

**DECLARATION OF COVENANTS, RESTRICTIONS  
AND CONDOMINIUM REGIME  
AVONLEA COURT CONDOMINIUM  
THE WOODLANDS, TEXAS**

Received by Tenant(s)

X \_\_\_\_\_ Date \_\_\_\_\_

X \_\_\_\_\_ Date \_\_\_\_\_

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**DECLARATION OF COVENANTS,  
RESTRICTIONS AND CONDOMINIUM REGIME**

**AVONLEA COURT CONDOMINIUM  
THE WOODLANDS, TEXAS**

THIS DECLARATION is made and executed on this the 12<sup>th</sup> day of JUNE, 1996 by THE RYLAND GROUP, INC. (the "Developer"), a Maryland corporation with offices in The Woodlands, Montgomery County, Texas.

**RECITALS**

Developer is the owner of all numbered lots, Restricted Open Space Reserve "A", and Restricted Open Space Reserve "B", all in a 5.573 acre tract of land situated in Montgomery County, Texas which has been subdivided as The Woodlands Village of Alden Bridge, Section 25, according to the map or plat thereof recorded in Cabinet H, Slide 150A of the Map Records of Montgomery County, Texas (the "Property").

Developer desires to create and carry out a uniform plan for the improvement, development and sale of condominium units on the Property in accordance with the provisions of the Texas Uniform Condominium Act (Texas Property Code Section 82.001, et seq.), in a development to be known as Avonlea Court Condominium.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, Developer, upon the recording hereof, does hereby adopt, establish and impose the following covenants, restrictions, easements, liens and condominium declaration to apply to the use, improvement, occupancy and conveyance of the Units in Avonlea Court Condominium. Each contract or deed which may be hereafter executed with regard to any of the Units in Avonlea Court Condominium shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, easements, liens and condominium declaration set forth in this Declaration, and same shall run with the land and be binding upon all successive owners thereof regardless of whether or not the following covenants, restrictions, easements, liens and condominium declaration are set out in full or incorporated by reference in said contract or deed.

**ARTICLE I  
Definitions**

**Section 1.01.** Except as otherwise expressly provided:

- a. **Articles of Incorporation** means the Articles of Incorporation of the Association.
- b. **Association** means Avonlea Court Condominium Association, the non-profit corporation organized pursuant to Section 3.01.
- c. **Board** means the Board of Directors of the Association.
- d. **By-Laws** means the By-Laws of the Association.

e. **Common Elements** means both General Common Elements and Limited Common Elements, and includes, without limitation, the following (to the extent that they lie within the Property but outside the Unit boundaries described below):

- (1) The land which comprises the Property;
- (2) The foundations, columns, girders, beams, supports, roofs, floors, bearing walls, partition walls and perimeter walls of all Units to the inner surfaces of the structural wall elements (excluding the sheetrock and any wall or ceiling finishes);
- (3) The fences, stairs, stairwells, balconies, verandas, terraces, resident storage rooms, driveways and parking garage or parking spaces, for all Units;
- (4) All other structures, facilities and equipment located on the Property (other than those structures, facilities and equipment located in the Units) which are necessary or convenient to its existence, maintenance and safety, or which are normally in common use by the owners or occupants of Units.

f. **Declaration** means this Declaration of Covenants, Restrictions and Condominium Regime, and any amendments thereto.

g. **Development Standards Committee** means the Development Standards Committee established pursuant to Article IX of The Woodlands Covenants.

h. **Developer** means The Ryland Group, Inc. and its successors or any person or entity who acquires the Property or portions thereof for purposes of development and to whom the rights and obligations of Developer hereunder are specifically assigned by The Ryland Group, Inc.

i. **General Common Elements** means and consists of all Common Elements other than the Limited Common Elements.

j. **Limited Common Elements** means a part of the Common Elements reserved for the exclusive use of the Owner(s) and occupant(s) of a particular Unit or which exclusively serve one or more Units. Limited Common Elements shall consist of walkways and stairways serving one or more Units, those driveways, parking or garage areas and storage spaces indicated on attached Exhibit B as Limited Common Elements appurtenant to a specific Unit, and the area within the fence-enclosed rear yard adjacent to certain Units.

k. **Member** means every person or entity who holds membership in the Association, as further defined in paragraph 3.02 below.

l. **Owner** means the record owner of fee title to any Unit (whether one or more persons or entities), including contract sellers, but excluding those having an interest merely as security for performance of an obligation.

m. **Plat** means the subdivision plat of The Woodlands Village of Alden Bridge, Section 25, or any amendment or replat of such plat which is filed for record in the Map Records of Montgomery County, Texas.

n. **Property** means all numbered lots, "Restricted Open Space Reserve A", and Restricted Open Space Reserve "B", all as shown on the Plat.

o. **Unit** means the air space and all walls, fixtures, equipment, materials and finishes within the plane formed by the outermost surface of the wallboard, plaster or other material comprising the perimeter walls of the dwelling unit. The upper boundary of each Unit shall be the plane formed by the uppermost surface of the wallboard, plaster or other material comprising the uppermost ceiling of each portion of the dwelling unit. The lower boundary of each Unit shall be the plane formed by the uppermost, unfinished surface of the concrete slab or subflooring on which the lowermost story of the dwelling unit is constructed. Included within the boundaries of each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the interior walls, floors or ceilings (such as paint, wall paper, vinyl wall and floor coverings and carpets), interior walls and stairways, and all utility pipes, lines, systems, fixtures or appliances servicing only that Unit (whether or not within the boundaries of that Unit). All sheetrock, plaster, ceiling or wall finishes or other material attached to the inner surface of structural elements of the perimeter walls and ceiling shall be part of the Unit. The boundaries of each Unit shall also extend to the exterior surface of all window and door glass, to the interior surfaces of doors (excluding glass), window frames and door frames of windows and doors comprising a portion of the perimeter walls of the dwelling, and to the exterior surfaces of any balcony, deck or patio which is a Limited Common Element appurtenant to the Unit. The location of each Unit is shown on attached Exhibit B. A floor plan of each Unit is shown on attached Exhibit C. Unit shall have the same meaning as the term "Apartment" as used in the Condominium Act of the State of Texas.

p. **Woodlands Covenants** means the Declaration of Covenants, Restrictions, Basements, Charges and Liens which is attached to and made a part of a deed dated the 30th day of August, 1993, from The Woodlands Community Association, Inc. to The Woodlands Corporation, and filed for record in File Number 9348564 in the Office of the County Clerk of Montgomery County, Texas, covering, among other lands, the Property.

## ARTICLE II Units

**Section 2.01- Division of Property.** The Property is divided into the following separate fee simple estates:

(a) forty-three (43) Units as established by this Declaration and identified by Unit number on attached Exhibit A, and located on the Property at the site shown on attached Exhibit B; and

(b) the Common Elements, which shall be held in common by the Owners. The Owner of each Unit shall own the undivided percentage interest in the Common Elements specified for that Unit in attached Exhibit A.

**Section 2.02 - Description of Unit.** Each Unit shall consist of the Unit as described in Section 1.01(o) above, an undivided interest in the Common Elements in the percentage shown on attached Exhibit A, together with exclusive right to use the Limited Common Elements appurtenant thereto as provided for in Section 1.01(j) above. Each Unit, the Limited Common Elements appurtenant thereto, and the Unit's undivided interest in the General Common Elements shall be inseparable and may be conveyed, leased or encumbered only as a Unit. Every deed, lease, mortgage, trust deed or other instrument may legally describe a Unit by its Unit number as shown on attached Exhibits A and B, followed by the words "Avonlea Court Condominium". No Owner shall bring any action for the partition or division of the Common Elements.

**Section 2.03 - Use of Common Elements.** The Limited Common Elements shall be for the exclusive use of the Owners and occupants of the Unit to which same are appurtenant. The General Common Elements shall be for the joint use of the Owners and occupants of all Units.

**ARTICLE III**  
**Avonlea Court Condominium Association**

**Section 3.01 - Creation.** Developer has created Avonlea Court Condominium Association under the Texas Non-Profit Corporation Act for the purpose of administering the operation and maintenance of the Common Elements and providing the other functions delegated to the Association by the terms of this Declaration or the Texas Uniform Condominium Act (Texas Property Code Section 82.001, et seq.)

**Section 3.02 - Membership.** Every person or entity who is a record owner of a Unit, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership.

**Section 3.03 - Voting Rights.** The record owner of a Unit shall be entitled to one (1) vote for each Unit owned. When more than one person or entity owns a fee interest in any Unit, all such persons or entities shall be Members, provided that only one of the Members owning an interest in a Unit may serve as an officer or director of the Association at any point in time. The vote for such Unit shall be exercised as the several Members owning an interest in the Unit may among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. No Member shall be entitled to vote in the affairs of or serve as an officer or director of the Association while delinquent in the payment of any Assessment or while in default of any obligations imposed hereunder or under the Articles of Incorporation or By-Laws.

**Section 3.04 - Voting Requirements of the By-Laws.** The Board may make such By-Laws consistent with the Articles of Incorporation and with this Declaration as it deems advisable for meetings of Members in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes and such other matters concerning the conduct of meetings and voting as it shall deem proper.

**Section 3.05 - Powers of the Association.** The Members shall elect the Board of Directors of the Association in a manner and at the time provided in the By-Laws. Except as otherwise specifically required by the terms of this Declaration, the By-Laws or applicable law, all acts of the Association must be by and through the Board. The Association, acting through the Board, shall have, in addition to the powers provided in the other provisions of this Declaration, the power to:

- (a) adopt and amend rules regulating the use, occupancy, leasing, sale, maintenance, repair, modification and appearance of the Units and Common Elements, to the extent the regulated actions affect Common Elements or other Units, and so long as such rules are not inconsistent with the provisions of this Declaration;
- (b) impose and collect fees for services provided to Unit Owners; and
- (c) exercise any other powers permitted by the laws of the State of Texas which may be necessary or desirable to govern and operate the Association.

**Section 3.06 - Developer Control Period.** The Developer shall be entitled to appoint and remove any one or more officers and/or directors of the Board of Directors of the Association until the earlier to occur of (i) 120 days after 75% of the Units have been conveyed by Developer to other Owners, or (ii) three years after the first Unit was conveyed by Developer to another Owner.

#### **ARTICLE IV Property Rights**

**Section 4.01- Ingress and Egress Easement of Owner.** Each Owner is granted an unrestricted right of ingress and egress to his Unit.

**Section 4.02 - Members' Easement of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following:

- (a) The right of the Association to limit the number of guests of Members;
- b) The right of the Association to charge reasonable admission and other fees for use of any recreational facilities situated upon the Common Elements;
- (c) The right of the Association to borrow money for the purpose of improving the Common Elements and facilities, and in aid thereof to mortgage said property with the prior approval of sixty seven percent (67%) of the Members;
- (d) The right of the Association to suspend the voting rights and right to use any recreational facilities by a Member for any period during which such Member is in default of any provisions of this Declaration or the Association's published rules and regulations.

**Section 4.03 - Delegation of Use.** Only those persons who reside in Avonlea Court Condominium shall have the right to use the Common Elements and facilities. Any Member who does not reside in his Unit shall be deemed to have delegated his right of enjoyment in the Common Elements and facilities to his tenants or contract purchasers who reside in his Unit, subject to such rules and regulations as may from time to time be promulgated by the Association.

**Section 4.04 - Title to the Common Elements.** The Common Elements shall remain undivided, and shall at all times be controlled by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the right of each Owner with respect to the use, operation and management of the Common Elements.

**Section 4.05 - Easement for Encroachment.** Each Unit shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing two or more Units is partially or totally destroyed, and then rebuilt, the Owners of the dwellings so affected agree that minor encroachments of parts of the adjacent Units due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

**Section 4.06 - Easement for Utilities.** Permanent easements are hereby created upon, across, over and under those portions of the Property as may be reasonably necessary for the installation, maintenance and repair of all utilities, including, but not limited to, water, sewers, gas, telephone, electricity and a master or cable television antenna and security system, which easements shall run to and be administered by the Association.



An easement is further granted to all police, fire protection, ambulance and similar persons to enter upon the Property in the performance of their duties. Developer reserves the right to grant (without necessity for consent from any Owner) such additional utility easements as may, in its sole judgment, be necessary to properly serve the Property's utility requirements.

**Section 4.07 - Access Easements.** Each Owner, his guests, tenants, and invitees shall have an easement for vehicular ingress and egress across that portion of the Common Elements serving as a driveway to the parking area appurtenant to that Owner's Unit.

#### ARTICLE V Covenants for Maintenance Assessments

**Section 5.01 - Creation of the Lien and Personal Obligation.** Each Owner (except the Developer), by acceptance of a deed to any Unit, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association the General Assessments and Special Assessments fixed, established, and collected from time to time as hereinafter provided. The General Assessments and Special Assessments, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon each Unit and any rents or insurance proceeds with respect to each Unit. Such assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of each Unit at the time when the assessment becomes due. The personal obligation shall not pass to an Owner's successor in title unless expressly assumed by the successor.

**Section 5.02 - General Assessments.** The General Assessments levied by the Association shall be used for the improvement and maintenance of the Common Elements and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, and for the performance of such other duties as are given to the Association by this Declaration. The purposes of the General Assessments shall include, but are not limited to, the payment of the expenses of the Association, and the establishment of adequate reserves for, insurance, insurance deductibles, repair, replacement and maintenance of the Common Elements, including, but not limited to, mowing grass, caring for the grounds, landscaping, fences, exterior maintenance and lighting and other uses that the Board shall determine to be necessary to meet the primary purposes of the Association.

**Section 5.03 - Amount of General Assessment.** After consideration of the current maintenance costs and future needs of the Association, the Board shall fix the General Assessment in an amount necessary to fund the anticipated revenue needs of the Association, including an adequate reserve fund for the replacement of improvements to the Common Elements.

**Section 5.04 - Uniform Rate of Assessments.** General Assessments shall be a uniform monthly sum for each square foot of livable space in each Unit (as shown on attached Exhibit A), and shall be due and payable in advance without notice on the first day of each calendar month. Each Owner agrees that, while the size of each Unit as shown on Exhibit A is an estimate only, and shall not be considered a representation or warranty by Developer as to the actual size of the Unit, such estimated sizes shall be conclusive in the determination of the total General and Special Assessments due with respect to any Unit.

**Section 5.05 - Date of Commencement of General Assessments.** General Assessments shall commence to accrue against each Unit on the first day of the first calendar month following i) the date of closing of the sale of that Unit from the Developer to another Owner, or ii) the date of occupancy of such Unit if such Unit has not been sold by Developer to another Owner and such Unit is rented or used as a model or office. The General Assessment shall initially be \$0.055 per square foot per month. The Board may adjust the amount of the General Assessment not more than one time during any calendar year. Written notice of any adjustment in the amount of the General Assessment shall be sent to every Member at least thirty days prior to the effective

date of the adjustment; provided that the failure of the Association to provide such notice shall not release or relieve the Owner of the duty to pay the General Assessment.

**Section 5.06 - Special Assessments for Capital Improvements.** In addition to the General Assessment authorized above, the Association may levy Special Assessments from time to time in an amount necessary and for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements, or other capital or operating expenditures deemed necessary. Any Special Assessment shall require the consent of sixty-seven percent (67%) of the Members voting at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting, setting forth the purposes of the meeting. Special Assessments levied in accordance with this Section shall be a uniform sum for each square foot of livable space in each Unit (as shown on attached Exhibit A), and shall be due and payable on the date or dates and in the manner determined by the Board and specified in a statement mailed to the Members.

**Section 5.07 - Application of Payments.** All assessment payments received from Owners shall be applied by the Board first to the payment of accrued fines, legal fees, court costs and costs of collection, then to accrued late charges and interest, then to delinquent Special Assessments, and finally to those General Assessments with the longest delinquency.

**Section 5.08 - Developer Payment.** Until Developer control of the Association terminates as set forth in this Declaration, Developer shall make a monthly payment to the Association equal to (i) the cost of all operating expenses for which the Association is liable less the operational expense portion of the assessments levied against the Owners, plus (ii) for each Unit on which General Assessments have not commenced to accrue, an amount determined by the Board, from time to time, to be deposited into a reserve fund for the replacement of improvements to the Common Elements. Commencing on the date Developer control of the Association terminates as set forth in this Declaration, General Assessments shall commence to accrue against any Unit which has not been sold by Developer to another Owner.

**Section 5.09 - Cash Reserve Account.** In addition to any required escrow deposit for General Assessments, each purchaser of a Unit from the Developer agrees, at the closing of the Unit purchase, to pay to the Association's cash reserve account a cash advance equal to two times the monthly General Assessment for the Unit being purchased. Neither the cash reserve account nor the working capital portion of the assessments paid by Owners shall be used to pay operational expenses until Developer control of the Board terminates.

**Section 5.10 - Effect of Nonpayment of Assessments; Remedies of the Association.** If any Assessment is not paid on or before ten (10) days following the due date, same shall be delinquent and shall, at the option of the Board, bear interest from the date of delinquency at the rate established by the Board from time to time but not to exceed the highest legal rate as may then be permitted under the laws of the State of Texas. The defaulting Owner shall also be assessed a late charge in the amount of \$25.00 or such greater amount as may be imposed by the Board from time to time, to cover the extra cost and expense involved in handling delinquent assessments. The Association is authorized to impose a charge of \$15 or more for checks which are returned unpaid. The Association may bring an action at law against the Owner personally obligated to pay the delinquent General or Special Assessments to recover the delinquent amount and all accrued interest and late charges thereon, and/or to foreclose the lien against the Unit securing such assessment. In any such action, the Association shall be entitled to recover its costs incurred in the proceeding, including reasonable attorney's fees, all of which shall be secured by the lien securing payment of assessments. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Association or its agents, the right and power to bring an action against such Owner personally for the collection of delinquent assessments and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure in a like manner as a mortgage or deed of trust lien on real property. Each Owner hereby expressly grants to the Association a power of sale in connection with said lien, same to be exercised in compliance with the terms of the applicable Texas Civil Statutes relating to the foreclosure of deed of trust or other contractual liens (Texas Property Code Section 51.002). The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in an interest

foreclosed at foreclosure sale and to acquire, hold, lease and mortgage same. No Owner may waive or otherwise escape liability for any assessments by non-use of any Common Elements or other services or facilities, or abandonment of his Unit.

**Section 5.11 Certificate.** The Association shall upon request at any time furnish a certificate in writing, signed by an officer or agent of the Association, setting forth whether the Assessments on a specified Unit have been paid. A reasonable charge may be made by the Board for the issuance of a certificate, which shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**Section 5.12 - Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages imposed on a Unit to secure debt incurred for the purchase price thereof or for improvements thereto. Sale, transfer or other disposition of any Unit shall not affect the assessment lien. However, the sale or transfer of any mortgaged Unit pursuant to a decree of foreclosure under such mortgage shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer of any kind, including foreclosure, shall release such Unit from liability for any assessments thereafter becoming due or from the lien provided in this Declaration.

**Section 5.13 - Subordination of the Lien to The Woodlands Covenants.** The lien securing the assessments provided for herein shall be subordinate to the lien provided for in The Woodlands Covenants. The sale or transfer of any Unit pursuant to a decree of foreclosure under the lien provided for in The Woodlands Covenants shall extinguish the lien hereunder as to payments which become due prior to such sale or transfer. Foreclosure of the lien provided for in The Woodlands Covenants shall not relieve such Unit from liability for any General or Special Assessments thereafter becoming due or from the lien securing payment thereof.

#### ARTICLE VI Insurance, Casualty and Condemnation

##### Section 6.01- Insurance.

(a) The Board or its authorized agent shall obtain and maintain at all times, to the extent obtainable, policies of insurance consistent with the then current specific requirements of the Federal National Mortgage Association for a development of the size and type of the Property, written with financially responsible companies licensed to do business in Texas, covering, without limitation, the risks set forth below. The type of coverages to be obtained and risks to be covered are, at a minimum, as follows, to-wit:

(1) Insurance against loss or damage by fire and lightning, and such other hazards ("casualty damage") as are customarily covered in condominium projects in Montgomery County, Texas, under extended coverage and all risk endorsements. Said casualty insurance shall insure the entire Property and all buildings thereon, together with all service equipment contained therein, in an amount equal to the full replacement value, without deduction for depreciation.

(2) If the Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on each or all buildings in the Property, in an amount which is the lesser of the maximum amount of insurance available under the Act or the replacement cost of the Common Elements located in that building.

(3) Bodily injury and property damage insurance in such limits as the Board may from time to time determine, but not in an amount less than \$1,000,000.00 per occurrence covering all claims for bodily injury or death, and \$100,000.00 per occurrence for property damage. Coverage shall include,

without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Property. All liability insurance shall name the Association, the Board, the Developer, the Owners, the managing agent and the officers of the Association as insureds thereunder.

(4) Worker's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, in the amounts and on the forms now or hereafter required by law or deemed reasonable and necessary by the Board.

(5) Directors and officers liability insurance with respect to the actions of the Board and officers of the Association.

(6) Insurance against such other risks of similar or dissimilar nature as the Board may deem appropriate with respect to the Property, including insurance for any personal property of the Association located thereon.

(b) All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all Owners, first mortgagees and the Association. Certificates evidencing such insurance coverage shall be promptly delivered to any first mortgagee upon request. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners and first mortgagees, as their interests may appear.

(c) Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

(d) It shall be the duty of each Owner to obtain personal liability insurance, and casualty insurance (including flood insurance if available under the National Flood Insurance Act) on the Unit, improvements and fixtures installed therein by the Owner, and furnishings belonging to the Owner, including carpet, draperies, appliances and items of personal property.

#### **Section 6.02 - Damage or Destruction.**

(a) **Attorney-in-fact.** All Owners irrevocably constitute and appoint the Board as their attorney in-fact for the purpose of dealing with the repair or reconstruction of damage or destruction to any Units or Common Elements, by fire or other disaster. A claim for any loss covered by the policy under Section 6.01 (a) must be submitted by and adjusted with the Board, as attorney-in-fact. As attorney-in-fact, the Board, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interests of an Owner, which is necessary and appropriate to exercise the powers herein granted. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction or replacement unless the Owners agree not to rebuild in accordance with the provisions set forth hereinafter. Maintenance assessments shall not be abated during the period of insurance adjustment and repair and reconstruction.

(b) **Duty to Rebuild.** Any building containing a Unit or portion of the Common Elements that is damaged or destroyed by fire or other disaster shall be promptly repaired or reconstructed by the Association unless at least 80% of the Owners of all Units in the project, including each Owner of a Unit in that building, vote to not rebuild. Repair and reconstruction of the damaged or destroyed Units or Common Elements shall be to substantially the same condition to which they existed prior to the damage, with each Unit having

substantially the same vertical and horizontal boundaries as before. If insurance proceeds are insufficient to complete the necessary repair or reconstruction, they shall be allocated to the repair of the Common Elements, and then to each damaged Unit based upon its percentage interest in the Common Elements. The cost of repair or replacement to any Unit in excess of the insurance proceeds shall be paid by the Owner(s) of the damaged Unit(s).

(c) **Election to Not Rebuild.** If the Owners elect not to repair or reconstruct any or all of the destroyed or damaged Units, any insurance proceeds allocable to those Units shall be used to restore the damaged Common Elements to a condition compatible with the remainder of the project, and the interest of the unrestored Units in the Common Elements shall be reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the damage or destruction, by a recorded amendment to the Declaration reflecting the reallocations, which amendment may be executed by the President of the Association, and shall not require the vote, signature or other consent of the Members. The remaining proceeds shall be distributed to the Owners of the unrestored Units (or to their mortgagees, as their interests may appear) in the proportion their percentage interest in the Common Elements bears to the total percentage interest in the Common Elements of all unrestored Units, and the remainder shall be paid to the Association.

(d) **Owner Liability.** Notwithstanding anything set out above, each Owner shall be liable to the Association for all costs incurred by the Association in excess of insurance proceeds (including the full amount of any deductible payable to the Association) if the loss was caused by the negligence of the Owner, his tenants, guests or invitees.

#### Section 6.03 - Condemnation.

(a) **Consequence of Condemnation.** If at any time or times all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Section shall apply.

(b) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

(c) **Complete Taking.** In the event that the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, Unit ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their percentage interest in the Common Elements.

(d) **Partial Taking.** In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, Unit ownership hereunder shall not terminate. The amounts allocated to the taking of or injury to a particular Unit, its allocated Limited Common Elements and/or improvements an Owner had made thereon shall be apportioned to the particular Unit involved. The total amount allocated to severance damages shall be apportioned to the Owners of those Units which were damaged but not taken or condemned, based upon their percentage interest in the Common Elements, and the amount allocated to consequential damages and any other takings or injuries shall be paid to the Association. If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then the Association shall employ such allocation to the extent it is relevant and applicable.

(e) **Distribution.** The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled, and shall disburse such shares by checks payable jointly to the Owners and any first mortgagees.

(f) **Reallocation.** The interest of the condemned Units in the Common Elements shall be reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the

taking, by a recorded amendment to the Declaration reflecting the reallocations, which amendment may be executed by the President of the Association, and shall not require the vote, signature or other consent of the Members.

**ARTICLE VII**  
**Maintenance**

**Section 7.01 - Owner's Maintenance Responsibilities.** Each Owner shall promptly maintain, repair and replace at his expense all portions of his Unit to keep such Unit in good repair. Each Owner is responsible for the cost of maintenance, repair and replacement of a) any utility installation or equipment serving only the Owner's Unit, without regard to whether the installation or equipment is located wholly or partially outside the designated boundaries of the Unit, and b) any Common Elements or other Units if the maintenance, replacement or repair is required due to the negligence of the responsible Owner, his agents, guests or tenants.

**Section 7.02 - Exterior Maintenance and Repair of Buildings.** The Common Elements shall be maintained and repaired by the Association, which maintenance and repair shall include, but shall not be limited to, repainting and repair of exterior walls, doors, trim, eaves, fences, or any portion of the foregoing. Such exterior maintenance shall not include window panes or other glass surfaces which shall be the responsibility of the Unit Owner. Each Owner shall promptly report to the Association any defect or need for repairs to be performed by the Association. The times and extent of such maintenance and repair shall be determined by the Board in its sole discretion. The exterior maintenance to be performed by the Association shall extend to not only maintenance and repair due to normal wear and tear, but shall also include exterior damage caused by casualty ("casualty damage") pursuant to Section 6.02. In addition, the Association shall have the discretionary authority, but not the obligation, to provide maintenance and repair to all or any portion of the Units if such maintenance or repair is necessary in the sole discretion of the Board to protect adjacent Units or the Common Elements, and (except in case of emergency) the Owner of said Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered to the Owner by the Board. The cost of said maintenance or repair shall be paid to the Association by the Owner(s) of the Unit(s) so repaired. Payment of said sums shall be secured by the lien reserved above to secure payment of assessments. Each Owner hereby grants to the Association, other Unit Owners, and their agents or employees access to and through their Unit reasonably necessary to perform needed repairs and maintenance.

**Section 7.03 - Landscaping and Maintenance of Patio Areas.** Each Owner shall be responsible for the maintenance and care of the lawns, trees, shrubs, hedges, walkways and other facilities within any fenced yard or patio area which is a Limited Common Element appurtenant to his Unit. The Association shall be responsible for the maintenance of all fences surrounding rear yards and other fences on the Property, and for the landscaping, maintenance and care of lawns, trees, shrubs, hedges and the like on all areas of the Property other than those fence-enclosed rear yards designated as Limited Common Elements.

**Section 7.04 - Alterations, Additions or Improvements.** No alteration, addition or improvement shall be made by any Owner beyond the perimeter of his Unit. No alteration, addition or improvement shall be made within any Unit or the Limited Common Elements appurtenant thereto without first obtaining the prior written approval of the Board and the Development Standards Committee.

**Section 7.05 - Management Agreements.** Each Owner of a Unit hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Board. A copy of all such agreements shall be available to each Owner. Any management agreement entered into by the Board before control of the Association is passed to the Owners shall provide that said management agreement may be canceled without cause and without payment of a termination fee, upon ninety (90) days or less written notice, by an affirmative vote of sixty-seven percent (67%) of the Members. It shall be the duty of the Board to effect a new

management agreement prior to the expiration of the term of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

#### ARTICLE VIII Use Restrictions

The Woodlands Covenants, to which the Property is subject, impose certain use restrictions on the Property. The following use restrictions are supplemental and in addition to the restrictions of The Woodlands Covenants.

**Section 8.01 - Single-Family Residences.** Neither the Property nor any portion thereof, nor any improvements thereon shall be used for any use other than single-family residential purposes. All Units shall be exclusively single-family residential dwellings. The term "single-family" shall mean (a) one or more persons related by blood, marriage or adoption, which may include only their children (including foster children and wards), their dependent brothers, sisters, parents and grandparents, and their domestic servants, or (b) no more than four unrelated persons living together as a single housekeeping unit and their children (including foster children and wards), their dependent brothers, sisters, parents and grandparents, and their domestic servants. In no event, shall any Unit be occupied by more persons than the product of the total number of bedrooms contained in the Unit as originally constructed multiplied by two and five tenths (2.5). Notwithstanding the foregoing, the Developer shall have the right to operate model homes and a sales office in one or more Units until Developer has sold all the Units.

**Section 8.02 - Improper Activity.** No immoral improper, unlawful, noxious or offensive activity shall be carried on or maintained on or within any Unit or the Common Elements, nor shall anything be done or permitted to be done thereon which may be or become an annoyance or a nuisance to the residents or Owners of other Units, or to surrounding property owners or residents.

**Section 8.03 - Storage/Trash.** No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap or debris of any kind shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed container of a type, size and style approved by the Board and appropriately screened from view, except that any such container may be placed in a designated area for garbage or trash pickup no earlier than six o'clock p.m. on the day preceding trash pickup, and shall be returned to an enclosed structure or an area appropriately screened from view no later than midnight of the day of pickup of such garbage and trash. Wood piles shall not be stored so as to attract termites or other wood damaging insects.

**Section 8.04 - Screening.** All equipment, garbage cans, wood piles or storage piles shall be confined to the patio areas or interior of the Unit. All rubbish, trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

**Section 8.05 - Parking.** Private driveways and parking spaces in the Common Elements shall be used solely for the parking of passenger cars by residents of the Units and their guests or invitees. The parking or standing of any boat, trailer, camper, inoperable motor vehicle or truck with a licensed capacity in excess of one (1) ton on any portion of the Property is prohibited except within an enclosed garage. The parking or standing of any motor vehicle in any part of the Property, other than in a garage, carport, driveway, or designated parking space, is expressly prohibited. This provision shall not be construed to prohibit the temporary parking of motor vehicles necessary to the servicing or repair of any Unit or other property in Avonlea Court Condominium. Avonlea Court Condominium residents must park in their designated spaces. Resident parking in visitor parking areas is prohibited.

**Section 8.06 - Signage.** Except for the project signs and temporary sales signs installed by the Developer, no sign of any kind shall be displayed to the public view on or from any portion of the Property without the prior written consent of the Board. All signage authorized by the Board must also comply with the rules and regulations adopted by the Development Standards Committee.

**Section 8.07 - Pets.** In addition to the requirements and limitations of The Woodlands Covenants and the Development Standards Committee, the Board shall have the right to adopt regulations regarding the keeping of pets, including without limitation, limits on the number, size and type of pets or other animals which may be kept in any Unit.

**Section 8.08 - Miscellaneous.** Clothes lines, outdoor antennas of any kind and aluminum foil, brightly colored materials or other unsightly window coverings are expressly prohibited.

**Section 8.09 - Rules and Regulations.** Rules and regulations adopted by the Board from time to time under the authority set out in Section 3.05 above shall be binding upon and enforceable against all Members and Owners and their guests, tenants and invitees. After hearing, the Board shall have the right to fine any person not to exceed \$100.00 for each violation of the rules and regulations.

#### ARTICLE IX Notices/Unit Owner Information

**Section 9.01- Owner Information.** Not later than the 30th day after the date of acquiring an interest in a Unit, the Unit Owner shall provide the Association with:

- (a) the Owner's mailing address, telephone number, and driver's license number, if any,
  - (b) the name and address of the holder of any lien against the Unit, and any loan number,
  - (c) the name and telephone number of any person occupying the Unit other than the Owner,
- and
- (d) the name, address, and telephone number of any person managing the unit as agent of the Owner.

**Section 9.02 - Notice of Change.** Each Owner shall notify the Association not later than the 30th day after the date the Owner has notice of a change in any information required by Section 9.01 above, and shall provide the information on request by the Association from time to time.

**Section 9.03 - Notice in Writing.** Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally at the appropriate address provided by Owner under Paragraph 9.01 above, or 72 hours after deposit in any United States post office box, postage prepaid, addressed to the appropriate address provided by Owner under 9.01 above.

#### ARTICLE X Rights of Lenders

**Section 10.01 - Eligible Mortgage Holders.** If the holder, insurer or guarantor of a purchase money lien secured by a mortgage on a Unit (a "Lender") provides the Association a written request, stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guarantees) the mortgage, that holder, insurer or guarantor shall be an "Eligible Mortgage Holder".



**Section 10.02 - Availability of Audited Financial Statements.** Any Eligible Mortgage Holder shall be permitted to have an audited financial statement of the Association's preceding fiscal year prepared at its own expense.

**Section 10.03 - Notices.** The Board shall provide to each Eligible Mortgage Holder timely written notice of:

- (a) default in the mortgagee's payment of assessments or other charges due under the Declaration which is not cured within sixty (60) days;
- (b) any condemnation or casualty loss that affects a material portion of the project or the Unit on which it holds the mortgage;
- (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) any proposed action by the Association that requires the consent of a specified percentage of Eligible Mortgage Holders.

#### ARTICLE XI General Provisions

**Section 11.01 - Duration.** The provisions of this Declaration shall be deemed to run with all or any portion of the Property, and shall be a burden and a benefit to Developer, its successors and assigns, and any persons acquiring or owning any interest in the Property, their grantees, successors, heirs, executors, administrators and assigns; and shall run with the land and shall be binding on all parties and persons claiming under them until December 31, 2019, at which time these Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years each.

**Section 11.02 - Amendment.** Except as otherwise provided by the terms of this Declaration, the provisions of this Declaration may be changed, modified or rescinded by an instrument filed for record in the Real Property Records of Montgomery County, Texas setting forth such change, modification or rescission, signed and acknowledged by at least sixty-seven percent (67%) of the Members, provided that:

- (a) no amendment of this Declaration may alter or destroy a Unit or a Unit's Limited Common Elements, or alter the percentage interest of a Unit Owner in the Common Elements without the consent of the affected Owner;
- (b) any amendment which affects provisions of this Declaration that expressly benefit Eligible Mortgage Holders and any amendment which changes the requirements of this Declaration regarding voting rights, assessments, assessment liens, the priority of assessment liens, reserves for maintenance, repair or replacement of Common Elements, responsibility for maintenance and repairs, redefinition of Unit boundaries, reallocation of interests in the Common Elements or rights to their use, convertibility of Units into Common Elements or vice versa, expansion or contraction of the project, the addition, annexation or withdrawal of property to or from the project, insurance, fidelity bonds, leasing of Units, imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit, restoration or repair of the project after hazard damage or partial condemnation, or termination of the Declaration following substantial destruction or condemnation, shall require the written approval of Eligible Mortgage Holders holding mortgages on 51% of the Units with mortgages held by Eligible Mortgage Holders, in addition to the Member consent required above; and

(c) any amendment which terminates the Declaration for reasons other than total destruction or condemnation shall require the written approval of at least 80% of the Members and Eligible Mortgage Holders holding mortgages on 67% of the mortgaged Units.

Any proposed amendment to this Declaration shall be deemed approved by any Eligible Mortgage Holder who fails to respond within 30 days following receipt of notice of the proposal by certified mail, return receipt requested.

The Developer shall have the authority, without the joinder or consent of any other party, to make any amendment of this Declaration necessary to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors, to adjust the size of each Unit and its percentage interest in the Common Elements based upon as-built conditions, to incorporate into this Declaration any amended Plat based upon as built conditions, or to conform with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or any similar lender or loan guarantor, by written instrument executed by Developer only and filed for record in the Real Property Records of Montgomery County, Texas.

**Section 11.03 - Waiver of Liability.** Neither the Developer nor the Association shall be held liable for any personal injury or damage to property resulting from acts or omissions by the Developer or the Association or their respective agents or employees in connection with the carrying out of any of their rights, duties or obligations under the terms of this Declaration.

**Section 11.04 - Enforcement.** The Association or any Owner shall have the right to enforce all of the covenants and restrictions imposed by the provisions of this Declaration, as the same may be amended from time to time, by any proceedings at law or in equity against any person or persons so violating or attempting to violate any of the provisions hereof, including by means of actions to restrain or prevent such violation or attempted violation by injunction, prohibitive or mandatory. It shall not be a prerequisite to the granting of any such injunction that there be an inadequate remedy at law or that there be any showing of irreparable harm or damage if such injunction is not granted. In addition, any person or entity entitled to enforce the provisions hereof may recover such damages, either actual or punitive, as such person or entity may show themselves justly entitled by reason of such violation. The Association is hereby expressly authorized to use its funds for the purpose of enforcing the terms and provisions hereof. Failure of the Association or any Owner to enforce any covenant or restriction herein contained, or acquiescence in any violation shall not be deemed a waiver of the right to enforce same against the same or other violators. In addition, the Association shall have the right to enter the Property of the violator and correct the violation, or to require that same be corrected, provided, however, that the Association shall institute judicial proceedings before any items of construction can be altered or demolished.

**Section 11.05 - Conflicts with The Woodlands Covenants.** In the event that any clause, sentence, paragraph, sub-section, or section of this Declaration shall be inconsistent with The Woodlands Covenants, then the latter shall be controlling. Nothing in this document shall be construed to confer upon the Association the right to amend, or in any manner change The Woodlands Covenants.

**Section 11.06 - Severability.** Invalidation of any provision of this Declaration by court order or otherwise shall in no wise affect the validity of any other provisions, which shall remain in full force and effect.

**Section 11.07 - Arbitration.** All disputes and controversies between the parties concerning the performance, breach, construction or interpretation of this Declaration, or in any manner arising out of this Declaration, shall be submitted to arbitration before a panel of three arbitrators upon written demand by either party setting forth the name of the arbitrator selected by such party. All arbitrators selected pursuant to this Declaration shall be former judges of state or federal courts who are not affiliated with either party and who have no conflict which would inhibit their providing unbiased decisions. Within thirty (30) days after receipt of

the demand for arbitration, the other party shall notify the demanding party of the name of the arbitrator selected by it. Within thirty (30) days thereafter the two arbitrators so selected shall select a third arbitrator and the decision of any two shall be binding upon the parties. If either party fails to name an arbitrator as required above, an arbitrator shall be chosen for such party by the Judicial Arbitration and Mediation Services, Inc., and the two arbitrators thus designated shall choose a third. If the arbitrators fail to designate the third arbitrator within thirty (30) days after the date of the initial demand for arbitration, the Judicial Arbitration and Mediation Services, Inc. shall upon application by either party, designate the third arbitrator. The arbitrators shall reasonably fix their own compensation, unless otherwise provided by agreement. All costs of arbitration shall be born equally by the parties, provided that the prevailing party shall be awarded such sums as the arbitrator shall deem proper as compensation for the time and expense incident to the proceeding. All arbitration proceedings held in connection with this Declaration shall be held in Harris or Montgomery County, Texas in accordance with the Rules of Practice and Procedure for Arbitration of Commercial Disputes of Judicial Arbitration and Mediation Services, Inc. then in effect. The decision of such arbitration shall be binding on both parties. Exclusive jurisdiction over entry of judgment on any arbitration award rendered pursuant thereto or over any dispute, action or suit arising therefrom shall be in any court of appropriate subject matter jurisdiction located in Montgomery County, Texas, and all Owners, expressly subject themselves to the personal jurisdiction of such court for the entry of any such judgment and for the resolution of any dispute, action or suit arising in connection with the entry of such judgment.

Section 11.08 - Headings. All section and paragraph headings used herein are for convenience only and shall have no efficacy in construing any of the provisions hereof.

This instrument executed by the duly authorized officer of the Developer on the day and year first hereinabove written.

THE RYLAND GROUP, INC.

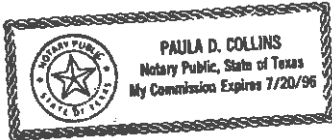
By: James A. Lemming  
Name: James A. Lemming  
Title: President, Houston Division  
"DEVELOPER"

STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

This instrument was acknowledged before me on June 12, 1996 by James A. Lemming, President, Houston Division, of The Ryland Group, Inc., a Maryland corporation, on behalf of said corporation.



Paula D. Collins  
Notary Public, State of Texas

(Printed Name of Notary)

My Commission Expires: