

**PREPARED BY & RETURN TO:**  
**AUSTIN LAW FIRM, P.A.**  
**ATTORNEYS AT LAW**  
**6928 COBBLESTONE DRIVE, SUITE 100    RIGHT OF FIRST REFUSAL**  
**SOUTHAVEN, MS 38672**

~~662-890-7575~~ Agreement is made and entered into as of the 11  
day of November, 2004, by and among Charles Anderson, Margie  
Mays and R. McKeever Heun (hereinafter "Owner"), and Robert  
D. Allen, Sr. and Robert D. Allen, Jr. (the "Allens").

W I T N E S S E T H:

WHEREAS, the Owner has entered into a certain contract dated November 3, 2004, ("Contract") pursuant to which the Owner has contracted to buy a parcel of land located at the east half of the Southwest Quarter of Section 16, Township 3 South, Range 6 West located in DeSoto County, Mississippi, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Allens are desirous of entering in to an agreement should said property be again transferred in the future that they hold a first right to purchase the property, in the event the Owner should ever decide to sell or otherwise transfer the Property, or any portion thereof; and

WHEREAS, the Owner has agreed to grant to the Allens a Right of First Refusal to purchase the Property, if 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, provided

however, no mortgage or similar encumbrance of the Property or transfer upon foreclosure of the same, or any part thereof, shall be deemed to be a sale or transfer, and no sale or transfer of a portion of the Property to a member of the Owner'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 the Owner or the members thereof.

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

## **ARTICLE 2**

### **RESTRICTIONS ON SALE OR TRANSFER**

**2.1 Restrictions.** Except in accordance with the terms and conditions of this Agreement, the Owner shall not permit the Sale or Transfer of the Property, or any portion thereof, to any Third Person. This agreement shall not restrict the owner's right to mortgage, or otherwise encumber, including by refinance, any portion of the

property and this right of first refusal is and shall be construed as subordinate to any deed of trust which or may become existing against the property during the term of this agreement.

**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 Owner 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 Allens' Notice.** Upon receipt of a Bona Fide Offer from a Third Person ("Third Person Offer") to purchase the Property, or any portion thereof, the Owner shall notify the Allens in writing of the Third Person's Offer which contains the terms and conditions. The Allens' shall be given 10 days from receipt of the notice to match the Third Person Offer containing the same terms and conditions. The Allens shall notify the Owner in writing that it is their decision to exercise the option to acquire such Property in accordance with the general terms of the Third Person Offer.

**3.2 Consummation of Purchase.** In the event the Allens elect to exercise the option to purchase the Property, or any portion thereof, subject to the Allens' notice, such purchase shall be consummated within thirty (30) days.

**3.3 Sale by Owner.** Should the Allens elect not to exercise their option as to the Property subject to the notice (or should the Allens fail to consummate the purchase within the required period), the Owner shall then have the right, for one hundred twenty (120) days following the date of the Allens' 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 the Allens' right of first refusal shall renew and they shall be given the same notices as set out above. Should said sale be consummated, however, this agreement shall be considered fulfilled and shall terminate by its terms.

**3.4 Sale by Allens.** If the Allens sell any or all of the property described in the attached exhibit "b", this agreement shall terminate. The terms and conditions of this agreement shall be null and void and this agreement does not run with the land.

**3.5 Termination Date.** This agreement shall expire as to all parties on December 31, 2034.

#### **ARTICLE 4** **SPECIFIC PERFORMANCE**

**4.1 Specific Performance.** The Allens and the Owner agree that since the Property is of a unique nature, the Allens would be irreparably damaged in the event that the Owner failed to sell or transfer the Property, 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 Allens' rights shall be enforceable by a decree of specific performance.

#### **ARTICLE 5** **MISCELLANEOUS**

**6.1 Form of Notice.** Any notice required hereunder shall be in writing, shall be signed by the party rendering such notice and shall be deemed delivered upon delivery by hand by any national overnight carrier such as Federal Express or on the third day following deposit thereof in the United States certified or registered mail, postage prepaid, and addressed to the party to be notified at their address as shown below:

If to the Owner: \_\_\_\_\_

If to the Allens:

With a copy to: Austin Law Firm, P.A.  
6928 Cobblestone Drive, Ste

100

Southaven, MS 38672

Any address of any party may be changed by notice in writing to the other parties duly served in accordance herewith.

**5.2 Captions.** The various titles and captions contained in this Agreement are inserted for convenience of reference only and shall be ignored in any construction of the provisions thereof.

**5.3 Pronouns.** All pronouns and any variations thereof shall be deemed to include the masculine, feminine, singular and plural thereof as the identity of the person or persons as the context may require.

**5.4 Construction.** This Agreement shall be construed and administered and the validity thereof shall be determined in accordance with the laws of the State of Mississippi.

**5.5 Agreement May be Executed in Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original.

**5.6 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If there is 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.

This the 11 day of November, 2004.

Robert D. Allen Sr  
Robert D. Allen, Sr.

Robert D. Allen Jr  
Robert D. Allen, Jr.

Charles M Anderson  
Charles M. Anderson

R. McKeever Heun  
R. McKeever Heun

Margie S Mays  
Margie S. Mays



State of Mississippi  
County of DeSoto

Personally appeared before me, the undersigned authority in and for said county and state, on this 11 day of November, 2004, within my jurisdiction, the within named ROBERT D. ALLEN, SR. AND ROBERT D. ALLEN, JR., who acknowledged, that they executed the above and foregoing instrument as their free and voluntary act and deed and for the purposes therein expressed.

Wanda Sandlin  
Notary Public

My Commission Expires: August 25, 2006



State of Mississippi  
County of DeSoto

Personally appeared before me, the undersigned authority in and for said county and state, on this 11 day of November, 2004, within my jurisdiction, the within named CHARLES M. ANDERSON, that he executed the above and foregoing instrument as his free and voluntary act and deed and for the purposes therein expressed.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_



State of Mississippi  
County of DeSoto

Personally appeared before me, the undersigned authority in and for said county and state, on this 11 day of November, 2004, within my jurisdiction, the within named R. McKeever Heun, that he executed the above and foregoing instrument as his free and voluntary act and deed and for the purposes therein expressed.

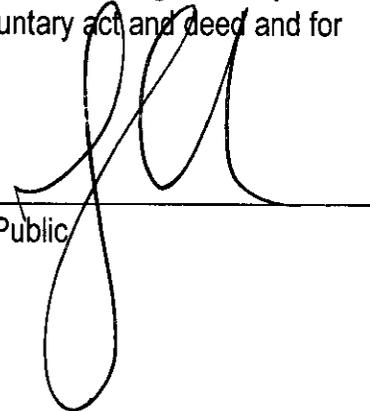
[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_

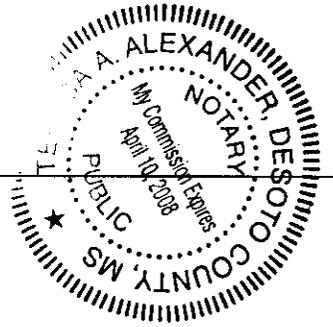


State of Mississippi  
County of DeSoto

Personally appeared before me, the undersigned authority in and for said county and state, on this 11 day of November, 2004, within my jurisdiction, the within named Margie S. Mays, that she executed the above and foregoing instrument as her free and voluntary act and deed and for the purposes therein expressed.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



The East Half of the Southwest Quarter of Section 16, Township 3 South, Range 6 West, and being the same land conveyed to C. W. Anderson by deed of record in Deed Book 28, Page 127 and being the same land left to Thomas Bradley Anderson and William Lee Anderson under the Will of C. W. Anderson as shown of record in Will Book 6, Page 377, Chancery Clerk's Office, DeSoto County, Mississippi, being 80 acres more or less.

(S04-1030.PFD/S04-1030/4)