

Downey's Lot Owner's Association Deed Restrictions Section 12

SECTION 12 DEED RESTRICTIONS

That GULF COAST HOME BUILDERS, INC. and DOWNEY BROS. INC. OF HARRIS COUNTY, herein called "Owners", are the owners of Downey's Caney Creek Club, Section Twelve, a subdivision out of the William Baxter League, Abstract 4 in Matagorda County, Texas, as recorded in Volume Pages of the plat Records of Matagorda County, Texas.

NOW, THEREFORE, Owners dedicate to public use as such, the streets, alleys and easements shown on the plat of said subdivision, forever, and covenant and declare that all lots in said subdivision shall be subject to the following restrictions, covenants and conditions, and each lot in said subdivision shall be conveyed by Owners subject thereto.

Any purchaser by, through or under it shall hold title to the lot conveyed subject to the restrictions, covenants, conditions and easements herein referred to, which shall continue and remain in effect until August 1, 1989, and for such an extended time, if extended as herein provided, said easements, restrictions, covenants and conditions being established and fixed against said property for the purpose of establishing and creating a uniform plan of development for said property.

The easements, covenants, restrictions and conditions to which such property shall be subject are:

1. Property in said subdivision shall be used for single residence families only. No duplexes, rooming houses, apartment houses or similar building shall be permitted upon such property, except that a duplex may be built on two adjoining lots. No buildings shall be erected, placed or altered on any lot until the construction plans, specifications and plot plan, showing the location of the structure, has been approved by the Architectural Control Committee.
2. The Architectural Control Committee is composed of four (4) members appointed by Owners for the betterment and improvement of the subdivision, until all lots are sold. The four members are C. J. Downey, D. F. W. Downey, H. B. Sanders and Johnny White. Any one of the four members have the authority to act on behalf of the Architectural Control Committee.
3. No lot or any part thereof may be used for commercial, business or professional uses of any type.
4. No building shall be occupied while it is in the process of construction. All building shall be completed within six (6) months after construction is commenced.
5. No more than one residence shall be erected on any lot.
6. No building or structure may be constructed or covered with tar paper, corrugated metal or any material other than that customarily used for the erection of residences, and all residences shall have a minimum of six hundred (600) square feet of living area.
7. No tents or canvas covered shelters may be placed on any lot at any time.
8. No used house or other building may be moved on any lot in said Subdivision. Any trailer placed on any lot must first be approved by the Architectural Control Committee. None other than factory manufactured trailers are permitted on premises.
9. No part of any lot shall be used for the dumping of rubbish, trash, or other waste, all of which shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept clean and sanitary.
10. No outside toilet or privy shall be erected or maintained in the subdivision. No sewage or other waste matter shall be placed or deposited in, or permitted to drain in bar ditches, or canals. All sanitary

plumbing shall conform with the minimum requirements of the Health Department of Matagorda County, the state of Texas, and the Architectural Control Committee in subdivision.

11. All piers, docks and other structures erected adjacent to any lot shall conform to all regulations and laws pertaining to said property. No boat house or pier shall extend into any canal more than six (6) feet from the rear property line. No building or residence shall be located on any lot nearer than the minimum set back lines as shown on the recorded plat, or nearer than five (5) feet to any side lot, including overhangs, steps and porches.

12. The canals are for the use of all persons in the subdivisions and shall not be obstructed in any manner. No waste, refuse or other foreign material of any kind shall be dumped or deposited in any of said canals.

13. No livestock shall be staked or pastured on any lot. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that no more than two (2) dogs or cats or other household pets may be kept, provided they are not bred, kept or maintained for any commercial purpose and solely as pets.

14. No signs, billboards, posters or advertising devices of any character shall be erected on any lot or plat. The owner and developer may construct and maintain billboards and advertising devices customary in connection with the general sale of property in the subdivision.

15. An assessment of \$12.00 per lot per year shall be charged to the Owner on each lot in said subdivision for the maintenance of canals, drainage, and or other expenditures as determined by Downey's Caney Creek Club Civic Committee as its sole judgment shall may deem necessary for the benefit of the Owners of all lots in subdivision. The maintenance fees shall be paid to "Maintenance Fund", Downey's Caney Creek Club Section Twelve, P. O. Box 26527, Houston, Texas 77032. The maintenance charge shall begin on the first day of the month following the date of the sales contract or deed of conveyance, whichever is sooner, and will be paid annually in advance beginning August 1, 1968. The Civic Club members are appointed by Owner and Developer from year to year. The maintenance charge shall not apply to lots owned by Developers.

16. The maintenance charge shall be paid by each and every lot owner and is secured by the Vendor's lien which is expressly created and retained upon each and every lot. The lien for the maintenance charge shall be secondary, subordinate and inferior to the lien of any bona fide mortgagee. The Civic Committee shall be the custodian and administrator of the maintenance fund, and the vendor's lien is transferred and assigned to the Civic Committee.

17. The Civic Committee shall have authority to adjust the maintenance charge from year to year as it may deem proper, but in no event shall such charge exceed the maximum herein stated without the consent of ninety (90%) percent of the owners of lots in said addition.

18. All funds collected shall be used for any and all purposes in said subdivision which the Committee in its sole judgment may deem for the benefit of the owners of all lots in said subdivision.

19. If the owner of any lot in said subdivision, or any other person, shall violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damage or other dues for such violations.

20. The foregoing restrictions, covenants and conditions shall constitute covenants running with the land and shall be binding on and inure to the benefit of Owners, their successors and assigns and all

persons claiming by, through and under Owners and shall be effective until August 1, 1989, and shall be extended automatically thereafter for successive periods of ten (10) years, provided, however, that the owners of a majority of the square foot area in said subdivision may terminate the same on August 1, 1989, or at the end of any successive ten (10) year period thereafter by executing, acknowledging and filing for record in the Matagorda County Clerk's office any appropriate instrument or agreement in writing for such purpose which may be filed at any time within five (5) years of the end of any successive ten (10) year period, but said restrictions shall nevertheless continue to the end of the period for which they are then in effect.

21. Invalidation of any one or more of these restrictions, covenants or conditions by judgment, court order or otherwise shall in no wise affect or invalidate any other restriction, covenant or condition, but all such other restrictions, covenants and conditions shall continue and remain in full force and effect. Executed this the 19th day of January, 1968 by and through the respective officers hereunto duly authorized.

**BYLAWS OF
DOWNEY'S CANEY CREEK CLUB
LOT OWNERS ASSOCIATION, INC.**

Property Owners' Association: Downey's Caney Creek Club Lot Owners Association, Inc. ("DCCCLOA"), established by Articles of Formation filed with the Texas Secretary of State on July 29, 1974 under file number 34662501. DCCCLOA shall be governed by a Board of Directors (the "Board") as provided in the Articles of Formation and as otherwise provided herein.

Principal Office: 25150 FM 547, Bay City, Texas 77414 or such other location as may from time to time determined by the official act of DCCCLOA.

Restrictive Covenants: The Restrictive Covenants of the Downey's Caney Creek Club Subdivision are recorded in the Deed Records and/or Official Records of Matagorda County Clerk's office, Matagorda County, Texas, under the following volume and pages:

Section 2 = Volume 4 at Page 31
Section 3 = Volume 4 at Pages 13-27
Section 4 = Volume 4 at Page 30
Section 5 = Volume 4 at Page 47
Section 6 = Volume 4 at Pages 48-50
Section 7 = Volume 5 at Pages 5-6
Section 8 = Volume 5 at Page 8-10
Section 9 = Volume 5 at Page 11-12
Section 10 = Volume 460 at Pages 360
Section 12 = Volume 5 at Pages 13-15
Section 13 = Volume 5 at Page 28
Section 14 = Volume 5 at Page 24
Section 15 = Volume 5 at Pages 29-33
Section 16 = Volume 5 at Pages 41-43
Section 17 = Volume 6 at Pages 1-2
Section 18 = Volume 6 at Pages 28-29
Section 19 = Volume 6 at Pages 45-46
Section 20 = Volume 6 at Pages 53-56

Definitions: Capitalized terms used but not defined have the meaning set forth in the Restrictive Covenants.

1.00 MEMBERSHIP

1.01 *Members.* Every Owner is a Member of DCCCLOA. Membership is appurtenant to and may not be separated from ownership of a Lot. Members have one vote per Lot. When more than

one person is an Owner, each is a Member, but only one vote may be cast for any one Lot. Any one co-owner may exercise the vote and such vote shall be binding and conclusive on all of the other co-owners, provided however, if another co-owner has also cast a vote for the same Lot or has provided DCCCLOA with written notice of an objection to the vote cast by any other co-owner of such Lot, no votes cast for such Lot will be counted and all such votes will be deemed to have not been cast for purposes of quorum.

1.02 *Place of Meeting.* Members meetings will be held at the Property Owners' Association's principal office or at another place designated by the Board within the Sargent area.

1.03 *Annual Meetings.* Regular annual Members meetings will be held during the month of August each year, with the specific date and location to be determined by the Board and publicly posted at least thirty (30) days prior to any such meeting.

1.04 *Special Meetings.* The president may call special meetings. The president must call a special meeting if directed by the Board or by a petition signed by twenty-five (25) Members.

1.05 *Notice of Meetings.* Written notice stating the place, day and hour of each Members meeting, other than a reconvened meeting, must be publicly posted not less than thirty (30) nor more than sixty (60) days before the meeting. The special meeting notices must also state the meeting's purpose, and no business may be conducted except as stated in the notice. Notice to a Member is deemed given when hand delivered, when deposited with the United States Postal Service, postage prepaid (whether actually received or not), when emailed (if an email address has been provided by a Member, when publicly posted on the DCCCLOA's website, when conspicuously posted at the Principal Office, when published in a newspaper of general circulation in the community in which the Principal Office is located, or any combination of the foregoing.

1.06 *Waiver of Notice.* A Member may, in writing, waive notice of a meeting. Attendance at a meeting is a waiver of notice of the meeting, unless the Member objects to lack of notice when the meeting is called to order.

1.07 *Quorum.* Members holding one-tenth (ie. 10%) of the votes entitled to be cast, in person or by proxy, constitute a quorum. If a Members meeting cannot be held because a quorum is not present, a majority of the Members who are present may adjourn the meeting. Notice of the place, date and hour of each reconvened meeting must be given not more than sixty (60) nor less than thirty (30) days before the reconvened meeting. At the reconvened meeting, Members holding one-tenth (ie. 10%) of the votes entitled to be cast, in person or by proxy, constitute a quorum.

1.08 *Voting.* The voting rights of Members and the procedure for casting, accessing and tabulating ballots are governed by Texas Property Code Chapter 209 and any amendments thereto. Votes representing more than 50 percent of the Members actually voting ("Voting Members") at a meeting at which a quorum is present, whether in person, by proxy or by other means as provided in Texas Property Code Chapter 209 and any amendments thereto, constitute a majority vote. No Member will be denied the right to vote because of a delinquency in payment of dues or assessments. DCCCLOA will attempt to make the current version of Texas Property Code Chapter 209 and any amendments thereto available for Members to reference as desired.

1.9 *Proxies.* Members may vote by a written proxy executed by the Member or the Member's attorney-in-fact.

1.10 *Conduct of Meetings.* The President will preside over Members meetings. The Secretary will keep minutes of the meetings and will record the votes of the Members.

1.11 *Action without Meeting.* Any action that may be taken at a meeting of the Members, whether required by law or not, may be taken without a meeting, if the action to be taken is approved by utilizing the procedures for casting, accessing and tabulating absentee and/or electronic ballots found in Texas Property Code Chapter 209 and any amendments thereto. Votes representing more than 50 percent of the Voting Members constitute a majority vote.

2.00 BOARD OF DIRECTORS

2.01 *Governing Body and Composition.* The affairs of the Property Owners' Association are governed by the Board. Each director has one vote. The Board shall be comprised of directors who must be a Member or, in the case of an entity Member, a person designated by such entity in writing to the Secretary.

2.02 *Number of Directors.* The Board consists of not less than three nor more than eleven directors. Within those limits, the Board may change the number of directors by official act. No decrease may shorten the term of a director and any director position created by an increase shall serve for no less than a full term.

2.03 *Term of Office.* The terms of directors will be staggered. Six (6) directors of the Board shall be elected in even years and Five (5) directors of the Board shall be elected in odd years. Each director shall serve a term of two years. Directors may serve consecutive terms.

2.04 *Election.* At the annual meeting of Members, the Voting Members will elect successors for each director whose term is expiring. Cumulative voting is prohibited. The candidate or candidates receiving the most votes will be elected. The directors elected by the Voting Members will hold office until their respective qualified successors have been elected.

2.05 *Removal of Directors and Vacancies*

2.051 *Removal by Members.* Any director may be removed, with or without cause, by a majority of the Voting Members. Any director whose removal is sought will be given written notice of the proposed removal.

2.052 *Removal by Board.* Any director may be removed at a Board meeting by a majority vote of the Board of Directors if the director —

2.0521 failed to attend four consecutive Board meetings;

2.0522 failed to attend fifty percent of Board meetings within one year;

2.0523 is delinquent in the payment of any Assessment for more than one hundred eighty days or;

2.0524 is the subject of an enforcement action by the Property Owners' Association for violation of the Governing Documents.

2.053 *Vacancies.* A director's position becomes vacant if the director dies, becomes incapacitated, resigns or is no longer a Member.

2.054 *Successors.* If a director is removed or a vacancy exists, a successor will be elected by the remaining directors for the remainder of the term.

2.06 *Compensation.* Directors will not receive compensation. A director may be reimbursed for expenses approved by the Board.

2.07 *Accounts and Reports.* Accounting and controls must conform to good accounting practices. Accounts shall not be commingled with accounts of other persons. The bank statements and financial reports shall be posted monthly on the DCCCLOA website. The following financial reports will be prepared at least annually:

2.071 An income statement reflecting all income and expense activity for the preceding period.

2.072 A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format.

2.073 A balance sheet as of the last day of the preceding period.

2.074 A delinquency report listing all Owners who are delinquent by more than ninety days in paying any Assessment and describing the status of any action to collect those delinquent Assessments.

3.00 BOARD MEETINGS

3.01 *Regular Meetings.* Regular meetings of the Board will be held at such time and place as determined by the Board, but at least ten such meetings will be held during each fiscal year. Notice of the time and place of the regular meetings will be given to Members in accordance with the Texas Property Code Sec. 209.0051. The board shall keep written minutes of the meetings.

3.02 *Special Meetings.* Special meetings will be held when called by written notice signed by the President or by any three directors. Notice of the time and place of the special meetings will be given to Members in accordance with Texas Property Code Sec. 209.0051. The board shall keep written minutes of the meetings.

3.03 *Waiver of Notice.* The actions of the Board at any meeting are valid if (a) a quorum is present, (b) proper notice of the meeting was given to Members and (c) proper notice of the meeting was given to each director or a written waiver of notice is given by any director who did not receive proper notice of the meeting. Proper notice of a meeting will be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of proper notice.

3.04 *Quorum of Board.* At all meetings, a majority of the Board will constitute a quorum, and the votes of a majority of the directors present at a meeting at which a quorum is present constitutes the decision of the Board. If the Board cannot act because a quorum is not present, a majority of the directors who are present may adjourn the meeting to a date not less than two nor more than 30 days from the date of the original meeting was called. At the reconvened meeting, if a quorum is present, any business that may have been transacted at the meeting originally called may be transacted without further notice.

3.05 *Conduct of Meetings.* The President will preside at the Board meetings. The Secretary will keep minutes of the meetings and will record in a minute book the vote of the directors.

3.06 *Proxies.* Directors may vote by a written proxy executed by the Director.

3.07 *Open Meetings.* Regular and special Board meetings must be open to Members, subject to the right of the Board to adjourn Board meetings and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the DCCCLOA's attorney, matters involving the invasion of privacy of individual owners or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session. Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board.

3.08 *Action Without Meeting.* Any action allowed under Texas Business Organizations Code §22.220 may be taken without a Board meeting by written consent setting forth the action taken signed by a majority of the Board. The consent must state the date of each director's signature. Any such action may be accomplished by facsimile, email and/or such other means as may necessary to obtain written consent. Prompt notice of the taking of an action by directors without a meeting by less than unanimous written consent shall be given to each director who did not consent in writing to the action.

3.09 *Nomination and Election of Directors.* At a regular meeting of the Board, a nominating committee of three or more Members who are not current Directors shall be appointed by the Board. Such committee shall nominate Director candidates for the Board to be elected at the next annual meeting. All nominations of the committee shall be tendered to the Board in writing at least sixty days prior to the annual meeting. Members may nominate other candidates by delivering written notice of

such nomination to the Secretary not less than sixty days prior to the annual meeting. The names of all nominated candidates shall be listed alphabetically on the ballot. No nominations may be made from the floor of the annual meeting. Candidates receiving the highest number of votes shall be elected, unless disqualified to serve by law. No Member may cumulate votes.

4.00 OFFICERS

4.01 *Officers.* The officers of DCCCLOA are a President, Vice President, Secretary and Treasurer, to be elected from the Members. The Board may appoint other officers having the authority and duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of president and secretary.

4.02 *Election, Term of Office and Vacancies.* Officers will be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members. A vacancy in any office may be filled by the Board for the unexpired portion of the term.

4.03 *Removal.* The Board may remove any officer whenever, in the Board's judgment, the interests of the DCCCLOA will be served thereby. Such removal shall require a majority vote of the entire Board.

4.04 *Powers and Duties.* Officers have such powers and duties as are generally associated with their respective offices and as may be specifically conferred by the Board. Any officer shall be authorized to sign checks on behalf of DCCCLOA, however, any check totaling in excess of \$5,000 shall require the signatures of two (2) officers. The President is the chief executive officer of DCCCLOA. The Treasurer has primary responsibility for the preparation of the budget and financial reports and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

4.05 *Resignation.* Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Resignation takes effect on the date of the receipt of the notice or at any later time specified in the notice.

5.00 COMMITTEES

The Board may establish and/or discharge committees by resolution, and may authorize such committees to perform any duties described in the resolution, which are consistent with the Articles of Formation, these Bylaws and Texas law.

6.00 BOOKS AND RECORDS

6.01 *Maintenance.* All Restrictive Covenants, Articles of Formation, Bylaws, membership registers, records of accounts, minutes, resolutions and other records of DCCCLOA shall be kept at the Principal Office or at such other location as may be determined by the Board to allow reasonable and open access to such records by all Members upon request for inspection. Copies of any

DCCCLOA books and records may be obtained pursuant to the Records Production Policy adopted by the Board and on file with all other DCCCLOA records. All such records will be kept for the minimum length of time required by law.

7.00 MISCELLANEOUS

7.01 *Fiscal Year.* The Board may establish DCCCLOA's fiscal year by resolution. In the absence of a Board resolution determining otherwise, the fiscal year is a calendar year.

7.02 *Rules for Meeting.* The Board may adopt rules for the conduct of meetings of Members, Board and committees.

7.03 *Conflict.* The Restrictive Covenants control over these Bylaws.

7.04 *Notices.* Unless otherwise provided herein, any notice required or permitted by the Governing Documents or applicable law must be in writing and must be given by certified mail, return receipt requested. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to (a) a Member at the Member's last known address according to the Property Owners' Association's records and (b) the Property Owners' Association, the Board or a managing agent at the Property Owners' Association's Principal Office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.

7.05 *Amendment.* These Bylaws may be amended only by seventy-five percent (75%) of the members of the Board of Directors.

DOWNEY'S CANEY CREEK CLUB
OWNERS ASSOCIATION, INC.

By: Ruth Risinger

Printed Name: Ruth Risinger

Its: President

THE STATE OF TEXAS §
 §
COUNTY OF MATAGORDA §

This instrument was acknowledged before me this 10th day of DECEMBER, 2012, by RUTH RISINGER.

D. Lamar Brown
NOTARY PUBLIC

