these restrictions. Mr. Youngblood's lot however shows a platted 15' side yard build line and therefore he is requesting a variance to improve the aesthetic look of the garage he plans to build; allowing him to leave a large tree in place.

The Town Engineer has done a preliminary review of the property and a copy of his response is included.

The chart below lists some historical ZBA decisions for similar requests:

302 Cottonwood Trail	variance to 25' rear yard setback and 10' side yard setback	APPROVED	01/13/2005
302 Cedar Circle	Variance to rear yard set back from 25' to 15' to build a garage	Approved	12/13/2007
304 Cedar Circle	Variance to rear yard set back from 25' to 15' to build a garage	Approved	05/10/2001
300 Cottonwood Trail	Variance to rear yard set back 25' to 5'	Denied	03/11/2004

FINANCIAL IMPLICATIONS: None

RECOMMENDATION/ACTION DESIRED: Approve the request, staff to ensure that engineers comments are addressed regarding swimming pool plans to be marked with drainage patterns. Town Engineer's office will review the plans to ensure that building is constructed so as not to cause additional flow on Lot 16.

ATTACHMENTS/SUPPORTING DOCUMENTATION:

1. Variance Application

2. Arbor Shores Covenants
3. Engineers Preliminary Review and Comments.
4. Arbor Shores Plat

REVIEWED BY:

TOWN OF SHADY SHORES

ZONING VARIANCE REQUEST PACKET

(UPDATED APRIL 29, 2014)



Application Checklist

- Application
- \$500 Application Fee
- Cost for Property Owner Mailings (\$1/Property – Minimum \$25)
- Property Detail from Denton Central Appraisal District Website
- Aerial Photograph or Plat
- Development Plans (if applicable)
- Received a minimum of 30-days prior to Board meeting

Variance Request Summary

- Main Structure Setback: _____
- Accessory Structure Setback: _10' from side fence _____
- Lot Size: .5226 Acres or 22,763 Sqft _____
- Residential Structure Size: _____
- Other: _____

ZONING VARIANCE APPLICATION

TO THE HONORABLE ZONING BOARD OF ADJUSTMENTS OF THE
TOWN OF SHADY SHORES, TEXAS:

I/WE, the undersigned owner(s) (Print) Austin Youngblood _____
of all property within described do hereby file this, my/our Application for a Zoning Variance under
the provisions of the Zoning Ordinance of the Town of Shady Shores, Texas on said property, so there
may be permitted on said property the following Zoning Variance:

The said property is located at: (Address) 116 Dogwood Trail, Shady Shores, TX 76208_

Legal description: Survey __Plat Job# 12-1323_Denton CAD Prop ID # 211764 Abstract __Arbor Shores
Estates__

Lot __15_____ Block _____ Total Acreage __.5226_____

Said property is currently zoned: _R-1800-1/2 (per 2018-08-15 revision Zoning Document)___

Proposed development plans are/are not submitted herewith, explanation if any.

__The addition of an accessory structure (24' x 40' x 15') desired at my 116 Dogwood Trail residence
to be placed 10' away from my side fence that I share with my neighbor at 114 Dogwood Trail. This
building is desired to be placed 10 feet away from my side fence. This will allow for the building to
be useable in relation to the existing driveway that was there when we purchased the house.

Explanation of hardship:

If the building has to be placed 15' away from the side fence, then an old oak tree that is in the way
would likely have to be removed in order me to position any vehicles and/or boats inside the building.
I also have already placed a deposit on a building design with a 10' placement from the side fence
approved in original email and verbal correspondence with the building permits department at the
town of Shady Shores. Our lot size is over a 1/2 acre and I ask that you please approve this variance
as it will help to maximize the buildings desired function for me or any resident that may ever live
there. It would also help to preserve a large oak tree that would currently hinder the buildings access
if the 15' building distance from the side fence has to be observed. According to the Plat, it does not
appear that there is any impact to drainage or flooding/watershed considerations (although I am
certainly not a subject matter expert in that sense)._

I/We REPRESENT AND CERTIFY that I/We own said property and have full authority to make and
file this application. I/We have read in full the attached Zoning Variance Request Packet and
acknowledge that the variance application fee is non-refundable.

Austin Youngblood
SIGNATURE(S)

12-12-2022
DATE

E-MAIL ADDRESS

PHONE NUMBER

OFFICE USE ONLY BELOW

- Letters sent to property owners within 200-foot of subject property 10-days prior to meeting but no more than 20-days prior
- Legal notice published in official newspaper 10-days prior to meeting but no more than 20-days prior

Date Received: _____

Receipt #: _____

Check #: _____

Received by: _____

What is a zoning variance?

A zoning variance is permission granted by the Board of Adjustment to waive or alter a requirement of the zoning ordinance. The Board of Adjustment can adjust the standards of the zoning ordinance where exceptional and extraordinary circumstances apply to a property. This exceptional and extraordinary circumstance is known as a *hardship*. The Board can vary the strict application of height, area, setback, yard, parking, or density requirements of the zoning ordinance.

When could a variance be granted?

A variance is granted when a hardship associated with a property is preventing the property from meeting the requirements of the zoning ordinance. Zoning regulations are intended to preserve and protect property uses and values, and to promote health and general welfare. Therefore, provisions of the zoning ordinance should be universally applied. However, sometimes there are extraordinary conditions at a particular property. Due to this peculiar circumstance, carrying out the strict letter of the zoning ordinance would render the property useless. A variance can be granted after an analysis focused on particular conditions and circumstances of a specific property.

What is a hardship?

There are special conditions attached to the property that do not generally apply to other properties in the area. Special conditions can involve the size, shape, topography or general location. There is a physical constraint which is unique to a property. Special circumstances are not interpreted to be something intangible, such as lack of knowledge of the code or misinformation at the time of purchase or construction. A hardship is a characteristic of the property, not the person.

A literal enforcement of the provisions of the zoning ordinance will result an unnecessary hardship. For example, it must be demonstrated that a strict enforcement of the ordinance would prohibit the development of the property or no reasonable use of the property can be made. It is not sufficient that the requirement would make the property less profitable or marketable.

The variance request is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same zoning district. For example, it must be demonstrated to the Board that you are seeking a property right that is generally enjoyed by other property owners in the same zoning district, not some additional privilege not generally enjoyed by others in the area.

The spirit of the zoning ordinance is observed and substantial justice is done. For example, variances cannot be granted which would be contrary to the public interest or that would pose a threat to the public health and safety such as fire safety, structural stability, clearance, preservation of air, light or open space, and visual or aesthetic concerns.

What is not a hardship?

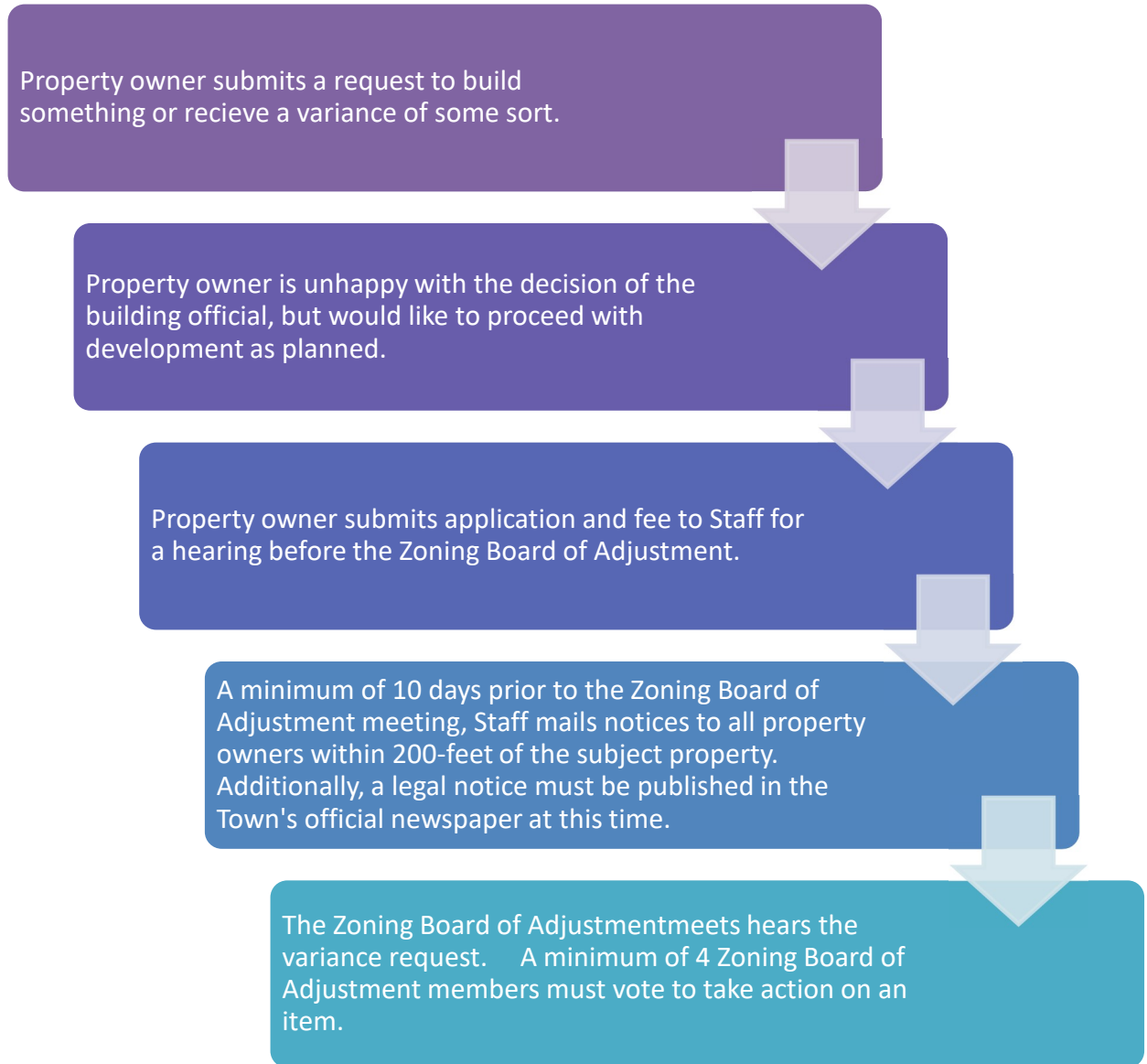
Economic hardships. For example, adding more units to a building than allowed can generate more income and make the project more economically feasible.

Self-Created hardships. Conditions that are created as a result of action by the applicant or owner and not as a result of the land.

Personal hardships. Conditions personal to the owner of the land (ie. person's health, age, family conditions, desires, or other personal needs), not conditions especially affecting the lot in question.

ZONING VARIANCE PROCESS FLOWCHART

(process in its entirety can be found in Zoning Ordinance 256, Article 3.7 Board of Adjustment)



Following a decision of the Zoning Board of Adjustment, the applicant has 180 days in which to apply for and receive a building permit for the development plans for which a variance was granted.

An applicant may not submit a request for the same variance for a minimum period of 6-months, unless the conditions of the property substantially change within that 6-month period.

From: [Richard A. Arvizu](#)
To: [Wendy Withers](#)
Cc: [DAVID KRINGS](#); [Development-Building Permits](#); [Amber Schuler](#)
Subject: RE: 116 Dogwood Trail
Date: Friday, December 9, 2022 11:58:01 AM
Attachments: [image001.png](#)

Wendy,

I do not know why a 15-foot setback was established. Perhaps the developer liked the larger setbacks. That plat was done in 1999 before my time as Town Engineer.

Given the fact that there is a 15' drainage easement centered on the shared property line (7.5' on each lot – Lot 15 and Lot 16), it appears that all drainage was planned to be conveyed with those limits. As such, building to a 10' setback along that side should theoretically be good. In reviewing the elevation contours in the area, I do not see a defined swale along the shared property line, but rather, drainage flows from the higher elevation on Lot 16 across the shared property line and onto Lot 15. Then the flow crosses the rear yard of Lot 15 south southwest to Lake Lewisville. See attached.

Without visiting the rear yard and analyzing the drainage, I would say as long as the proposed building is constructed to not direct water back onto Lot 16 and the area around the proposed building is graded to direct drainage around it then no adverse impacts should result. A new pool plan would need to be submitted showing the proposed drainage patterns in that area for review.

Richard Arvizu, PE, CFM
Corporate Vice President

Binkley & Barfield | DCCM
972.644.2800 x 1407 p | 214.674.9456 c

From: Wendy Withers <wendy.withers@shady-shores.com>
Sent: Friday, December 09, 2022 11:05 AM
To: Richard A. Arvizu <rarvizu@binkleybarfield.com>
Cc: DAVID KRINGS <david@kringsconsulting.com>; Development-Building Permits <Development.Permits@shady-shores.com>; Amber Schuler <amber.schuler@shady-shores.com>
Subject: 116 Dogwood Trail

Caution: This e-mail originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Richard-

You may be familiar with this request- Mr. Youngblood was hoping to place an accessory structure on 116 Dogwood using a 10' setback, however when you reviewed the plan it was determined that the build line for this property was 15'. Do you know of any reason that these were platted with 15' setbacks as opposed to our regular 10'. I have reviewed past minutes and engineer's comments and can not find anything that gives me pause, - If the applicant requested a variance to 10' setback do you see any drainage/utility issues that would cause a problem ?

Wendy Withers, TRMC, CMC, CPM, MPA

Town Administrator

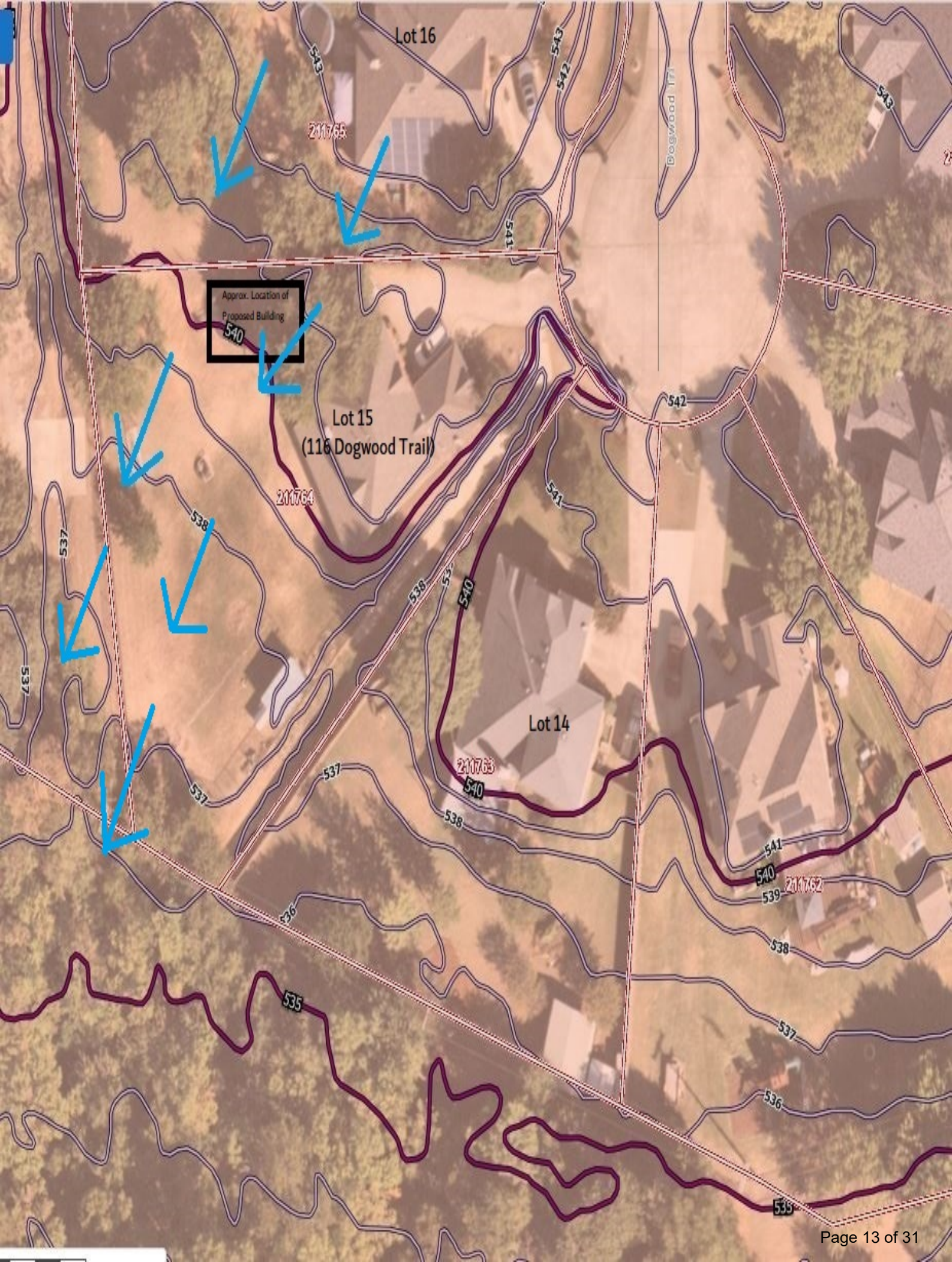
Town of Shady Shores

101 S. Shady Shores Road

940.498.0044 ext 100

www.shady-shores.com





Approx. Location of
Proposed Building
540

Lot 15
(116 Dogwood Trail)

Lot 14

Lot 16



AGENDA MEMORANDUM

DATE: January 9, 2023
TO: Zoning Board of Adjustment
FROM: Wendy withers, Town Administrator
SUBJECT: **Action Regarding Public Hearing (Youngblood) - Consider and act on approval or denial of a request made by Austin Youngblood for a variance to the 15' setback line for the property more legally known as 116 Dogwood Trail.**

BACKGROUND/INFORMATION:

FINANCIAL IMPLICATIONS:

RECOMMENDATION/ACTION DESIRED:

ATTACHMENTS/SUPPORTING DOCUMENTATION:

1. Arbor Shores Declaration of Covenants Conditions and Restrictons for Arbor Shores

REVIEWED BY:

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043271

Dated: APRIL 28, 1999

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ARBOR SHORES

THIS DECLARATION is made on the date hereinafter set forth by David Pickett, hereinafter referred to as the "Declarant."

WITNESSETH

WHEREAS, the Declarant is the owner of certain real property in the Town of Shady Shores, Denton County, Texas which is described in Exhibit "A" attached hereto and made a part hereof (the "Property").

WHEREAS, Declarant desires to create an exclusive planned community known as Arbor Shores on the Property and such other land as may be added thereto pursuant to the terms and provisions of this Declaration.

NOW THEREFORE, the Declarant declares that the Property shall be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any party thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner.

**ARTICLE I
DEFINITIONS**

Section 1. "Property" shall mean and refer to the real property described in Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 2. "Association" shall mean and refer to Arbor Shores Homeowner's Association, Inc., a Texas not-for-profit Corporation established for the purpose set forth herein.

Section 3. "Lot" shall mean and refer to any plot of land indicated upon any recorded subdivision map of Property or any part thereof creating single-family homesites, with the exception of the Common Area and areas deeded to a governmental authority or utility, together with all improvements thereon.

Section 4. "Unit" shall mean and refer to any residential dwelling situated upon any Lot.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to David Pickett, their successors and assigns who are designated as such in writing by the Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect of the Lots acquired by such successor or assigns.

Section 7. "Common Areas" shall mean and refer to that portion of the Property, if any, conveyed to the Association for the use and benefit of the Owners,

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including the following: The private streets, typically 28 feet in width, as shown on the Plat.

Section 8. "Common Maintenance Areas" shall mean and refer to the Common Areas, if any, and the entrance monuments, drainage facilities, right-of-way landscaping, and such other areas lying within dedicated public easements or right-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners.

Section 9. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Arbor Shores, and any amendments, annexations and supplements thereto made in accordance with its terms.

Section 10. "Plat" the final Plat of the Property, as filed in the Denton County records.

ARTICLE II

ARBOR SHORES HOMEOWNERS ASSOCIATION, INC.

Section 1. Membership. The Declarant and every other Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every member shall have the right at all reasonable times during business hours to inspect the books of the Association.

Section 2. Funding. Subject to the terms of this Article, Declarant, for each Lot owned by Declarant, hereby covenants to pay, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them.

Section 3. Assessment.

(a) **Units Owned by Class A Members.** Subject to the terms of this Article, each Lot is hereby subject to an initial maximum maintenance charge of \$10.00 per month or \$120.00 per annum (until such maintenance charge shall be increased in the By-Laws of the Association), for the purpose of creating a fund to be designated and known as the "Maintenance Fund", which maintenance charge and assessment will be paid by the Owner or Owners of each Lot in advance in monthly, quarterly, or annual installments, commencing as to all Lots on which a completed Unit is then located or the conveyance of the first Lot to a Class A Member and as to all other Lots as of the Completion of the Unit thereon. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly, or annually, will be determined by the Board of Directors of the Association at least thirty (30) days in advance of each affected assessment period. Said rate may be adjusted from time to time by the Board of Directors as the needs of the Association may, in the judgment of the Directors require. The assessment for each Lot shall be uniform except as provided in Subsection (b) of this Section 3. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

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(b) Units or Lots by Declarant. Notwithstanding the foregoing, the Declarant shall be exempt from the annual maintenance assessment charged to Owners so long as there is a Class B membership as set forth in Section 6.

(c) Purpose of the Maintenance Fund. The Association shall establish a maintenance fund composed of Owner's annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Maintenance Areas for the use and benefit of all members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following:

Normal, recurring maintenance of the Common Maintenance Areas and Easements, (including but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for existing landscaping) and the improvements to such Common Maintenance Areas, such as sprinkler systems, and private streets provided the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas. Payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the property to which the Maintenance Fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of policemen and watchmen, if any, caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board of Directors of the Association to keep the Property neat and in good order. Whatever is considered of general benefit to the Owners or Occupants of the Property, it being understood that the judgment of the Board of Directors in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements of the Common Maintenance Area. The fund shall be established and maintained out of regular annual assessments.

(d) Special Assessment for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments. In any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair, or replacement of a capital improvement upon any Common Maintenance Area, including fixtures and personal property related thereto may be assessed. The Association shall not commingle the proceeds of such special assessment with the Maintenance Fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

Section 4. Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall bear interest from due date at the highest nonusurious rate of interest allowed by Texas law or 18% per annum, whichever is less. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien retained herein against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his property.

Section 5. Subordinated Lien to Secure Payment. To secure the payment of the maintenance charge and assessment established hereby and to be levied on individual Lots as above provided, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided however, that each such lien shall be specifically made secondary, subordinate, and inferior to all liens, present and future, given, granted, and created by or at the insistence and request of the Owner of any such Lot to secure the payment of moneys advanced or to be advanced on account of the purchase price and/ or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding, valid and subsisting first mortgage sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of the lienholder of which the Association has received written notice by prepaid U.S.

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registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. Sale or transfer of a Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale, foreclosure, or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the official records of Denton County, Texas. The Association shall be entitled to enforce the lien securing assessments at such time as the Association complies with each requirement set forth in Section 51.002 of the Texas Property Code, as amended, which requirements are incorporated in this Declaration, as rights and/or obligations of the Association, by this reference as if fully set forth herein.

Section 6. Voting Rights. The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners with the exception of Declarant (until the occurrence of the events referenced in Section 6(b) below which converts Declarant's Class B Membership to a Class A Membership) and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, any such persons shall be members, but the vote of such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any lot.

(b) **Class B.** Class B Members shall be the Declarant, who shall be entitled to three (3) votes for each unoccupied Lot owned by it. The Class B membership shall cease and be converted to Class A Membership one hundred (100) days after the conveyance of the Lot which causes the total votes outstanding in the Class B Membership to be less than three (3). Class B Membership shall be reinstated at any time before the expiration of twenty (20) years from the date of conveyance of the first Lot if additional Lots owned by a Class B Member are annexed to this Declaration in sufficient numbers to restore a ratio of at least one Class B Lot for each three Class A Lots in Property.

(c) **Suspension.** All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article or is otherwise in default hereunder or under the By-Laws or Rules and Regulations of the Association and such suspension shall apply to the proxy authority of the Voting Representative, if any.

Section 7. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all members, or delivered to their residences, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of members or of proxies of Voting Representatives entitled to cast two-thirds (2/3) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at such subsequent meeting shall be two-thirds (2/3) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (the quorum requirement being reduced for each subsequent meeting). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Maintenance of the Drainage Facilities. The Association is responsible for and shall assume all maintenance obligations with respect to the drainage facilities located within Common Areas, and the roadside drainage ditches adjacent to each street. It shall be the responsibility of each Owner to maintain a drainage culvert beneath each driveway crossing a roadside drainage ditch. Each Owner shall maintain the original grades of any drainage ditches or swales crossing their respective Lot.

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**ARTICLE III
GENERAL POWERS AND DUTIES OF THE BOARD OF
DIRECTORS OF THE ASSOCIATION**

Section 1. Purpose of Maintenance Fund. The Board, for the benefit of the Owners, shall provide and shall pay out of the Maintenance Fund provided in Article II above, the following:

(a) Which may or may not include items such as trash removal, street lighting, landscaping, fair share of fire protection, care of lakes and drainage facilities.

(b) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

(c) Care and preservation of the Common Maintenance Area.

(d) Legal and Accounting services, if needed.

(e) A policy or Policies of Insurance insuring the Association against any liability to the public or to the Owners (and / or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors, including a policy or Policies of Insurance as provided herein in Article IV.

(f) Worker's Compensation Insurance to the extent necessary to comply with any applicable laws, if needed.

(g) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

Section 2. Powers and Duties of the Board. The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the By-Laws of the Association:

(a) To execute all Declarations Of Ownership for Tax Assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

(b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

(c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

(d) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

(e) To make reasonable rules and regulations for the operation of the Common Maintenance Areas and to amend them from time to time; Provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by Owners constituting a majority of the votes of the Association, or with respect to a rule applicable to less than all of the Common Areas, by a majority of the votes of the Owners in the portions affected. Any such amendment must have approval from the Town of Shady Shores.

(f) To make available for inspection by Owners within sixty (60) days after the end of each year an Annual Report and to make all books and records of the Association available for inspection by Owners at reasonable times.

(g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(h) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(i) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

Section 3. Board Powers Exclusive. The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to

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be made from the Maintenance Fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

Section 4. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

**ARTICLE IV
TITLE TO COMMON AREAS**

Section 1. Association to Hold. Title to the common areas, described in the plat recorded in the Denton County Clerk's Office shall remain in the Association.

Section 2. Maintenance Obligations. The Association shall assume all Maintenance obligations with respect to the Common Areas so designated on the Plat of Arbor Shores and provided for in this instrument.

Section 3. Liability Insurance. From and after the date on which Title to any Common Area vests in the Association, the Association has the authority to purchase and carry a General Comprehensive Public Liability Insurance Policy for the Benefit of the Association and its members, covering occurrences on the Common Areas. The policy limits shall be as determined by the Board of Directors of the Association. The Association shall use its best efforts to see that such policy shall contain, if available, crossliability endorsements or other appropriate provisions for the benefit of the members, Directors, and the management company and other insureds, as their interest may be determined.

Section 4. Condemnation. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps that it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event that the Board of Directors of the Association determines that the funds cannot be used in such a manner due to lack of available land for additional Common Areas or for whatever reason, any remaining funds may be utilized by the Association for the General Maintenance Fund.

**ARTICLE V
EASEMENTS**

Section 1. Utility Easements. As long as Class B Membership shall be in effect, the Declarant hereby reserves the right to grant perpetual, non-exclusive easements for the benefit of the Declarant or its designees, upon, across, over, through and under any portion of the Common Area or any portion of any Lot outside of the permitted building area of such Lot, for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitations, cable television. Declarant, for itself and its designees, reserves the right to retain title to any such easements. Upon cessation of Class B Membership, the Association shall have the right to grant the easements described herein.

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Section 2. Declarant's Easement of Correct Drainage. As long as Class B Membership shall be in effect, or for two years from date of filing of the plat, whichever is greater, Declarant hereby reserves a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety, and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damage, as may be necessary to provide adequate drainage for any portion of the Property. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

Section 3. Easement for Unintentional Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

Section 4. Entry Easement. In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency repairs and to do the work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 5. Drainage Easement. Easements for the installation and maintenance of utilities or a conservation area are reserved as may be sworn on the recorded plat. Within these easement areas, no structure, plant or material shall be placed or permitted to remain which may hinder or change the direction or flow of drainage channels or slopes in the easements, including, but not limited to irrigation in the eighteen (18) foot easement. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot.

Section 6. Temporary Completion Easement. All Lots shall be subject to easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side or rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement shall terminate twelve (12) months after the date such Lot is conveyed to the Owner by the Declarant.

ARTICLE VI PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every owner shall have the right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of the Association members.

(b) The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purposes and subject to the conditions as may be agreed by the Association. No such dedication or transfer shall be effective unless an instrument

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signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded agreeing to such dedication or transfer.

(d) All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the Owners, and all of their grantees, and their respective heirs, successors, personal representative and assigns, perpetually and in full force.

Section 2. Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 3. Rezoning Prohibited. No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant (as long as Declarant owns any Lot subject to this Declaration), which may be withheld in Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Appointment. The Declarant shall designate and appoint an Architectural Control Committee (herein called the "Committee") composed of three (3) individuals, each generally familiar with the residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards on the Property. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Property consistent with this Declaration.

Section 2. Successors. In the event of the death, resignation or removal by the Declarant of any member of the Committee, the remaining members shall appoint a successor member. In default of such appointment, the Declarant shall have full authority to designate and appoint a successor. No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of, services performed pursuant to this Declaration.

Section 3. Approval of Plans and Specifications. No satellite dish, fence, building, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to, and approved in writing, by the Architectural Control Committee, as to harmony of external design and location in relation to surrounding structures and topography.

Section 4. Standards. The committee shall have sole discretion with respect to taste, design and all standards that are specified herein. One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property.

Section 5. Termination; Continuation. The Committee appointed by the Declarant shall cease to exist on the earlier of: (a) The date on which all members of the Committee file a document declaring the termination of the Committee, or (b) the date on which residences have been constructed on all lots on the Property. Notwithstanding the above provision, at the time after the termination of the Committee, the record owners of a majority of the lots on the Property shall have the authority to record an instrument which provides for a committee elected by the homeowners continue the functions of the Committee, which instrument shall establish election or

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appointment procedures whereby the homeowner's committee members shall be chosen and a notice procedure whereby all owners of homes on the Property will receive notice of such procedures. If there is no Committee or homeowner's committee, no approval by the Committee or Homeowner's Committee shall be required under this Declaration. Variations from the standards set forth in this Declaration shall be made in accordance with the general development standards as reflected in the plans, construction materials, landscaping and other matters approved by the Committee or Homeowner's Committee during their periods of control.

Section 6. Liability of Committee. The members of the Committee shall have no liability for the decisions made by the Committee so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the plans submitted to the Committee shall be the responsibility of the owner of the lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plan's compliance with the general provisions of this Declaration, City Codes, State Statutes or the Common Law, whether the same relate to lot line, building line, easements or any other issue.

Section 7. Failure of Committee to Act. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with the Article shall be deemed to have been had.

ARTICLE VIII USE RESTRICTIONS

Section 1. Types of Buildings Permitted. All Lots shall be used for residential purposes only, and no building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not less than two (2) automobiles and not more than six (6), and a detached servant's quarters, guest house, or pool cabana. The garages may be tandem, or one a porte-cochere, but only one may face the street.

Section 2. Time of Construction. All residences, including driveways, shall be completed within eight (8) months from the time the building permit thereof is issued.

Section 3. Minimum Floor Area, Roofs and Exterior.

(a) **Minimum Floor Space:** Any single residence constructed on said Lots must have an area of not less than twenty-two hundred (2,200) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages.

(b) **Roofs:** All roofs shall be constructed of a minimum twentyfive (25) year composition shingles shall be in a "Weathered Wood Color", and shall be constructed of fire retardant material. An exception to color can be granted if in the view of the Architectural Control Committee, a particular color will better compliment the architectural style of the house. Example: Georgian house with black shutters and black roof or a stucco house with colored roof.

(c) **Garages:** Each residence shall have a minimum of a two (2) car garage. These garages may be tandem. However, three (3) car garages are permissible; two (2) of the three (3) may be tandem. One (1) of the three (3) garages may face the street and one (1) of the three (3) garages may be a porte-cochere.

(d) **Walls:** All residences are to have seventy-five percent (75%) masonry on the first floor.

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Section 4. Setbacks. No building shall be located on any Lot nearer than thirty-five (35) feet from the easement right of way line. No side yard at the front building setback line shall be less than twenty (20) feet, at the building line. For the purpose of the covenants, eaves, steps, and open porches, (defined as having no walls, covering, screening of any kind), shall be considered as part of the building. This shall not be construed to permit any portion of the building on any Lot to encroach upon another Lot. If two or more Lots, or fractions thereof, are consolidated to a building site in conformity with the Provisions of Section 6 these buildings setback provisions shall be applied to such resultant building site as if it were one original platted Lot. In reference to the Cul-de-sac Lots, the mean width of the Lot shall not be less than one hundred (100) feet. For remaining area regulations see "APPENDIX B".

Section 5. Driveways and Circular Drives. All driveways are to be concrete, asphalt or masonry. All driveways must be completed prior to occupancy.

Section 6. Resubdivision or Consolidation. None of said Lots shall be resubdivided in any fashion.

Section 7. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the property all activities normally associated with and convenient to the development of the Property and the construction and sale of the dwelling units on the Property.

Section 9. Temporary Structures. No structures of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, shall be used on any Lot at any time as a residence, or as a business, either temporarily or permanently. With the exception and authorization of allowing each builder to place and maintain one (1) sales trailer to be used until his lots are builtout. All sales trailers must be removed within thirty (30) days of the completion of his lots. If builder defaults on any unbuilt lots builder will have thirty (30) days to remove his sales trailer.

Section 10. Signs and Picketing. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view except the following:

(a) **For Sale Signs.** An Owner may erect one (1) sign not exceeding 2' X 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the Property for sale.

(b) **Declarant's Signs.** Signs or billboards may be erected by the Declarant.

(c) **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such sign shall not be erected more than forty five (45) days in advance of the election to which they pertain and are removed within five (5) days after the election.

(d) **Subcontractor Signs.** Subcontractors such as landscaping or swimming pool, can temporarily erect their signs not to exceed 2' X 3'. These signs are to be removed within thirty (30) Days.

In addition to the foregoing, to protect the safety and harmony of the community, no person shall engage in picketing on any lot, easement, right-of-way or Common Area within or adjacent to the Property, nor shall any vehicle parked, stored or driven in or adjacent to the Property bear or display any sign, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner or Declarant.

Section 11. Campers, Trucks, Boats, and Recreational Vehicles. No truck, bus, trailer or vehicle of any kind shall be left parked in the street in front of

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any Lot except for construction and repair equipment while a residence or residences are being built or repaired in the immediate vicinity. The parking of one camper, travel trailer or recreational vehicle designed for recreational use shall be permitted behind the front line of the house. The storage of one pleasure boat and boat trailer shall be permitted, in the open, behind the front line of the house.

Section 12. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

Section 13. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 14. Sight Distance and Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between one (1) and ten (10) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street boundary lines and a line connecting them at points forty five (45) feet from the intersection of the street boundary lines, or in the case of a rounded property corner, from the intersection of the street boundary lines extended. The same sight line limitations shall apply on any Lot within twenty (20) feet from the intersection of a street boundary line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 15. Parking. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Maintenance area or on any easement.

Section 16. Commercial or Institutional Use. No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes.

Section 17. Building Standards. No building shall be erected or maintained on any Lot unless it complies with all applicable standards, including any governmental ordinances.

Section 18. Fences and Walls. No fence shall be built in front of the front building line or the front of the house. Rear fences shall be permitted. All retaining walls built in front of the house (meaning also the front sides) are to be of Brick, Concrete or Stone. Railroad ties, Landscape Timbers, etc., are permitted from the house set back line to the rear of the property. Corner lots shall not be allowed to have fences nearer than ten percent (10%) of the width of the Lot for the side lot lines. All fencing walls or screening fences shall be of first quality residential type which is harmonious and compatible with the residential character of the development. The Architectural Control Committee must pass in writing on the type, character, location and height of any fence or wall that is proposed for construction in the development. All fences and walls shall be maintained in a sound state by the Owner, and the Committee shall have the right to order compliance with this provision. Failure to maintain a fence or wall in a sound, orderly and secure state shall constitute a violation of this restriction.

Section 19. Antennae, Satellite Dishes and Solar Collectors. No Owner may erect or maintain a television radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public right-of-way directly in front of the house erected on such Lot.

Section 20. Chimneys. All fireplaces, flues, and smoke stacks, shall be enclosed in material(s) that are architecturally compatible with the finish material(s) of the house.

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Section 21. Window Treatment. No aluminum foil, reflective film or similar treatment shall be placed on window or glass doors.

Section 22. Electrical Boxes and Transformers. The Homeowner, and/or Contractor shall place the Electrical Box to the side of the structure where the existing Transformer sets, as shown on the dedicated plat.

Section 23. Floor Elevation. Minimum finished floor elevation for each lot is shown on the recorded final plat.

ARTICLE IX GENERAL

Section 1. Remedies. In the event of any default by any owner under the provisions of the Declaration, By-Laws or rules and regulations of the Association, the Association shall have each and all of the rights and remedies which may be provided for in this Declaration, the By-Laws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/ or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance or for judgment for the payment of the money and collection thereof, or for any combination of the remedies, or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys fees and other fees and expenses, and all damages, permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of the respective maintenance assessment (to the same extent as the liens provided herein for unpaid assessments), upon the Lot and Upon all of the owners additions and improvements thereto, and upon all of the owners personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

Section 2. Term and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless seventy-five percent (75%) of the votes outstanding shall have voted to terminate the covenants and restrictions of this Declaration and prior approval has been obtained from the Town of Shady Shores upon the expiration of the initial twenty-five (25) year period and of any extension thereof, which termination shall be by a written instrument signed by seventy-five percent (75%) of the Owners and countersigned by a duly authorized representative of the Town of Shady Shores and properly recorded in the Denton County, Texas land records. This Declaration may be amended by an instrument signed by Owners constituting not less than seventy-five percent (75%) of the votes of the Association, provided that as long as there is a Class B Membership. Any amendment must be recorded.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain, in full force and effect.

Section 4. Reserved Right of Declarant. Notwithstanding any other provision hereof, Declarant reserves the right upon application and request of the owner of any Lot to waive, vary or amend (by an appropriate letter to that effect addressed and delivered to such Declarant by Applicant) the application of any of these covenants and restrictions to such Lot if, in the sole discretion of the Declarant such action be necessary to relieve hardship or permit good architectural planning to be affected.

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Section 5. Rights and Obligations. The provisions of this Declaration and the Articles of Incorporation and By-Laws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon each and all the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording of the acceptance of a deed conveying a Lot of any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and By-Laws, whether or not mention thereof is made in said deed.

Section 6. Failure of Association to Perform Duties. Should the Association fail to carry out its duties as specified in this Declaration, the Town of Shady Shores or its lawful agents shall have the right and ability, after sixty (60) days prior written notice to the Association, to remove any landscape systems, features or elements that cease to be maintained by the Association; to perform the responsibilities of the Association if the Association fails to do so in compliance with any of the provisions of this Declaration or of any applicable City Codes or Regulations; to assess the Association for all costs incurred by the Town in performing said responsibilities if the Association fails to do so; and or will avail itself or any other enforcement actions available to the Town pursuant to State Law or City Codes and Regulations. Should the Town exercise its rights as specified above, the Association shall indemnify and hold harmless the Town of Shady Shores from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the Town's removal of any landscape systems, features or elements that cease to be maintained by the Association or from the Town's performance of the aforementioned operations, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said duties.

DATE: 4-30-99

IN WITNESS WHEREOF, The Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of the day and year first above written.

ATTEST:

DECLARANT:
David Pickett

[Signature]

STATE OF TEXAS
COUNTY OF DENTON

The foregoing instrument was acknowledged before me on the 30th day of April, 1999 by David Pickett on behalf of said corporation.

[Signature]

Notary Public
my commission expires

4-14-2002



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EXHIBIT "A"**LEGAL DESCRIPTION OF ARBOR SHORES**

THENCE South 89 deg. 35 min. 35 sec. East, departing said common line and along the common line between said called 13 acre tract and said called 4.46 acre tract, with the general course of an old barbed wire fence which lies south of a newer fence of variable character, at a deed distance of 94.44 feet passing the common south corner of said McEntire tract and that certain tract conveyed to Mike A. Lewis and Barbara M. Lewis as evidenced by the deed recorded in Volume 1437 at page 951 of said Real Property Records, at 150 feet, more or less, passing the end of said barbed wire fence, at a deed distance of 186.97 feet passing the common south corner of said Lewis tract and that certain tract conveyed to Dustin G. Brozowska and Julie K Brozowska as evidence by the deed recorded in Volume 2908 at Page 0866 of said Real Property Records, at a deed distance of 279.50 feet passing the common South corner of said Brozowska tract and Lot 4 Block 1 of Shield Addition as shown on the plat recorded in Cabinet E at Slide 75 of said Real Property Records, a total distance of 841.93 feet to a 3/8-inch steel rod found near a fence corner at the southeast corner of Shield Addition and an angle point in the West line of said called 43 acre tract;

THENCE North 00 deg. 25 min. 01 sec. East, along the common line between said Shield Addition and said called 43 acre tract and with the general course of a barbed wire fence, at a distance of 273.01 feet passing a 3/8 inch steel rod found for the NorthEast corner of said Shield Addition a total distance of 303.01 feet to the POINT OF BEGINNING;

and CONTAINING 24.779 acres of land, more or less, of which the following portion lies within the apparent traveled way of Shady Shores Road;

BEGINNING at that certain P. K. nail set and described above as the "POINT OF BEGINNING" for the description of said 24.779 acre tract;

THENCE South 88 deg. 41 min. 45 sec. East, along the North line of said 24.779 acre tract, a distance of 509.53 feet to a P. K. nail set for the NorthEast corner of said tract;

THENCE South 00 deg. 46 min. 01 sec. West, along the west line of said tract, a distance of 30.00 feet to a 3/8-inch steel rod found near a fence corner for the NorthEast corner of said called 6.992 acre tract and the NorthWest corner of said Lot 1 of Brevcroft Addition;

THENCE North 88 deg. 41 min. 45 sec. West a distance of 509.35 feet to a 3/8-inch steel rod found for the NorthEast corner of said Shield Addition;

THENCE North 00 deg. 25 min. 01 sec. East along the West line of said 24.779 acre tract a distance of 30.00 feet to the POINT OF BEGINNING.

and CONTAINING 0.351 acre of land, leaving a net area of 24.428 acres of land, more or less.

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**APPENDIX B
DEED RESTRICTIONS
ARBOR SHORES
In the
TOWN OF SHADY SHORES**

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- Section 1. Use Regulations.** All land and lots shall be used for single family, residential purposes only.
- Section 2. Building Regulations.**
1. **Minimum Size:** The minimum floor area of the main building shall be twenty-two hundred (2,200) square feet of living area, which excludes porches, breezeways, and garages.
 2. **Garage Size:** Each residence shall have a minimum of a two (2) car garage. These garages may be tandem. However, three (3) car garages are permissible; two (2) of the three (3) garages may be tandem. One (1) of the three (3) garages (not being the tandem two (2) car minimum) may face the street and one (1) of the three (3) garages may be a porte-cochere. The two (2) car garage minimum may not face the same street as the front elevation of the home.
 3. **Type of Material:** The main building shall be of 75% masonry construction.
- Section 3. Height Limitations.** No building shall exceed thirty-five (35) feet in height.
- Section 4. Area Regulations.**
1. **Front Yards:** There shall be a front yard for every building having a depth of not less than thirty-five (35) feet measured from the front property line to the face of the building.
 2. **Rear Yards:** There shall be a rear yard for every building which shall have a depth of not less than twenty-five (25) feet measured from the back of the building to the rear property line.
 3. **Side Yards:** There shall be two (2) side yards for each building, one on each side of the building. No side yard shall be less than fifteen (15) feet measured from the side property line to the side of the building.
 4. **Lot Width:** The minimum lot width shall be seventy-five (75) feet, except cul-de-sac lots.
 5. **Lot Depth:** The minimum lot depth shall be one hundred, sixty (160) feet.
 6. **Lot Coverage:** The combined area of the main building and accessory buildings shall not cover more than thirty (30) percent of the total area of any lot.
 7. **Streets:** All streets shall:
 - (a) be a minimum of twenty-six (26) feet wide;
 - (b) have an easement of at least sixty (50) feet wide;
 - (c) be concrete, with barrow ditches; and
 - (d) have construction procedures and methods conform to the requirements for the Town of Shady Shores.
 9. **Driveways and Circular Drives:** All driveways and circular drives are to be concrete. All driveways must be completed prior to occupancy. All driveway culverts shall be a minimum of twelve (12) inches in diameter.

AMENDMENT

This Amendment is made to the Declaration of Covenants, Conditions and Restrictions for Arbor Shores filed on May 3, 1999 in Denton County, Texas (File No. 043271), for the following described property:

All of the lot in Arbor Shores Estates Edition, an addition to the Town of Shady Shores, Denton County, Texas, according to the Plat recorded in Cabinet Q, Slide 119, Site Records Denton County, Texas.

Pursuant to Article IX Section 2 of said Declaration, Sumeer Homes, Inc. makes the following Amendment to Article II, Section 1:

"The Declarant and every other owner of a lot may be a member of the Voluntary Home Owners Association."

As of the date of this Amendment, Sumeer Homes, Inc. is the owner of over 75% of the lots in Arbor Shores.

In Witness Whereof, Sumeer Homes, Inc. has caused this Amendment and Instrument to be executed.

Sumeer Homes, Inc.

By: [Signature], President

STATE OF TEXAS

COUNTY OF DENTON

Acknowledged by me, Mohan Margabandu, Suresh Shridharani, Pres. of Sumeer Homes, Inc.

this 17th day of May, 2000.

[Signature]
Notary Public

