

BOOK 4339 PG. 0087

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Please return to

C. King Askew  
P.O. Box 5513  
Rome, GA 30162-5513

**FOURTH AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE RYMAN FARM  
A PLANNED RESIDENTIAL COMMUNITY SUBDIVISION**

Georgia, Whitfield County:

**THIS FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RYMAN FARM A PLANNED RESIDENTIAL COMMUNITY SUBDIVISION** (hereinafter referred to as "this Amendment"), made on the date hereinafter set forth by **Ryman Farms, Inc.**, a Georgia Corporation (hereinafter sometimes referred to as "Ryman"), **Ole Folks' Partners**, a Georgia general partnership ("Ole Folks"), **Kinard Development, Inc.**, a Georgia corporation ("Declarant") and **Ryman Farm Homeowners' Association, Inc.**, a Georgia Corporation established consistent with the Declaration of Covenants, Restrictions and Easements for the **Ryman Farm** (hereinafter "Homeowners' Association").

**WITNESSETH:**

**WHEREAS**, Ryman was the developer of that certain real estate located in Land Lot No. 298 in the 12 District and 3rd Section of Whitfield County, Georgia, as shown by plat of survey recorded in Plat Cabinet C Slides 1005-1007, Whitfield County, Georgia Land Records (hereinafter referred to as "Ryman Farm Phase I"); and

**WHEREAS**, Ryman was the developer of that certain real estate located in Land Lot No. 298 in the 12th District and 3rd Section of Whitfield County, Georgia, as shown by plat of survey recorded in Plat Cabinet C. Slides 1166-1167, Whitfield County, Georgia Land Records (hereinafter referred to as "Ryman Farm Phase II"); and

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**WHEREAS**, Ryman was also the owner and developer of certain real estate located in Land Lot No. 298 in the 12th District and 3rd Section of Whitfield County, Georgia, as shown by a plat of survey recorded in Plat Cabinet C Slides 1350-1351, Whitfield County, Georgia Land Records (hereinafter referred to as "Ryman Farm Phase III"); and

**WHEREAS**, Ryman was also the owner and developer of certain real estate located in Land Lot No. 298 in the 12th District and 3rd Section of Whitfield County, Georgia, as shown by a plat of survey recorded in Plat Cabinet C. Slide 2118, Whitfield County, Georgia Land Records (hereinafter referred to as "Ryman Farm Phase IV"); and

**WHEREAS**, Ryman was the owner and developer of certain real estate located in Land Lot No. 298 in the 12th District and 3rd Section of Whitfield County, Georgia, as described in Exhibit "A" attached hereto (hereinafter referred to as "Ryman Farm Future Phase"); and

**WHEREAS**, Ryman declared Ryman Farm Phase I to be subject to that certain Declaration of Covenants, Conditions and Restrictions for the Ryman Farm a Planned Residential Community Subdivision dated October 20, 1993, and recorded in Deed Book 2453, Page 146, Whitfield County, Georgia Land Records (hereinafter referred to as the "Declaration"); and

**WHEREAS**, Ryman declared Ryman Farm Phase II to be subject to the Declaration in that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for the Ryman Farm a Planned Residential Community Subdivision, dated January 11, 1995, and recorded in Deed Book 2581, Page 94, Whitfield County, Georgia Land Records; and

**WHEREAS**, Ryman declared Ryman Farm Phase III to be subject to the Declaration in that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for the Ryman Farm a Planned Residential Community Subdivision, dated April 18, 1996, and recorded in Deed Book 2721, Page 254, Whitfield County, Georgia Land Records; and

**WHEREAS**, Ryman declared Ryman Farm Phase IV and Ryman Farm Future Phase to be subject to the Declaration in that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions for the Ryman Farm a Planned Residential Community Subdivision, dated July 21, 2000, and recorded in Deed Book 3335, Page 177, Whitfield County, Georgia Land Records; and

**WHEREAS**, Ryman and Ole Folks transferred all of their rights, title, and interest in the Ryman Farm Future Phase properties to Kinard Development, Inc. as Declarant as recorded in the

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Whitfield County, Georgia Land Records, Deed Book 4087, Page 287-289, and Deed Book 4018, Page 280-283, respectively; and

**WHEREAS**, the Ryman Farm Future Phase properties have been divided into two separate phases, with one portion containing sixteen (16) lots and being described in that engineering drawing prepared by Civil South, Inc. Dated September 3, 2003 and revised July 26, 2004, the "Phase V Drawing" (Exhibit B) and being hereinafter referred to as Future Phase V, and the other portion of said property containing thirty-six (36) lots and being described in that engineering drawing prepared by Civil South, Inc. and dated October 25, 2003, the "Future Phases Drawing" (Exhibit C) and being hereinafter referred to as Future Phases. The attachment of Exhibit B and Exhibit C to this instrument is not intended to, and shall not be construed to create or dedicate easements in the areas designated thereon as utility easements, drainage easements, detention pond, etc., and the creation and dedication of such easements shall be in accordance with the approval of Future Phase V and Future Phases granted by the Whitfield County Planning Commission. Declarant shall seek approval from the Whitfield County Planning Commission of Future Phase V and Future Phases materially in accord with the Phase V Drawing and Future Phases Drawing, respectively, except that Declarant shall be entitled to vary those engineering drawings to the extent the Whitfield County Planning Commission requires changes to comply with existing regulations, to deal with construction exigencies, or Declarant does not acquire some of the property not currently owned by it or an affiliate and described in Future Phases Drawing, and further provided that the development will be in keeping with the requirements of these Declarations as herein amended. The final plats for Future Phase V and Future Phases as approved by the Whitfield County Planning Commission shall replace and supersede Exhibits B and C attached hereto, and shall be made a part of these Declarations and Covenants. The final plats for Future Phase V and Future Phases as approved by the Whitfield County Planning Commission shall be recorded in the Office of the Superior Court of Whitfield County, Georgia.

**WHEREAS**, the parties intend for all future purposes that **Kinard Development, Inc.** shall be substituted for and hereafter serve as the Declarant for the entire Ryman Farm subdivision (including Phase I, Phase II, Phase III, Phase IV, Future Phase V, and Future Phases ); and

**WHEREAS**, Ryman Farms, Inc., Ole Folks' Partners, Declarant, and the Homeowners' Association have agreed to further amend the Declaration of Covenants, Conditions and Restrictions for the Ryman Farm a Planned Residential Community Subdivision as set forth herein, and to also ratify and affirm all terms and conditions of the Declaration of said Covenants, Conditions and Restrictions for the Ryman Farm, as amended, and not otherwise further amended herein.

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**NOW, THEREFORE**, for and in consideration of the premises, and of the benefits to be derived by declaring in each and every subsequent owner any and all of the entire Ryman Farm Subdivision (including Phase I, II, III, IV, and future Phase V, and future Phases and for other good and valuable consideration, Declarant, Ole Folks, Successor Declarant, and the Homeowners' Association hereby amend the Declaration of Covenants, Conditions and Restrictions for the Ryman Farm a Planned Residential Community Subdivision as follows:

1.

Parties hereby acknowledge that Ryman Farm Phase I, Ryman Farm Phase II, Ryman Farm Phase III, Ryman Farm Phase IV, and Ryman Farm Future Phase V and Ryman Farm Future Phases are all subject to the Declaration of Covenants, Conditions and Restrictions for the Ryman Farm, all in accordance with the recorded documents as referenced hereinabove, said Declaration, as amended, and as affecting all of said Phases, being hereinafter referred to as the "Declaration".

2.

Ryman Farms, Inc. hereby transfers and assigns all of its rights and obligations as Declarant to Kinard Development, Inc., and Kinard Development, Inc. as Declarant hereby accepts said transfer of such rights and obligations and agrees to hereafter serve as the Declarant of the Declaration, as amended.

3.

The parties hereto acknowledge and agree that the lots previously platted as part of the Oak Crest Sub Division and recorded in Plat Book 4, Page 76 and being identified as Lots 11 - 22 and ranging in size from 18,583 square feet to 15,000 square feet, in the aggregate the "Oak Crest Lots" and located within the Ryman Farm Phase V and Future Phases, and acquired by Ole Folks and Ryman before the Ryman Farm Phase V and Future Phases (Phases V and VI) were made subject to the Declaration are not Lots as defined in the Declaration as amended and shall be ignored for all purposes, and as if the Oak Crest Lots had never been platted and filed of record, and no Owner or the Homeowners' Association shall have any rights arising by virtue of the platting of the Oak Crest Lots and the Declarant shall be free to plan its development of the Ryman Farm Future Phase (Phase V and Future Phases) as if the Oak Crest Lots had never been platted but always subject to compliance with this Declaration as herein amended, and as in Exhibits B and C.

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4.

§ 1.05 a. of the Declaration is hereby deleted in its entirety and shall hereafter read as follows:

**1.05. "DECLARANT**

**DECLARANT** shall mean and refer to:

- a. **KINARD DEVELOPMENT, INC.**, a Georgia Corporation, one of the entities executing this Declaration; or

5.

§ 1.09. of the Declaration is hereby deleted in its entirety and shall hereafter read as follows:

**"OWNER.** Owner means the record owner (not including Declarant, an individual, corporation, or partnership engaged primarily in the business of building housing units because Declarant, an individual, corporation, or partnership engaged primarily in the business of building housing units do not pay dues to the Homeowners' Association, see § 4.08), whether one or more persons or entities, of a fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security of or for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner."

6.

§ 1.11. of the Declaration is hereby deleted in its entirety and shall hereafter read as follows:

**"RESTRICTIONS** mean all covenants, restrictions, easement charges, liens and other obligations created or imposed by the Declaration and by such other amendments thereto as may hereafter be duly created and imposed."

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7.

§ 2.03. b. of the Declaration shall be deleted in its entirety and shall hereafter read as follows:

"b. borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof, to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property, including Common Property and revenue from assessments, user fees and other sources."

8.

§ 2.06. of the Declaration shall be deleted in its entirety and shall hereafter read as follows:

**"SALES AND CONSTRUCTION OFFICES**Notwithstanding any provisions or restrictions herein to the contrary, Declarant and its authorized agents, representatives, and employees shall have the transferable right easement for the maintenance of signs, sales offices, construction offices and business offices within the Ryman Farm Future Phase, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and sale of Lots, for so long as Declarant owns any Lot or has the unexpired option to add the Contiguous Property or any portion thereof to the Development, provided such signs must be located on Lots owned by the Declarant or a Developer."

9.

§ 3.02 of the Declaration shall be deleted in its entirety and shall hereafter read as follows:

**"MEMBERSHIP.** Every Owner shall be a Member of the association. Membership shall be automatic and shall be appurtenant to and may not be separated from ownership of any lot."

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10.

§ 3.03. shall be deleted in its entirety, and shall hereafter read as follows:

**"VOTING RIGHTS.** Every Member of the association shall have one vote for each Lot owned by the member in Ryman Farm Subdivision. Unless otherwise provided herein, all actions of the Homeowners' Association shall be governed by a majority vote of those Members personally or by proxy in attendance at any meeting of the association called where a quorum is present and conducted in accordance with the By-Laws of the Association."

11.

§ 3.04. shall be deleted in its entirety, and shall hereafter read as follows:

**"MEETINGS AND MINUTES OF MEETINGS.** Subject to the provisions of § 3.02 of this Article III hereof, notice shall be given to Members and Declarant, so long as he owns property within Phase V, Future Phases or property contiguous to the Property, concerning all matters of meetings, including the time within and manner in which the meetings are to be held. The quorum required for the transaction of business at any meeting shall be as specified in the By-Laws of the Association, as amended from time to time, and by law. To the extent that minutes of meetings are prepared, they shall be sent to the Members and the Declarant, so long as he owns property within Phase V, Future Phases or property contiguous to the Property."

12.

ARTICLE IV, "ASSESSMENTS" shall be deleted in its entirety, and shall hereafter read as follows:

**"4.01 PURPOSE OF ASSESSMENTS.** The annual assessments provided for herein shall be levied, spent and used by the Association to further any corporate purpose as set forth in the

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Association's Articles of Incorporation, as amended from time to time, or pursuant to the valid exercise of any corporate power as set forth in said Articles of Incorporation, as amended from time to time. In addition, the Board of Directors of the Homeowners' Association may impose additional assessments for capital improvements and for such non-capital improvements as may be designated by the Board of Directors.

- 4.02 **AMOUNTS OF ANNUAL ASSESSMENTS.** The annual assessments shall be payable to the Association on a January 1st to December 31st fiscal year basis. Beginning January 1, 2003, the annual assessment was established at \$640.00 per year. All annual assessments are payable one-half by January 15th and one-half by May 31st of each such year. If it is determined that the annual assessment is excessive, or is insufficient to produce sufficient funds to satisfy the maintenance costs and current needs of the Association, then at the regularly scheduled annual meeting or at a called special meeting of the Association members (all actions being taken pursuant to the terms of the Articles of Incorporation and By-Laws of the corporation) then the annual assessment may be increased or decreased, as the case may be, in an amount sufficient to satisfy the costs and needs of the Association.
- 4.03 **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, for the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property, provided that any such special assessments shall have been approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting of members duly held in

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accordance with the provisions of the By-Laws of the Association and this Declaration.

**4.04 SPECIAL ASSESSMENTS FOR NON-CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized by this Article IV and the special assessments for capital improvements, as authorized in § 4.03, the Association may levy, in any Assessment year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying business expenses of the Association, including, without limitation, insurance fees, legal fees, business expenses, and such other costs as deemed necessary for the proper functioning of the Association, provided that any such special assessments shall have been approved by two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

**4.05 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** Each Lot now or hereafter subjected to this Declaration is subject to a lien and permanent charge in favor of the Association for the annual assessments set forth in § 4.02 of this Article IV. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the Lot against which it relates, and shall also be the joint and several personal obligation of each Owner of such Lot at the time the assessment fell due, and each such Owner hereby covenants, and by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the same to the Association as and when due.

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- 4.06 **EFFECT OF NON-PAYMENT OF ASSESSMENT; THE PERSONAL OBLIGATION OF THE OWNER; THE LIEN; THE REMEDIES OF ASSOCIATION.** If an assessment is not paid on the date when due, as herein provided, then such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge and continuing lien on the Lot to which it relates, and shall bind such property in the hand of the then Owner, his heirs, legal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass as a personal obligation to his successor in title unless expressly assumed by such successor in title. If such successor in title assumes such prior Owner's personal obligation, such prior Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer, and such prior Owner and such successor in title assuming such liability shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior owner and such successor in title creating the relation of principal and surety as between themselves or creating any relationship as between themselves other than one by virtue of which such prior owner and such successor in title would be jointly and severally liable to pay such amounts.

Any such assessment not paid on the date when due, as hereinabove provided, shall bear interest from the date of delinquency at the maximum rate allowable under Georgia law, and the Association may bring legal action against the Owner personally obligated to pay the same and foreclose its lien against the Lot to which it relates. In either of such events, the Association shall also be entitled to recover attorney's fees in an amount equal to fifteen percent (15%) thereof, and all costs of collection. Each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association or his agent the right and power to bring all

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actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding in law or in equity. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease mortgage and convey the same. No Owner may be relieved from liability for the assessments provided for herein by non-use of the Common Property or by abandonment of his Lot or otherwise.

**4.07 SUBORDINATION OF THE CHARGES AND LIENS TO MORTGAGES.**

- a. The lien and permanent charge of the annual assessment (together with interest thereon and costs of collection) authorized herein with respect to any Lot is hereby made subordinate to the lien of any mortgage placed on such Lot if, but only if, all such assessments with respect to such Lot having a due date on or prior to the date such mortgage is filed for record has been paid. The lien and permanent charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed for record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage.
- b. Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he is the Owner; shall not relieve such property from the lien and permanent charge provided for herein (except to the extent a subordinated lien and permanent charge is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure or by sale

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under power); and no sale or transfer of such property to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure, or pursuant to a sale under power, shall relieve any existing or previous Owner of such property of any personal obligation, or relieve such property or the then and subsequent Owners from liability for any assessment provided for hereunder coming due after such sale or transfer.

- c. Notwithstanding the foregoing, the Association may at any time, either before or after any mortgage or mortgages are placed on such property, waive, relinquish or quit-claim in whole or in part the right of Association to assessments provided for hereunder with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.
- 4.08 **EXEMPT PROPERTY.** Each Lot now or hereafter made subject to this Declaration shall be exempt from the assessments, charges and liens created herein while owned by Declarant or while owned by an individual, corporation, or partnership engaged primarily in the business of building housing units which individual or entity purchases the Lot from Declarant for the sole purpose of constructing thereon for eventual sale a single-family residence through such contractor's own efforts and those of his agents, employees, and subcontractors; provided however, said exception shall no longer apply at any time after which the house becomes occupied. All Common Property, including any Lot which may be designated for use as such by Declarant, shall be exempt from the assessments, charges, and liens created therein.
- 4.09 **ACCUMULATION OF FUNDS PERMITTED.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus,

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any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

- 4.10 CERTIFICATE OF PAYMENT.** Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interests and costs, if any) have been paid, with respect to any Lot owned by said owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued is herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question."

13.

§§ 5.01, 5.02, and 5.03 shall be deleted in their entirety, and shall hereafter read as follows:

- "5.01 LAND USE AND BUILDING TYPE.** No Lot located in Phase I, Phase II, Phase III, and Phase IV, Future Phase V and Future Phases of the subdivision shall be used except for residential purposes and no commercial activity of any kind shall be carried on upon any Lot. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family dwelling not to exceed three stories in height and a private garage for not less than two (2) nor more than four (4) cars. Garage shall be defined as a covered building having three fully enclosed sides. Construction must equal or exceed the requirements that are in effect at the time

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