

RIGHT OF FIRST REFUSAL

This Agreement is made and entered into as of the 29th day of April, 1996, by and among Mathew Lipscomb, III and wife, Cindy D. Lipscomb (the "Lipscombs"), and J. Russell Vollmer and wife Cynthia K. Vollmer (the "Vollmers").

WITNESSETH:

JRW
MULTA
C.K.V.
COJ WHEREAS, the Lipscombs have entered into a certain contract dated April 29, 1996 ("Contract") pursuant to which the Lipscombs have agreed to sell, and the Vollmers have agreed to purchase, a 29.04 acre (more or less) tract of real estate located in DeSoto County, Mississippi, more particularly described by metes and bounds on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, it is a condition precedent to the Lipscombs' agreement to sell the Property to the Vollmers that the Vollmers grant to the Lipscombs the first right to purchase the Property, or any portion thereof, in the event the Vollmers should ever decide to sell or otherwise transfer the Property, or any portion thereof; and

WHEREAS, the Vollmers have agreed to grant to the Lipscombs a Right of First Refusal to purchase the Property, or any portion thereof they desire to sell or transfer, under the terms and conditions set forth herein; and

WHEREAS, the parties hereto have agreed to effect such First Right of Refusal by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed and covenanted as follows:

ARTICLE 1 DEFINITIONS

1.1 "Sale or Transfer" shall mean any direct or indirect sale or transfer of all or any part of the Property, whether by deed, lease or otherwise, occurring on or before April 30, 2017; provided, however, no mortgage or similar encumbrance of the Property, or any part thereof, shall be deemed to be a sale or transfer, and no sale or transfer of a portion of the Property (such portion to comprise at least ten (10) contiguous acres) to a member of the Vollmer's Family shall be deemed to be a sale or transfer; and transfers pursuant to a last will and testament or the laws of descent and distribution shall not be a Sale or Transfer, but the recipient of such a transfer shall be subject to the terms and conditions hereof.

1.2 "Bona Fide Offer" shall mean any offer submitted in writing and signed by the Third Person, containing all of the following information and subject to the following conditions:

- (a) The Third Person's: (i) full name, and (ii) address;
- (b) A legal description of the Property, or portion thereof, to be purchased; and
- (c) The total purchase price, the terms of payment thereof and all other terms and conditions of said offer.

Notwithstanding any provision in this Agreement to the contrary, no offer by any Third Person shall be considered a bona fide offer unless such offer fulfills all of the above conditions. Any sale or transfer which does not meet the above conditions, shall be null and void and without effect.

1.3 "Family" shall mean a mother, father, brother, sister, grandmother, grandfather, son, daughter or grandson or granddaughter of either one of the Vollmers.

1.4 "Third Person" shall mean someone other than a member of the Family of the Vollmers.

ARTICLE 2 **RESTRICTIONS ON SALE OR TRANSFER**

2.1 Restrictions. Except in accordance with the terms and conditions of this Agreement, the Vollmers shall not permit the Sale or Transfer of the Property, or any portion thereof, to any Third Person. Notwithstanding the fact that this Agreement provides the Lipscombs with a right of first refusal over a portion of the Property, nothing herein shall be deemed to allow the subdivision or division of the Property. The Vollmers have represented and warranted to the Lipscombs that they are purchasing the Property for their personal use and not for resale. The Vollmers have further agreed with the Lipscombs that they will not sell or otherwise transfer any portion of the Property to any person other than a member of their family, and only then if the amount sold to the family member contains at least ten (10) contiguous acres and the Vollmers retain at least ten (10) contiguous acres. The Vollmers restate and remake such agreement here, not as a novation of the previous agreement, but to reaffirm again the agreement on this point. The Vollmers further affirm that covenants and restrictions have been or will be filed of record affecting the Property which contains, among other things, restrictions on the subdivision of the Property. To the extent necessary, the Vollmers agree to join in and execute the documents and instruments setting forth the covenants and restrictions.

2.2 Status of Transferee. In the event any Sale or Transfer of the Property, or any part thereof, to a member of the Family, or a third person including, but not limited to, transfers pursuant to a last will and testament or under the laws of descent and distribution, such transferee shall receive and hold such Property, or portion thereof, subject to all of the terms and restrictions of this Agreement.

ARTICLE 3
SALE OR TRANSFER

3.1 Right of First Refusal. The Vollmers shall not permit the Sale or Transfer of the Property, or any portion thereof, that is subject to this Agreement, except in accordance with the following procedures shall be followed.

(a) **The Vollmers' Notice.** Upon receipt of a Bona Fide Offer from a Third Person ("Third Person Offer") to purchase the Property, or any portion thereof, the Vollmers shall notify the Lipscombs in writing of the Third Person's Offer. The Vollmers' notice will be deemed to be an offer by the ' of the Property, or portion thereof to sell to the Lipscombs or their assigns, the Property, or portion thereof to be sold, at a price (and with such terms and conditions) which are no less favorable than that contained in the Third Person Offer.

(b) **Lipscomb Option.** Upon receipt of the Vollmers' notice, the Lipscombs shall have an option to acquire the Property, or portion thereof, that is subject to the Third Person Offer. The Lipscombs shall have thirty (30) days within which to notify the Vollmers of their decision to exercise the option to acquire such Property, or the portion thereof subject to the notice, in accordance with the general terms of the Third Person Offer. Subject to the provisions of Section 3.3., such option shall automatically lapse as to the Property, or portion thereof subject to the notice, at the earlier of the end of the thirty (30) day period or the date the Lipscombs notify the Vollmers in writing that the Lipscombs will not be exercising the option. The option granted by this Section 3.1(b) shall remain in effect as to any portion of the Property not subject to the notice and should the Lipscombs' determine not to exercise the option as to a portion of the Property subject to a notice, they may exercise the option as to any subsequent attempts by the Vollmers to sell or transfer the remainder of the Property, or a portion thereof.

(c) **Additional Lipscomb Option.** Notwithstanding the provisions of the option in Section 3.1(b) above, should the Vollmers desire to make a Sale or Transfer of the Property, or any portion thereof, prior to the completion of the construction of a personal residence on the Property, then the Lipscombs shall have a Right of First Refusal to purchase the Property, or the particular portion thereof subject to the notice, for the same price per acre as they have agreed to sell the Property to the Vollmers pursuant to the Contract, plus an amount equal to six percent (6%) per annum on such price determined per acre, plus the reasonable costs and expenses incurred by the Vollmers in constructing the residence or any other improvements on the Property or portion thereof to be sold, if any. Only those costs and expenses incurred by the Vollmers in construction on or improvement of the portion of the Property to be sold shall be counted, and then only if such costs or expenses are documented to the Lipscombs' reasonable satisfaction. Maintenance costs, including, but not limited to, costs of maintaining a road or common area shall not be counted. The notice and timing provisions set forth in Section 3.1(b) above shall apply to this Section 3.1(c), except the thirty day time period within which the Lipscombs may exercise their option shall not

begin to run until the Vollmers have provided the Lipscombs with documentation reasonably satisfactory to the Lipscombs for the costs and expenses to be included in the option exercise price. The option granted by this Section 3.1(c) shall remain in effect as to any portion of the Property not subject to the notice and should the Lipscombs' determine not to exercise the option as to a portion of the Property subject to a notice given within the applicable five year period, they may exercise the option as to any subsequent attempts by the Vollmers to sell or transfer any other portion or the remainder of the Property within such five year time period.

3.2 Consummation of Purchase. In the event the Lipscombs elect to exercise the option to purchase the Property, or any portion thereof, subject to the Vollmers' notice, such purchase shall be consummated within sixty (60) days following the expiration of the thirty day period within which the Lipscombs may exercise their option, or such time period as may be provided in the Third Person Offer, whichever is shorter.

3.3 Sale by Vollmers. Should the Lipscombs elect not to exercise their option as to the Property subject to the notice (or should the Lipscombs fail to consummate the purchase within the required period), the Vollmers shall then have the right, for one hundred twenty (120) days following the date of the Vollmers' notice or such time period as may be provided in the Third Party Offer, whichever is longer, to consummate a sale with the Third Person, at the price and on the terms and conditions contained in the Third Person's Offer. If such sale is not consummated within said 120-day period, (a) the right of the Vollmers to sell or transfer the Property, or the particular portion thereof subject to the notice, shall be deemed to no longer exist; and (b) the right of the Vollmers to sell such Property or portion thereof subject to the notice under said Third Person Offer shall be subject to all of the terms, conditions and restrictions contained in this Agreement as if said Third Person's Offer never existed. Again, nothing herein shall be deemed as a novation or amendment of the Vollmers' agreement with the Lipscombs not to sell a portion of the Property or otherwise seek to subdivide the Property.

ARTICLE 4 **SPECIFIC PERFORMANCE**

4.1 Specific Performance. The Vollmers and the Lipscombs agree that since the Property is of a unique nature and great sentimental value to the Lipscombs, the Lipscombs would be irreparably damaged in the event that the Vollmers failed to sell or transfer the Property, or any portion thereof, pursuant to the terms and conditions of this Agreement. Additionally, the parties hereto stipulate that it would be impossible to measure in money the damages which would be suffered in the event of a sale in breach of this Agreement. As a result, should a sale or transfer be made which shall not be in conformity herewith, the Lipscombs' rights shall be enforceable by a decree of specific performance. Such remedy shall, however, be cumulative and non-exclusive and shall be in addition to any other remedy which the Lipscombs may have.

any provision of this Agreement or the application thereof to any party or circumstance which shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the minimal extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or the application of such provisions to other parties or circumstances.

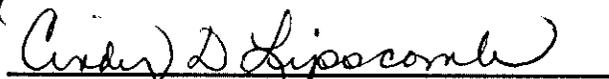
5.7 Modification. No change or modification of this Agreement shall be valid unless the same be in writing and signed by all the parties hereto.

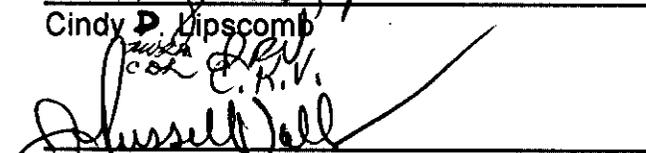
5.8 Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the right of first refusal granted herein. The parties acknowledge the existence of other contracts which contain, among other things, prohibitions against subdivision of the Property and other covenants and restrictions with respect to the use of the Property.

5.9 Memorandum. The parties hereto shall execute a Memorandum of this Agreement in recordable form and same shall be recorded in such public offices as shall be necessary to provide notice of the existence of this Agreement as an encumbrance upon the Property so that no transferee of the Property, or any portion thereof, may be deemed a bona fide transferee without notice of the existence hereof.

This the 2nd day of April, 1996.


Mathew W. Lipscomb, III

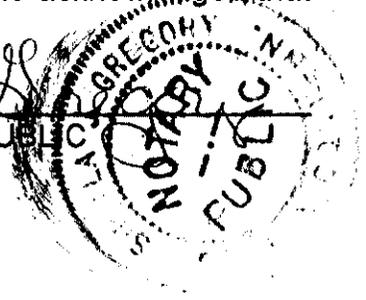

Cindy D. Lipscomb


J. Russell Vollmer


Cynthia K. Vollmer

STATE OF TENNESSEE
COUNTY OF SHELBY

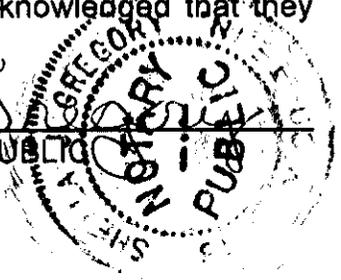
Personally appeared before me, the undersigned authority in and for the said county and state, on this 29th day of April, 1996, within my jurisdiction, the within named Mathew W. Lipscomb, III and wife, Cindy D. Lipscomb, who acknowledged that they executed the above and foregoing instrument.

Sheila J. Gregory
NOTARY PUBLIC


My commission expires:
Aug 26, 96

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 29 day of April, 1996, within my jurisdiction, the within named J. Russell Vollmer and wife, Cynthia K. Vollmer, who acknowledged that they executed the above and foregoing instrument.

Sheila J. Gregory
NOTARY PUBLIC


My commission expires:
Aug 26, 96

PREPARED BY AND RETURN TO:
R. Nash Neyland
Wyatt, Tarrant & Combs
P.O. Box 775000
Memphis, TN 38177-5000
901-537-1000

EXHIBIT A

LEGAL DESCRIPTION

29.04 acres, more or less, located in the Northwest Quarter of Section 26, Township 2 North, Range 9 West, and being part of a 163.90 acre parcel conveyed to Matthew Lipscomb described by Deed recorded in Book 208, Page 156 in the Desoto County Chancery Clerk's Office at Hernando, Mississippi, described as follows:

Commencing at the southwest corner of the Northwest Quarter of said Section 26, same being in the centerline of Baldwin Road; thence due east 818.00 feet to a point; thence due north a distance of 29.40 feet to the center of a post in an existing fence line, said point being the beginning point of the following described 29.04 acre tract; thence north 2 degrees, 38 minutes west along a fence line 369.00 feet to an angle in said fence line; thence north 15 degrees, 36 minutes east along said fence line 207.50 feet to an angle point therein; thence north 16 degrees, 48 minutes west along said fence line 236.50 feet to an angle point; thence north 18 degrees, 30 minutes east along said fence line 842.00 feet to an angle point; thence north 30 degrees, 00 minutes east along said fence line 243.30 feet to an angle point therein; thence north 5 degrees, 42 minutes east 347.40 feet to an angle point; thence north 56 degrees, 42 minutes east 302.60 feet to a corner post in said fence line; thence leaving said fence and continuing the following courses and distances; south 25 degrees, 15 minutes east 273.30 feet to a point; thence south 18 degrees, 30 minutes east 144.80 feet to a point; thence north 71 degrees, 30 minutes east 100.00 feet to a point; thence south 18 degrees, 30 minutes east 325.00 feet to a point; thence north 71 degrees, 30 minutes west 100.00 feet to a point; thence south 38 degrees, 45 minutes west 543.50 feet to a point; thence south 26 degrees, 50 minutes east 300.00 feet to a point; thence south 8 degrees, 10 minutes east 559.60 feet to a point; thence south 64 degrees, 18 minutes west 873.60 feet to the point of beginning.

STATE MS. - DESOTO CO. p2
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BK 71 PG 483
W.E. DAVIS CH. CLK.