

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 20___ (the "Effective Date") by and between **D & D Vail Trust** ("Seller") and **The Town of McCordsville**, an Indiana political subdivision ("Buyer"). Seller and Buyer are sometimes referred to herein, individually, as a "Party" and sometimes referred to herein, collectively, as the "Parties."

RECITALS

A. Seller is the fee simple owner of certain real property located in Hancock County, Indiana, which property is more particularly described on **Exhibit A**, attached hereto and by this reference made a part of this Agreement, together with any and all buildings, structures and other improvements located thereon (the "Property").

B. Buyer desires to obtain from Seller, and Seller is willing to grant to Buyer, upon the terms identified herein, a right of first refusal (the "ROFR") to purchase the Property.

C. The Parties have reached agreement on the terms and conditions of the right of first refusal and now desire to reduce their agreement to writing.

AGREEMENT

1. Recitals. The above Recitals are true and correct and by this reference made a part of this Agreement.

2. Right of First Refusal. Seller hereby irrevocably grants to Buyer a ROFR to purchase all or any portion of the Property. Upon receiving an offer, the Seller shall notify the Buyer and provide the Buyer 30 days to execute the right to purchase. If Buyer fails to purchase all or any portion of the Property, this Agreement shall be null and void.

3. Consideration. As consideration for the ROFR, Buyer agrees to pay the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00) to Seller within thirty (30) days of the date the annexation of the Property is complete. That sum shall be reduced from the overall purchase price of the Property should Buyer deliver a timely Purchase Notice to Seller. Seller agrees, upon execution of this Agreement, to seek annexation with the Town of McCordsville.

4. Governing Law. This Agreement has been entered into in the State of Indiana, and the laws of the State of Indiana shall govern the validity, enforcement and interpretation hereof, and the rights and obligations of the Parties hereto.

5. Captions. Titles or captions of sections or paragraphs in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, extend or describe the scope of this Agreement or the intent or meaning of any provision hereof.

6. Invalid Provision. The invalidity or unenforceability of a particular provision under this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such void, invalid, or unenforceable provision were omitted.

7. Notice. All notices, demands, consents, and acceptances required or permitted hereunder shall be in writing and shall be deemed to have been duly given or served if delivered in person or deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested, and addressed to a Party at the street address for that Party set forth below or at such other address as a Party may designate by notice in accordance with this paragraph.

To Seller: Dan Vail
6419 Vail Road
McCordsville, IN 46055
Email: dddfarm@gmail.com

Donis Vail
6549 Vail Road
McCordsville, IN 46055
Email: scubanurse56@yahoo.com

To Buyer: Town of McCordsville
Attn: Town Manager
6280 Vail Road
McCordsville, IN 46055
Email: tgropp@mccordsville.in.gov

8. Amendment. This Agreement contains the entire agreement of the Parties with respect to the subject matter herein described and may not be changed or modified verbally; this Agreement may be modified only by written amendment signed by both of the Parties.

9. Binding Effect and Recording. This Agreement shall run with the land and shall be binding on and inure to the benefit of (a) Seller and Seller's successors in title to the Property, and (b) Buyer and any assignee of Buyer. Either Party may record this Agreement in the office of the Hancock County Recorder.

10. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, or legal holiday under the laws of the State of Indiana, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The final day of any such time period or deadline shall be deemed to end at 5:00 p.m. EST, unless otherwise specified.

11. Remedies. If either Party fails to perform the covenants or observe the restrictions set forth in this Agreement, the other Party may commence an action in Hancock County Court and may seek either to specifically enforce the other Party's performance or obligations under this Agreement or to recover damages for that Party's failure to perform the covenants or observe the restrictions set forth in this Agreement. The prevailing Party in any such action shall also be entitled to recover that Party's reasonable attorney's fees and costs.

[Signatures follow]

EXHIBIT A

Legal Description of the Property

The West half of the Southwest Quarter of Section 31, Township 17 North, Range 6 East, containing eighty (80) acres, more or less.

EXCEPTION: A part of the west half of the southwest quarter of Section 31, Township 17 North, Range 6 East, in Vernon Township, Hancock County, Indiana, more particularly described as follows, to-wit:

Commencing at the northwest corner of said quarter section, said point being marked by an old corner fence post, thence on an assumed bearing of North 88 degrees 50 minutes 00 seconds East, a distance of 1333.50 feet along the north line of said quarter section to a railroad spike on the east line of the west half of said quarter section, thence South 00 degrees 06 minutes 00 seconds East a distance of 707.56 feet along the east line of said west half to a P.K. Nail at the point of beginning of this description; thence South 00 degrees 06 minutes 00 seconds East a distance of 250.00 feet along the east line of said west half to a P.K. Nail, thence South 89 degrees 54 minutes 00 seconds West a distance of 174.25 feet to an iron pin, thence North 00 degrees 06 minutes 00 seconds West a distance of 250.00 feet to an iron pin, thence North 89 degrees 54 minutes 00 seconds East a distance of 174.25 feet to the point of beginning, containing 1.000 acre, more or less, subject to right-of-way for County Road 500 W and subject to any easements of record.

ALSO, the East half of the Southeast Quarter of Section 36, Township 17 North, Range 5 East, containing Eighty (80) acres, more or less.