

Model Grant of Right of First Offer with Commentary

Prepared by the
Pennsylvania Land Trust Association

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Colcom Foundation

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Community Conservation Partnerships Program,
Environmental Stewardship Fund, under the
administration of the Pennsylvania Department
of Conservation and Natural Resources,
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Preface

A Foot in the Door

Your organization wants to buy a particular parcel of land important to its conservation goals. Unfortunately, the owners have no interest in selling to your organization or to anyone. They may offer it to you some day but, then again, they may have forgotten your conservations, think it's not worth the trouble of reaching out, or leave matters to their heirs.

What can your organization do? One possibility is to seek one or more rights of first purchase. The guide [*Rights of First Purchase \(Offer, Negotiation and Refusal\)*](#), published by the Pennsylvania Land Trust Association, describes these rights and how they may help you.

This publication provides a model legal document that may be used to obtain two of these rights—the right of first offer and right of first negotiation. These rights give an organization a crucial foot in the door—a guaranteed opportunity to someday deal with the owners or their heirs *before* the property goes on the market.

Rights of First Offer and Negotiation

The holder of a *right of first offer* has the opportunity to purchase land before any other prospective purchasers. When the owners wish to sell their land, they must first make an offer (determined at their discretion) to the holder of the right; the holder may then take or leave the offer.

Alternatively, the right can be structured so that the holder, rather than the owners, makes the initial offer, and the owners then accept or reject it.

If the offer is rejected and the holder of a right of first offer also holds a *right of first negotiation*, then the owners must refrain from marketing their property and engage in good faith negotiation with the holder for a period of time. However, neither the owners nor the holder are obligated to reach agreement.

A Tool to Obtain Rights of First Offer and Negotiation

The [*Model Grant of Right of First Offer*](#) provides a tool for documenting a commitment by landowners to turn first to a conservation organization before looking elsewhere for a purchaser. It includes both a right of first offer and a right of first negotiation.

The commentary to the model explains the purpose of each provision in the model, refers the user to pertinent portions of the guide [*Rights of First Purchase*](#) for deeper examination of issues, and provides alternative provisions to address various circumstances and needs.

The [*Model Grant of Right of First Offer*](#) contemplates a purchase of land. If you instead wish to obtain *an easement*, an attorney experienced in real estate law could adapt the model to serve the need.

Other Tools for Facilitating Acquisitions

The *Model Grant of Right of First Offer* applies to a time period before the landowners put their property up for sale. In contrast, the [*Model Grant of Right of First Refusal*](#) is used to assure that, after a property's exposure to the real estate market, your organization has an opportunity to match a competing bid the landowners are ready to accept. You may use the model on its own or in conjunction with the *Model Grant of Right of First Offer*

The [*Model Grant of Purchase Option*](#) may be useful when the landowners are willing to (1) sell their land or an easement to your organization within a certain time frame or upon the occurrence of a specific triggering event and (2) commit to a specific purchase price or a well-defined method for establishing the price.

When land is to be acquired, whether by purchase or acceptance of a donation, a well-drafted agreement for sale helps protect the conservation organization's interests. The guide [*Matching Form to Circumstance for Conservation Acquisitions*](#) provides guidance for preparing a sales agreement that appropriately addresses matters specific to conservation projects.

A prospective easement donor and conservation organization can use the [*Model Preliminary Agreement Regarding Conservation Easement Donation*](#) to establish the process they will follow in exploring, planning, and completing an easement donation.

Improve the Next Edition

The Pennsylvania Land Trust Association welcomes suggestions for improving the effectiveness of its model documents and commentaries. Please direct your comments to aloza@conserveland.org.

Acknowledgements

Patricia L. Pregmon, Esq., is the principal author. *Andrew M. Loza* is the contributing author, editor, and project manager.

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Find Materials Online

The Pennsylvania Land Trust Association publishes at ConservationTools.org all of the model legal documents and guides referenced in this preface.



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The Model

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Prepared by and Return to:

Parcel Identification:

Grant of Right of First Offer

Date of Grant:

Owners:

Grantee:

INTENDING TO BE LEGALLY BOUND and in consideration of the sum of \$1.00, the above identified Owners grant to the above identified Grantee the rights described below affecting the Property described in the attached Property Description.

Certain initially capitalized terms used in this document are defined in §6.

1 Intent to Transfer to Third Party

- 1.1 **Notice.** If the Owners want to Transfer the Property to a Third Party, they must notify the Grantee of their intent to Transfer and, until the Grantee has had the opportunities to purchase described in this Grant, the Owners must not (a) list the Property for sale with a broker or other agent or otherwise offer it for sale or other Transfer to a Third Party or (b) discuss or negotiate the terms of a Transfer with a Third Party.
- 1.2 **Less than whole.** If the Owners' notice applies to only a portion of the Property, then the Grantee's opportunity to offer and the Grantee's rights ending as described in §§1-4 pertain only to that portion of the Property. The Grantee's rights as to the remainder of the Property continue unchanged.

2 Opportunity of first offer

- 2.1 **Offer.** The Owners' notice of intent to Transfer must include the purchase price and other terms of sale that the Owners are willing to accept in consideration of the Transfer of the Property (the "Owners' Offer").
- 2.2 **Response.** Within thirty days after receiving the notice of intent to Transfer (the "Acceptance Period"), the Grantee may, by notice to the Owners, accept the Owners' Offer

or make a counteroffer setting forth the purchase price that Grantee is willing to pay and other terms the Grantee is willing to accept in consideration of the Property.

3 Opportunity to negotiate in good faith

- 3.1 **Negotiation.** If the Grantee responds to the Owners' Offer with the Grantee's counteroffer, then during the time remaining of the Acceptance Period and the thirty days following (together, the "**Negotiation Period**"), the Owners and the Grantee must make good faith attempts to find mutually acceptable terms for the sale of the Property.
- 3.2 **Open offers.** The initial offer and counteroffer remain open and available for acceptance for the entire Negotiation Period.

4 End of Grantee's rights

- 4.1 **Conditions that end rights.** The Grantee's rights under this Grant are ended and the Owners are free to offer the Property for sale to Third Parties if:
- (a) at the end of the Acceptance Period, the Owners have not received notice that the Grantee has either (1) accepted the Owners' Offer or (2) elected to negotiate during the Negotiation Period by submitting the Grantee's counteroffer; or
 - (b) at the end of the Negotiation Period, (1) no offer has been accepted and (2) the Owners and the Grantee fail to reach agreement on mutually acceptable terms for the Transfer of the Property.
- 4.2 **Reinstatement of rights.** The Grantee's rights under this Grant are reinstated if the Owners have not completed a Transfer of the Property to a Third Party within one year following the end of the Acceptance Period.

5 Requirements for giving notice

Notices under this Grant, including notice of change of address, must be in writing and delivered to the Owners or the Grantee, as the case may be, at their respective addresses set forth next to their signatures below by any of the following means: certified mail (return receipt requested), commercial courier guaranteeing next day delivery, or hand delivery.

6 Defined terms

"**Grant**" means this granting document.

"**Grantee**" means the Person or Persons identified at the beginning of the Grant and its successors and assigns.

"**Owners**" mean the Person or Persons identified as the Owners above and all Persons who own the Property after them.

"**Person**" means an individual or entity including a trust, corporation, partnership, limited liability company, or other organization.

"**Property**" means the entirety of land described in the Property Description attached to and incorporated into this Grant or, as applied to a notice of intent to Transfer some but not all of the Property, then such lesser portion as is the subject of the notice.

“Public Records” mean the office for the recording of deeds in the county in which the Property is located.

“Third Party” means a Person other than the Owners, the Grantee, a lineal descendant of the Owners (including adopted children and stepchildren) or a trust established for the benefit of the Owners or such Persons, or a Person controlled by the Owners.

“Transfer” means a change of ownership or control of the Property and includes any of the following whether in a single transaction or a series of transactions and whether the transfer is voluntary, involuntary, by operation of law, or otherwise: (a) the direct or indirect sale, agreement to sell, assignment, or conveyance of the Property; and (b) the transfer of stock, partnership or other ownership interests in an Owner (if an Owner is at any time an entity rather than one or more individuals).

7 Recording

This Grant may, at the option of the Grantee, be recorded in the Public Records. Once the Grantee’s opportunities to purchase under this Grant have ended without possibility of reinstatement, the Grantee must execute, at the request of the Owners, a release of this Grant for recording in the Public Records.

INTENDING TO BE LEGALLY BOUND, the Owners have signed and delivered this Grant as of the Date of Grant identified above.

Street Address for Notices:

Signatures of the Owners:

_____ (Seal)

_____ (Seal)

The Grantee signs below to evidence its acceptance of the terms of this Grant:

Street address for notices to the Grantee:

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to this Agreement, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

This document is based on the Model Grant of Right of First Offer (edition of March 2, 2016) provided by the Pennsylvania Land Trust Association.

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised under the guidance of legal counsel to reflect the specific situation.

Commentary to the Model Grant of Right of First Offer

General Instructions

Read the commentary. Read through the commentary at least once. It explains the purpose of each section and subsection and, oftentimes, provides alternatives to address various situations.

Structure. The model follows a simple outline structure. The commentary uses the same numbering and captions as the model, making cross-referencing easy.

Get legal counsel. Do not construe or rely upon the model and commentary as legal advice or legal opinion on any specific facts or circumstances. You should tailor the model to reflect the specific circumstances of the particular project and you should do so with the guidance of legal counsel.

Disclaimer box. If each party to the document has had legal counsel, it is appropriate to delete the box at the end of the document that begins “The model on which this document is based should not be construed or relied upon as legal advice....”

Other states. Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.

Updates. Check ConservationTools.org periodically for updates to the model and this commentary.

Format and Identifying Information

Format. County recording offices vary in their margin, page-size, font and other formatting requirements for documents presented for recording. A common margin requirement is 3 inches at the top of the first page of a document and an inch for all other margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents be printed on 8.5-inch by 11-inch paper. Many counties require type size not less than 10-point. The model is formatted to conform to these typical requirements.

Identifying information. Many county recording offices require information identifying the preparer (including both address and telephone number), the name and address of the person to whom the document is to be returned, and the tax parcels of the real estate to which the document pertains. The model conforms to these requirements. If unneeded or undesirable in a particular

county, delete the text but keep the lines in order to preserve a 3-inch margin at the top of the first page.

Preparer. Pennsylvania law does not require that a lawyer or law firm be identified as the preparer of the document; nevertheless, legal review is important. See the note “Get legal counsel” above.

Do not identify a lawyer as the “preparer” if the lawyer did not, in fact, prepare the particular document or was not given the opportunity to review *all of the changes* made to the document. Lawyers and other professionals, such as architects and engineers, are legally and professionally responsible for the work they produce for clients. It is legally and ethically improper to represent to the public that a legal document, survey plan, or architectural drawing is the work product of a professional if it has been changed without the knowledge or consent of that professional.

Basic Document Information

Title of Document. The title “Grant of Right of First Offer” differentiates the granting document (the “Grant”) from the real estate interest (the right of first offer) granted by execution and delivery of the document.

Date of Grant. Identify the date the right of first offer becomes effective by delivery of the Grant signed by the Owners.

Owners. Identify the full legal names of the persons who own the land that is the subject of the right of first offer and who are granting the right of first offer to the Grantee.

If the full legal names of the Owners do not match those on the last deed of record (for example, there has been a death), it is good practice to recite the off-record facts to clear up the apparent gap in title. These facts typically are recited either with the names of the Owners at the beginning of the granting document or at the end of the attached Property Description.

Grantee. Identify the proper legal name of the Grantee.

Opening Recital

Purpose. To set forth who is conveying the right of first offer to whom, the property that is subject to the right of first offer, and the consideration provided.

Intending to be legally bound. The grant of a right of first offer must be supported by consideration, or a legally sufficient substitute for consideration, to be enforceable against the Owners (defined in §6 to include all Owners of the land). Under Pennsylvania law, the phrase “intending to be legally bound” is a

valid substitute for consideration if the Owners were not compensated for the Grant. See the guide [Pledges and Donation Agreements](#) for more information.

Generally no or nominal cash consideration is paid. Granting a right of first offer results in little disadvantage to the Owners; it is a cause of only minor inconvenience, if that, sometime in the future. Consequently, Owners who have any interest at all in the possibility of conserving their land generally grant the right of first offer to a conservation organization for no or nominal (e.g., one or ten dollars) consideration.

Nominal consideration is unnecessary. The inclusion of nominal consideration is unnecessary under Pennsylvania law if the phrase “intending to be legally bound” is used; however, many attorneys feel more comfortable with its inclusion.

If Owners need financial inducement. If payment is necessary to induce the Owners to grant the right, change “the sum of \$1.00” to the agreed upon amount.

Initially capitalized terms. The opening recital ends with a cross-reference to §6, which defines certain initially capitalized terms.

Main Body of the Grant

1 Intent to Transfer to Third Party

1.1 Notice

The right of first offer process begins when the Owners decide to sell or otherwise Transfer the Property to a Third Party.

Importance of notice of intent. As discussed in the guide [Rights of First Purchase](#), the fundamental value of a right of first offer is informational. The Owners’ notice of intent informs the Grantee that the Property soon will be put on the market. It provides the Grantee the opportunity to reach out to the Owners and present them with information that otherwise wouldn’t have been considered (for example, the Grantee’s sincere interest in purchasing, the Grantee’s financial capacity to purchase, the avoidance of a real estate commission, or the possibility of tax advantages in dealing with a charitable organization).

Key terms. The obligation to furnish notice of intent is triggered by an intent to *Transfer the Property to a Third Party*:

- The Owners must intend to “Transfer,” which is defined in §6 to encompass a wide variety of events in which control of the property will pass from the current Owners to subsequent Owners.
- The Transfer must be to a “Third Party,” which is defined in §6 to exclude Transfers to family members, to trusts for the benefit of family members,

and to controlled companies. Those exclusions may be narrowed, for example, by elimination of controlled companies, or widened, for example, by excluding Transfers to spouses of lineal descendants.

- The “Property” transferred may be the entirety of the Property described in the legal description attached to the Grant or, as described in §6, it may be a portion of that Property.

1.2 Less than whole

Purpose. The notice of intent may apply to less than the whole of the Property. In this case, no matter the outcome in regards to the proposed Transfer of the portion, the Grantee’s right of first offer remains in effect as to the remainder of the Property.

2 Opportunity of first offer

Purpose. To describe the process that will afford the Grantee the opportunity to purchase the Property when the Owners decide to sell their Property but before they expose it to the market or entertain bids from others.

2.1 Offer

Purpose. To establish that the notice of intent is not simply informational but constitutes a firm offer by the Owners to sell at the price and terms set forth in the notice.

2.2 Response

Purpose. To stipulate the number of days the Owners’ offer remains open for acceptance by the Grantee. (Assuming users retain the model’s §3 and a counteroffer is made, the number of days will be extended per §3.)

Number of days. The default text of the model and alternative provisions provides the recipient of the offer thirty days to accept it (if at all). This number of days is merely a placeholder. Any number of days or months may be substituted.

Additional provision: Incorporate full terms of sale into acceptance of offer

Avoid uncertainty and potential disputes. Offers to sell or purchase at a certain price (but which fail to address other terms of sale) leave the other terms to be determined later by mutual agreement or, failing that, by implication based upon what a court determines would be reasonable and customary under the circumstances. Incorporating specific terms in an offer affords both the Owners and the Grantee the opportunity to avoid future disputes and litigation. One way to avoid uncertainty is to incorporate other terms by reference in the offer or by

attaching to the offer the agreement of sale to be signed upon acceptance of the offer.

Example of incorporation *by reference* (add to §2.2):

Grantee's acceptance must take the form of Grantee's execution and delivery to Owners of the current form agreement for the sale of real estate published by the Pennsylvania Association of Realtors completed to reflect the terms set forth in this offer.

Example of incorporation *by attachment* (add to §2.2):

Grantee's acceptance must take the form of Grantees' execution and delivery to Owners of the Agreement of Sale attached to this notice and incorporated into the notice by this reference.

Alternative provision: Grantee offers first

Instead of Owners, Grantee offers first. If the Owners are uncomfortable with putting a firm offer on the table first (as in the default provision), the order of offer and acceptance can be reversed by replacing the content of §2.1, §2.2, §3.1, §3.2 and §4.1 as follows:

- 2.1 **Offer.** The Owners' notice of intent to Transfer constitutes a request for an offer to purchase from the Grantee. The Grantee must respond to the Owners' request for offer (if at all) by notifying the Owners of its proposal within thirty days after receipt of the Owners' notice of intent to Transfer (the "Response Period"). The Response Period is extended to sixty days if the Grantee notifies the Owners within fifteen days after receiving the Owners' notice that the Grantee intends to obtain, at the Grantee's expense, an appraisal of the Property. The Grantee's proposal constitutes a firm offer to purchase at the purchase price and other terms set forth in the Grantee's notice to Owners of the terms of its offer.
- 2.2 **Response.** The Owners must notify the Grantee of their acceptance of the Grantee's proposal (if at all) not more than thirty days after receiving the Grantee's notice (the "Acceptance Period"). The Acceptance Period is extended to sixty days if the Owners notify the Grantee within fifteen days after receiving the Grantee's proposal that the Owners intend to obtain, at the Owners' expense, an appraisal of the Property.
- 2.3 **Appraisal.** If the Response Period per §2.1 or the Acceptance Period per §2.2 is extended, then the Grantee or the Owners, as the case may be, must commission a Pennsylvania certified general real estate appraiser to perform the appraisal and provide the appraisal report to the other party with the proposal or acceptance (if any) as the case may be. The Owners permit appraisers to access the Property for these purposes.

- 3.1 **Negotiation Period.** If the Grantee provides the Owners with a proposal under §2 and the Owners do not accept it, then during the time remaining of the Acceptance Period and the thirty days following (together, the “Negotiation Period”), the Owners and the Grantee must make good faith attempts to find mutually acceptable terms for the sale of the Property.
- 3.2 **Open offers.** The Grantee’s and the Grantor’s offers remain open and available for acceptance for the entire Negotiation Period.
- 4.1 **Conditions that end rights.** The Grantee’s rights under this Grant are ended and the Owners are free to offer the Property for sale to Third Parties if:
- (a) at the end of the Response Period, the Grantee has not made an offer to the Owners; or
 - (b) at the end of the Negotiation Period, (1) no offer has been accepted and (2) the Owners and the Grantee fail to reach agreement on mutually acceptable terms for the Transfer of the Property.

Disadvantage of offering first. The default provision is more advantageous to the Grantee because the Owners’ first offer establishes a ceiling on the purchase price for purposes of future negotiations. If the Owners are willing to compromise to reach agreement, the purchase price will almost always move down (not up). The alternative provision is more advantageous to the Owners because it establishes a floor on the purchase price for purposes of future negotiations. The Grantee may raise the purchase price from its initial offer but rarely lowers it unless justified by previously unknown information.

Additional provision: Resolution between market values

Average market value. The Owners or the Grantee may want to include a provision to end negotiation and set a purchase price if they both have obtained appraisals and the two values are within a certain range of each other. In that case, add the following after §2.3 “Appraisal” above:

- 2.4 **Market value purchase price.** If both the Grantee and the Owners have obtained appraisals, and the appraisal reports indicate that the higher of the two values does not exceed the lower by more than 10%, then the average of the two values is agreed to be the purchase price for the Property.
- The figure of 10% is merely a placeholder. Any figure may be substituted.
 - If the purchase price is established by the two appraisals, the parties may still want to include in the Grant the opportunity for further negotiation as to other terms of sale.

Alternative provision: Appraisals precede offer

Valuation problem. Owners are seldom armed with comprehensive and impartial guidance as to their land's value before placing their property on the market. They often overestimate the land's value and recognize this only after many months of the property failing to attract the bids they expected. In the context of a right of first offer, the Owners unrealistic expectations may place the Grantee in a difficult if not impossible bargaining position.

Good information early. An alternative approach starts by providing the Owners with professional, third party opinions regarding their land's value. The chief challenge with this alternative is that the Owners may not be willing to commit to paying for an appraisal.

Adjustments needed to implement. To implement this alternative, (1) use the replacement text for §3.1, §3.2 and §4.1 (presented above) for when the Grantee offers first and (2) replace §2's subsections with the following:

- 2.1 **Appraisals.** Within 45 days of the Owners' notice of intent to Transfer, the Owners and the Grantee must each hire a Pennsylvania certified general real estate appraiser to prepare an appraisal of the Property's fair market value. The Owners agree to allow the Grantee's appraiser full access to the Property. The Owners and the Grantee must each provide the other with a copy of their respective appraisal report.
- 2.2 **Offer.** Within 45 days of the Grantee's receipt of both appraisal reports, the Grantee may submit to the Owners an offer to purchase the Property.
- 2.3 **Response.** Within 30 days of receiving the Grantee's offer (the "Acceptance Period"), the Owners must respond by accepting, rejecting or countering it.

Additional provision: More time needed for counteroffer

Insufficient time or information. The Grantee may be concerned that it will not have, within the Acceptance Period, sufficient information to make a firm offer. In that case, if acceptable to the Owners, add a new subsection to §2 as follows:

- 2.3 **Additional time for counteroffer.** If the Grantee is unable or unwilling to accept the Owners' offer during the Acceptance Period, the Grantee, may, by notice to the Owners within the Acceptance Period, extend the Grantee's exclusive opportunities to purchase under this Grant for the Negotiation Period described in §3.1.

3 Opportunity to negotiate in good faith

Purpose. The right of first offer provides the Grantee with useful information about what the Owners' asking price is likely to be when the Owners offer the property for sale to the general public. That initial asking price is also likely to be at the high end of market value. The Grant does not require the Owners to establish a price based on market information; thus, the price quoted by the Owners may reflect nothing more than their wishful thinking. To address the likelihood that the Owners' offer to sell will not be acceptable without adjustment, the Grant provides for an extension to the initial offer and Acceptance Period to allow for further negotiation of price and other terms of sale.

Right of first negotiation. The extension into the Negotiation Period of the Grantee's exclusive rights during the Acceptance Period is sometimes referred to as a right of first negotiation.

Right exercised by presenting counteroffer. The default provision requires the Grantee to deliver a counteroffer to trigger the extension of its exclusive opportunity to deal with the Owners into the Negotiation Period. The effort of preparing and the commitment demonstrated by delivering a counteroffer shows the Owners that the Grantee is serious about purchasing the Property; it justifies the extension..

3.1 Negotiation Period

Purpose. To establish the time within which the Grantee has the exclusive right to negotiate with the Owners with respect to the purchase of the Property.

Default period. The Negotiation Period is an extension of the time afforded the Grantee to respond to the Owners' first offer. The thirty-day period specified is a placeholder. Any number of days or months may be chosen.

Extends Acceptance Period. The thirty days is tacked on to the end of the Acceptance Period. Thus, the Grantee is not disadvantaged if it earlier notifies the Owners of its desire for further negotiation.

Mutual obligation. Both the Owners and the Grantee are obliged to negotiate in good faith during the Negotiation Period. Good faith negotiation may be described as an honest desire to reach agreement on the differences which exist through compromise and a realization that the agreement thus reached should be fair and reasonable for both sides.

3.2 Open offers

Purpose. To keep the initial offers made during the Acceptance Period open during the Negotiation Period. The rule of contract law that would otherwise apply is that the Owners' offer is automatically rejected when the Grantee

delivers its counteroffer. The provision in §3.2 assures that, if further negotiation is unsuccessful, the Grantee still has the opportunity to accept the Owners' initial offer.

Alternative Provision: No duty to negotiate

If the Owners are willing to grant only a right of first offer and not a further opportunity to negotiate, then delete *the entirety* of §3 and substitute the following:

3. No duty to negotiate

During the Acceptance Period, the Owners may consider, respond to, or negotiate any counterproposal tendered by the Grantee; however, following the end of the Acceptance Period, they have no duty to do so and no duty to deal exclusively with the Grantee.

If this alternative §3 is used, modify §4.1 so that it reads as follows:

Conditions that end rights. The Grantee's rights under this Grant are ended and the Owners are free to offer the Property for sale to Third Parties if, at the end of the Acceptance Period, the Owners have not received notice that the Grantee has accepted the Owners' terms.

4 End of Grantee's rights

4.1 Conditions that end rights

Purpose. To establish the date when the Owners are free to market their property to the general public.

Outside date. The Grantee's rights of first purchase terminate with the end of the Acceptance Period; however, there are exceptions to this general rule:

- The Grantee's rights continue to the end of the Negotiation Period (§3).
- The Grantee's rights may be reinstated (§4.2).

4.2 Reinstatement of rights

Purpose. To assure the Grantee that the Owners cannot satisfy their obligations under the Grant simply by giving notice of intent and going through the motions of the required process. If the Owners do not move forward with the intended Transfer, then the next time they intend to sell, the Grantee will again have its opportunities to purchase.

Time for Transfer. The one-year time frame in the default provision is a placeholder. The time established by the Owners and the Grantee should reflect the reasonable time anticipated for marketing and closing a sale of the Property.

5 Requirements for giving notice

Purpose. To assure that notices are given by reliable means in a manner likely to be timely received and noted by the receiving party.

Additional means. Additional means of delivery, such as email, may be added. Sometimes provisions allowing email delivery of notices are conditioned upon the email being followed promptly by one of the other methods.

6 Defined terms

Purpose. To provide and clarify the meaning of various terms used in the Grant.

Grant. The definition abbreviates "Grant of Right of First Offer."

Grantee. The definition clarifies that the Grantee is not only the conservation organization identified at the beginning of the Grant but includes its successors (for example, after a merger) and any Person to whom the right of first offer is assigned. The freedom to assign to another maximizes flexibility. The Grantee may not be in a position to purchase when the opportunity arises but it may want another organization to be able to take advantage of the opportunity.

Limited to Qualified Organization. If the Owners are granting the right of first offer to incentivize acquisition for a conservation purpose, they may want to restrict assignment of the right of first offer to another conservation organization. In such cases, add the following sentence to the end of the provision:

The Grantee may not assign this right of first offer except to a qualified organization as defined in §170(h) of the Internal Revenue Code.

Owners. This definition clarifies that the term includes not only the Person or Persons identified at the beginning of the Grant but also all Persons who own the Property after them.

Person. The definition, by including both individuals and entities, simplifies drafting.

Property. The definition addresses a Transfer of less than all of the Property described in the Property Description attached to the Grant.

Public Records. Use of the defined term simplifies drafting.

Third Party. The definition provides the means to list Persons to whom the Property may be transferred without triggering the right of first offer. The list may be expanded or shortened to fit the needs and goals of the parties.

Transfer. The term is defined to establish the scope of changes in ownership and control of the Property that trigger the right of first offer.

7 Recording

Purpose. To assure the Grantee that it will have the opportunities afforded under this Grant whether or not the Owners who sign the Grant continue to own the Property and that the Grantee will have both legal and equitable remedies in the event the signing Owners sell without meeting their obligations under the Grant.

Release. If the Grantee's rights under the Grant are ended (without the possibility for reinstatement), the model requires the Grantee to sign a release in recordable form to clear the Grant from the Public Records if so requested by the Owners. If the Owners are concerned about the Grantee's compliance with this requirement, the release can be signed at the same time as the Grant and held by a mutually agreeable escrow agent until the Grantee's rights under the Grant are ended without possibility of reinstatement.

Closing Matters

Closing. The phrase "INTENDING TO BE LEGALLY BOUND" is especially important where there is no consideration being given for the Grant because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania. The term "consideration" means something of value given in return for a promise.

Signature lines. Space is provided for signatures by two individual Owners. Add or delete spaces as necessary. The Grantee signs the Grant to evidence its acceptance of the terms. If an Owner is a corporation, partnership or other entity, substitute a corporate signature line. Likewise, a form of acknowledgment appropriate for a corporation should be substituted for the form provided in the model, which is appropriate only for individual Owners.

Address for notices. This is critical information to give proper notice.

Witness/attest. It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.

Acknowledgment. The date of the acknowledgment should not be earlier than the Date of Grant.

Disclaimer Required by IRS Rules of Practice

Any discussion of tax matters contained in this message is not intended or written to be used and cannot be used for the purpose of avoiding any penalties that may be imposed under Federal tax laws.