

Model Grant of Purchase Option with Commentary

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Preface

A Right Without Obligation

A purchase option assures the option holder of the right to purchase property at a certain price within a certain time period but without an obligation to do so. It expands the opportunities for and limits the risks of real estate investment. The guide [Purchase Options](#), published at [ConservationTools.org](#), explains common and creative uses of purchase options to facilitate conservation projects. The [Model Grant of Purchase Option](#) provides a flexible platform to implement the strategies and address the various circumstances described in [Purchase Options](#).

The commentary to the model is intended as a resource, available to both land trusts and landowners, to explain the purpose of each provision in the model; refer the user to pertinent portions of [Purchase Options](#) for deeper or more expansive analysis of issues; and provide alternative and optional provisions.

Related Tools

The [Model Grant of Purchase Option](#) may be used to acquire rights to purchase any real estate interest: land ownership, conservation easement, trail easement, leasehold, and others. The purchase may be for full value or part donation (bargain-sale). Notwithstanding its broad application, other tools may be appropriate in certain situations:

- *Wholly donated easements.* The [Model Conservation Easement Donation Agreement](#) sets forth the steps for establishing an easement and the expectations and obligations of the prospective easement donor and easement holder during the process.
- *Commitments and assurances.* A purchase and sale agreement, like a grant of purchase option, involves a commitment by the landowner to convey property interests; unlike a purchase option, a purchase and sale agreement creates an obligation for the prospective buyer (or donee) to acquire the interests. A purchase and sale agreement also provides legal protections to the prospective owner by incorporating representations, warranties and covenants on the part of the seller. See the [Model Conservation Transaction Addendum](#) for sample provisions that you can add to standard Pennsylvania Association of Realtors purchase agreement forms to address conservation issues.
- *Rights of first purchase.* When a landowner is not presently interested in selling, a right of first purchase guarantees its holder the opportunity to make an offer to purchase should circumstances change. The guide [Rights of First Purchase](#) explains the uses of the rights of first offer, first negotiation, and first refusal. See also the [Model Grant of Right of First Offer](#) and the [Model Grant of Right of First Refusal](#).

The Pennsylvania Land Trust Association publishes these and other model legal documents and guides regarding conservation real estate transactions at [ConservationTools.org](#).

Improve the Next Edition

The Pennsylvania Land Trust Association welcomes suggestions for improving the model and commentary. Please share your thinking by emailing info@conserveland.org.

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The Model

Prepared by and Return to:

This *Model Grant of Purchase Option* is published by the Pennsylvania Land Trust Association at ConservationTools.org. Please refer to the commentary for explanations of the model's content and for alternative and optional provisions.

Parcel Identification:

Grant of Purchase Option

Date of Grant:

Owners:

Option Holder:

Option Exercise Date:

INTENDING TO BE LEGALLY BOUND, the Owners identified above ("Owners") grant to the Option Holder identified above ("Option Holder") the option to purchase (the "Purchase Option") described below affecting all or a portion of the property (the "Property") described in the attached "Property Description".

1. Property Interests

The following real estate interests are the subject of the Purchase Option (the "Property Interests"): **[delete those that do not apply]**

Ownership. Good and marketable title to the Property by delivery of special warranty deed. If the Purchase Option is exercised, the transaction is to be governed by the terms of the then-current form of purchase and sale agreement made available by the Pennsylvania Association of Realtors.

Access Easement. An easement over the area identified as _____ on the attached Sketch Plan for the following purposes: _____. The form of the grant of access easement is to be the most recent version of the Model _____, published by the Pennsylvania Land Trust Association and available at ConservationTools.org.

Conservation Easement. A conservation easement on the land shown on the attached Sketch Plan. If an "Excluded Area" is identified on the Sketch Plan, only the remainder of the Property (other than the Excluded Area) is subject to the conservation easement. The document granting the conservation easement is to be the most recent version of the *Model Grant of Conservation Easement and Declaration of Covenants*, published by the

Pennsylvania Land Trust Association and available at ConservationTools.org. The protection areas shown on the Sketch Plan are to be given their respective meanings as set forth in the *Model Grant of Conservation Easement and Declaration of Covenants*.

Leasehold. A leasehold estate with respect to the area identified as _____ on the attached Sketch Plan for a term of not less than ___ years.

2. Exercise of Option

The Purchase Option must be exercised, if at all, by written notice to the Owners delivered to their address set forth next to their signatures below on or before the Option Exercise Date identified above. If the Option Holder exercises the Purchase Option, closing of the acquisition of the Property Interests (“Closing”) will be held at a mutually agreeable location in the county in which the Property is located on a mutually agreeable date not later than ninety (90) days following the Option Exercise Date.

3. Purchase Price for Property Interests

The consideration to be paid for the Property Interests at Closing (the “Purchase Price”) is **[delete the item that does not apply]**

- the sum of \$_____.
- ___% of the fair market value established by one or more appraisals performed in accordance with Uniform Standards of Professional Appraisal Practice. Option Holder is responsible for providing and paying for all appraisals required to establish the Purchase Price to the satisfaction of those contributing funding for the acquisition.

4. Option Consideration

In consideration of the grant of this Purchase Option, Owners acknowledge receipt of the sum of \$1.00.

5. Extension of Purchase Option

The Option Exercise Date, Closing date or both may be extended by mutual agreement of Owners and Option Holder.

6. Transactional Costs and Expenses

6.1 *Owners’ Obligations.* At Closing, Owners must pay (or otherwise remove as a prior encumbrance on the Property Interests) all mortgages, liens and encumbrances securing the payment of money and any real estate taxes that remain unpaid as of the Closing or relate to preferential tax treatment prior to Closing. Whether or not Closing occurs, Owners are responsible for the costs and expenses of any attorney or other advisors engaged by Owners.

6.2 *Option Holder’s Obligations.* Whether or not Closing occurs, Option Holder is responsible for the costs of title, survey, environmental and other inspections, applications for funding, any subdivision or other governmental approvals required as a condition of Closing, and preparation of Closing documents to transfer the Property Interests.

7. **Transfer of Purchase Option**

This Purchase Option is freely assignable. Option Holder must notify Owners of the name and address of the transferee for notices.

8. **Condition of Property**

Owners must maintain the Property in its natural, scenic, open and, if applicable, wooded condition through the Closing or earlier expiration of the Purchase Option.

9. **Attachments**

The following attachments referred to in this Grant of Purchase Option are incorporated into the document by this reference:

- Property Description
- **[delete item if not relevant]** Sketch Plan prepared by Option Holder dated ____ (the "Sketch Plan")

10. **Recording**

This Purchase Option may, at the option of the Option Holder, be recorded in the Office for the Recording of Deeds (the "Public Records") in the county in which the Property is located. If Option Holder fails to exercise the Purchase Option, or fails to complete Closing once the Purchase Option is exercised, Option Holder must execute, at the request of Owners, a release of this Grant of Purchase Option for recording in the Public Records.

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

Street Address for Notices:

Signatures of Owners:

_____(Seal)

_____(Seal)

This document is based on the
Model Grant of Purchase Option (v. 2014.06.30)
published 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.

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 Grant of Purchase Option, 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.

Print Name: _____, Notary Public

Commentary to the Model Grant of Purchase Option

General Instructions

When in Doubt, Check the Commentary. The purpose of each provision is explained and, often, variations are provided to address alternatives that may be useful in particular situations.

Guides and Models. Unless otherwise noted, all guides and model legal documents referenced in the commentary are published by the Pennsylvania Land Trust Association and, thanks to the Association's financial supporters, are available free-of-charge at ConservationTools.org.

Structure Tracks Model. The model follows a simple outline structure and the commentary follows the same pattern to make cross-referencing easy. Titles or captions in bold lettering preceded by numbers refer to the same section in the model.

Get Legal Counsel. This model and commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The model must be revised to reflect the specific circumstances of the particular project under the guidance of legal counsel.

Disclaimer Box. Once a document based on the model has been prepared or reviewed on behalf of the Option Holder by an attorney licensed to practice law in the applicable state, you may delete the box at the bottom of the model's signature page 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 this guidance.

Format and Identifying Information

Recording? See section 10 of the commentary, which addresses the recording of the document and alternatives.

Space for Recording Information. The top of the first page of the models provides space for information required by some county recording offices: the name and address of the preparer, the person to whom the document is to be returned, and the tax parcels of the real estate to which the document pertains. If the information is 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.

Margins. Minimum margin requirements vary among counties; however, a typical requirement is a 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right and bottom margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5-inch by 11-inch paper. The model is formatted to conform to these requirements.

Preparer Information. Pennsylvania law does not require that a lawyer or law firm be identified as the preparer of the document; however, legal review is nevertheless 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.

Basic Document Information

Title of Document

Purpose. The title “Grant of Purchase Option” differentiates the granting document (referred to in this commentary as the “Grant”) from the real estate interest (the “Purchase Option”) granted by execution and delivery of the document.

Date of Grant

Purpose. To identify the date of the Grant and the earliest date upon which the Option Holder may exercise the Purchase Option.

Owners

Purpose. To identify the full legal names of the persons who own the land that is the subject of the Purchase Option.

Names Don’t Match Deed. 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.

Handling Multiple Owners

Options to Purchase Land. As discussed in the guide [Purchase Options](#), the Purchase Option is an excellent tool to sort through, and gain control over, messy ownership situations. There is no need to get all of the Owners on board at the same time with the same transaction. The Option Holder can deal with each Owner of a percentage

interest in the Property separately. The Option Holder is not obliged to purchase *any* of the interests unless its ready, willing and able to purchase *all* of the interests in the Property.

Options to Purchase Easements. An easement must be granted by all the persons holding title to the Property in order to be valid and legally binding. As such, all the titleholders must commit to sell their interests in order for the option to purchase an easement to be effective.

Owner Relationships. The relationship of multiple Owners to each other may be included but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.

Type of Entity. If a person other than an individual is granting the Purchase Option, a phrase identifying the nature of the person is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.

Option Holder

Purpose. To identify the proper legal name of the Option Holder and contact information for the Option Holder's project representative.

Type of Entity. A phrase identifying the nature of the Option Holder is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania nonprofit corporation.

Option Exercise Date

Purpose. To identify the date on or before which the Option Holder must exercise the Purchase Option, if at all.

Strict Observance. The Option Exercise Date is a critical date. To avoid a potential dispute about whether or not the Purchase Option was timely exercised, the selected date should not fall on a weekend or holiday. Option Holder must exercise the option, if at all, strictly in accordance with its terms. Unlike many other types of contracts, this is an area of the law in which a good faith effort or substantial compliance is not enough.

Opening Recital

Purpose. The opening recital sets forth who is conveying the purchase option to whom regarding which particular real property and incorporates into the Grant:

- The Basic Document Information set forth above the title; and
- The legal description of the land that is defined as the "Property" and is the subject of the Purchase Option.

Intending to be Legally Bound. Purchase options must be supported by consideration, or a legally sufficient substitute for consideration, to be enforceable against the Owners. 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.

Main Body of the Grant

1. Property Interests

Purpose. To identify the real estate interests that Option Holder will acquire if the Purchase Option is exercised.

Variety of Interests. Users may tailor the model to acquire the right to purchase any real estate interest. The model provides for four property interests common to conservation transactions: fee simple ownership, trail or other public access easement, conservation easement, or leasehold. Other possibilities abound, for example: a right of entry for resource management purposes; an easement for vehicular access to adjoining land; or the right to hunt deer to control damage to forest resources.

Delete Non-Applicable Interests. Delete the Property Interests listed in the model that do not apply to the circumstance.

Owners’ Deliverables. To avoid potential disputes and litigation, the Grant must precisely identify what the Owners are required to do, or deliver, upon exercise of the Purchase Option. To resolve any doubt, the documents to be delivered by the Owners at Closing may be attached to, and incorporated into, the Grant.

Ownership

Minimizing Risks. The guide [Purchase Options](#) explains some of the risks the Option Holder takes when all the Owners are required to do is deliver a deed. To lessen these risks, the model provides that if the Purchase Option is exercised, the transaction will be governed by a well-established form for conducting real estate transactions.

Alternative. If users of the model prefer a form of agreement other than the Pennsylvania Association of Realtors form, they may incorporate their selected form into the Grant by substituting the following:

If Option Holder exercises the Purchase Option, the transaction is to be governed by the terms of the purchase and sale agreement attached to, and incorporated into, this Grant of Purchase Option.

No Purchase Agreement. The sentence beginning, “If the Purchase Option is exercised...” may be deleted if the Owners and Option Holder are comfortable that the exchange of a deed against delivery of the purchase price is all that is involved with the transaction. The

Option Holder needs to evaluate, with advice of counsel, whether it is comfortable with relying solely on its title and other investigations because, without a purchase and sale agreement, it will have no assurances from the Owners to rely upon.

Future Purchase Agreement. The following may be substituted for the sentence beginning “If the Purchase Option is exercised...”:

Owners agree to negotiate in good faith with Option Holder the terms of a purchase and sale agreement for the Property for the same Purchase Price and with the same Closing date set forth in this Grant and on such other terms and conditions as are mutually agreeable to the parties.

Due diligence investigations may, and often do, disclose problematic title or physical conditions of the Property. These issues can be raised, and specifically addressed, in a purchase and sale agreement negotiated when due diligence is underway and, perhaps, close to completion.

Access Easement

If the Property Interest is a public access easement for recreational purposes, one of several models available in the Model Documents area of ConservationTools.org (accompanied by a plan identifying the easement area) will, in many cases, be sufficient to set the material terms of the grant of access easement. For other access easements, the document to be delivered at Closing may be attached to, and incorporated into, the Grant as follows:

Access Easement. An easement for pedestrian and vehicular access as set forth in the document entitled “Grant of Access Easement” attached to, and incorporated into, this Grant.

Conservation Easement

If the Property Interest is a conservation easement, the material terms of the Grant of Conservation Easement to be delivered at Closing are set by stipulating that the Model Grant of Conservation Easement will be used and that the Property will be conserved as Highest Protection Area, Standard Protection Area and Minimal Protection Area as these areas are shown on a Sketch Plan incorporated into the Grant.

Leasehold

The default provision leaves a number of material terms to be determined. There are several approaches to resolve potential issues:

- Incorporate the form of lease agreement as an attachment. To accomplish this, attach the document and append the following to the default provision:

The document entitled “Lease Agreement” attached to, and incorporated into, this Grant is to be executed and delivered at Closing.

- Incorporate a schedule setting the material terms to be included in the Lease Agreement to be delivered at Closing. To accomplish this, attach the schedule and append the following to the default provision:

The form of lease to be executed and delivered at Closing (the “Lease Agreement”) will include the terms set forth in the schedule entitled “Lease Terms” attached to, and incorporated into, this Grant. The Lease Agreement will be prepared by Option Holder and submitted to Owners for review and approval, not to be unreasonably withheld or delayed.

2. Exercise of Option

Purpose. To set the procedure by which the Purchase Option must be exercised, if at all, and to set the terms under which Closing of the transaction must occur.

Address for Notices. Notice of exercise must be given strictly in accordance with the terms of the Grant. Users need to check that the address furnished on the signature lines allows speedy delivery: a street address where notice can be hand-delivered or served by an overnight delivery courier.

Additional Detail. The default provision may be expanded to specify in detail the requirements for proper exercise of the Purchase Option; for example, setting the precise time of day (and time zone) that is the deadline for notice delivery; specifying acceptable modes of delivery; and setting corresponding time frames for delivery applicable to each. The advantage of specificity is forming a safe harbor where the Owners cannot dispute that notice was timely given. The disadvantage is that any deviation from the stipulated requirements may invalidate the notice even if it was, in fact, delivered before expiration of the deadline. Users should seek advice of counsel when incorporating additional detail into the notice provision.

Closing. The default provision (closing 90 days after exercise) is a mere placeholder. Any number of days or months may be substituted.

3. Purchase Price for Property Interests

Purpose. To set the compensation that, upon exercise of the Purchase Option, the Option Holder is obligated to pay at Closing for the Property Interests.

Two Choices. The model provides two alternatives for setting the Purchase Price for the Property Interests: *price fixed* as of the Date of Grant or determined at a later date by *appraisal*.

Appraisal Standard. The appraisal alternative requires the use of the Uniform Standards of Professional Appraisal Practice, which are generally accepted standards for professional appraisal practice.

Requirements of Funding Sources. Conservation projects are often funded by grants from public or charitable sources, who want and need assurance that they are not paying more than fair value. Many public funding sources also require more than one appraisal. To give the needed assurance and prevent any dispute over which appraisal sets the Purchase Price, the model provision provides that the appraisal establishing the Purchase Price must be satisfactory to these funding sources.

Clarification. If desired, the following clarification may be added:

The appraisal is to be delivered to Owners not later than ninety (90) days prior to the Option Exercise Date. If applicable, the appraisal may be delivered conditioned upon subsequent acceptance by Funding Sources.

The number of days may be changed; however, the timing needs to coordinate with the requirements of the Funding Sources (if applicable) and the possibility that the Owners may obtain a Second Appraisal (see below) or that a Review Appraisal (see below) may be required. It is imperative that the Option Holder know the Purchase Price before the Option Exercise Date.

Floor on Purchase Price. When the Purchase Price is to be determined by appraisal, some Owners may not be willing to risk receiving payment of less than a certain amount, no matter the results of the appraisal. Among other reasons, they may not be able to clear the title of mortgage liens if a minimum Purchase Price is not available at Closing. The solution is to create a floor Purchase Price by adding the following to the end of the appraisal alternative: “but not less than \$___ unless approved by Owners.”

Ceiling on Purchase Price. There is no need to set a maximum Purchase Price because, if the appraised value is higher than budgeted by the Option Holder, the Purchase Option will not be exercised (unless the Owners agree to the lower Purchase Price). If the Owners have targeted a Purchase Price they expect for the Property interest, the Option Holder (if a charitable organization) may propose a donation of the appraised value in excess of the targeted Purchase Price. If that is acceptable to the Owners, the following may be added to the section to implement that agreement:

Owners have voluntarily limited the Purchase Price to a maximum of \$____. Any value in excess of that amount is considered a donation to Option Holder.

Multiple Appraisals. If the Owners are not satisfied that they can rely upon a single appraisal to establish a fair Purchase Price, the following may be added to §3:

Owners may elect to obtain their own appraisal for purposes of establishing the Purchase Price (the “Second Appraisal”). The Second Appraisal must conform to the requirements of Uniform Standards of Professional Appraisal Practice and be paid for by Owners. The Second Appraisal must be delivered, if at all, to Option Holder not later than thirty (30) days after delivery to Owners of the appraisal obtained by

Option Holder (the “First Appraisal”). If the Purchase Price set by the Second Appraisal is within five (5%) percent of that set by the First Appraisal, the Purchase Price is to be set at the midpoint between the two, subject to acceptance by Funding Sources, if applicable.

If the Purchase Price set by the Second Appraisal exceeds the First Appraisal by more than five (5%) percent, Option Holder may elect, by notice to Owners within thirty (30) days following delivery of the Second Appraisal, to commence the following procedure (the “Review Appraisal”): The first two appraisers shall select a third appraiser to perform a review of the First Appraisal and the Second Appraisal for the purpose of setting a Purchase Price not greater than that set by the Second Appraisal and not lower than that set by the First Appraisal. The cost of the Review Appraisal is to be borne in equal shares by Owners and Option Holder whether or not the Purchase Option is exercised. If the Review Appraisal is delivered within ten (10) days of the Option Exercise Date, the Option Exercise Date shall be extended to ten (10) days following delivery of the Review Appraisal. If Option Holder fails to elect the Review Appraisal procedure, the Purchase Price to be paid at Closing (if the Purchase Option is exercised) shall be as set forth in the Second Appraisal unless otherwise agreed in writing by Owners and Option Holder.

The phrase “five (5) percent” in the above text may be changed to conform to the agreement of the parties but typically the range will not exceed ten (10) percent. The number of days for notice and delivery may also change but the entire appraisal process must be concluded, and the Purchase Price definitively set, before the Option Exercise Date.

4. Option Consideration

Purpose. To state the value received by the Owners in consideration for the Grant.

Should the Option Holder Pay for the Option? The guide [Purchase Options](#) explains why it is not unusual for Owners to receive little or no cash in exchange for granting a purchase option. The nominal payment provided by the model’s default provision reflects this situation.

Cash Consideration. If the Owners require cash compensation for the Grant beyond the nominal payment provided for in the model, replace the model’s default text with the following provision:

In consideration of the Grant of this Purchase Option, Owners acknowledge receipt of the sum of \$___ (the “Option Payment”) paid by Option Holder on or before the Date of the Grant. The Option Payment is non-refundable whether or not the Purchase Option is exercised;

however, if the Purchase Option is exercised, the Option Payment is credited against the balance of the Purchase Price otherwise due at Closing.

If No Credit. In the alternative set forth above, the Option Payment is applied to the Purchase Price at Closing just as a deposit under an agreement of sale would be. If this rationale is not accepted by the Owners, delete the remainder of the sentence starting with the semicolon.

Option Holder’s Efforts as Additional Consideration.

The Option Holder will have to make a substantial investment of time, energy and money to complete the purchase if the owners grant the purchase option. The default provision of the model may be expanded to include the following provision that expresses the Owners’ understanding that the Option Holder’s willingness to make that investment is an inducement to the Owners to take the property off the market and allow the Option Holder the opportunity to proceed:

As additional consideration for the grant of this Purchase Option, Option Holder agrees to apply for, and use reasonable good faith efforts to obtain, funding of the Purchase Price from one or more funding sources.

If the Option Holder has presented a specific funding plan to the Owners as an inducement for the grant of the Purchase Option, the above provision may be further expanded by adding the following:

These sources include the following:

- ___% Commonwealth of Pennsylvania
- ___% County in which the Property is located
- ___% Municipality in which the Property is located
- ___% Other Funding Sources
- ___% Bargain-sale contribution by Owners
- 100%

Funding Plan. The expanded provision discloses the Option Holder’s funding plan for the project, evidences the Owners’ understanding of the complexity and risks of securing funding for the project, and clarifies whether any contribution in support of the project is expected from the Owners.

Fixed Instead of Percentage. The alternative provision allocates targeted funding by percentages to reflect typical grant commitments set at a percentage of the Purchase Price. That approach may be modified, as in the following example, when a particular grant is a fixed or not to exceed amount.

\$ _____	[Identify Funding Source]
Balance of Purchase Price:	Bargain-sale donation by Owners (50%)
	County (25%)

Township (25%)

5. Extension of Purchase Option

Purpose. To provide a mechanism for the Option Holder to gain more time to exercise the Purchase Option and/or close on the purchase following exercise of the Purchase Option.

Default Provision is Placeholder. The model's default provision serves as a placeholder to be replaced if the Owners agree to extend either the Option Exercise Date or Closing date or both for an additional time period.

Extensions. Extension periods are necessary when the time frame for exercising the Purchase Option or closing the transaction is not sufficient for the Option Holder to achieve a high degree of certainty as to project completion. Extension periods are also desirable to allow time for the Option Holder to handle unanticipated setbacks in the course of project completion. The Owners may find an extension period to be preferable to a longer initial term because they can set conditions that must be met for the Option Holder to merit additional time.

Extensions in Response to Progress. The Owners may be willing to extend the option period if they are comfortable that progress is being made towards project completion. If so, the Option Holder may want to consider offering benchmarks to evidence that progress; for example, the following may be substituted for the model's default provision:

The Option Exercise Date is automatically extended an additional _____ (___) days upon delivery to Owners, before the then-scheduled Option Exercise Date, of written evidence that Option Holder has obtained commitments from the Funding Sources identified in §4 in an amount not less than ___% of the Purchase Price.

The Closing Date is automatically extended an additional _____ (___) days upon delivery to Owners, before the then-scheduled Closing Date, of copies of grant contracts issued by Funding Sources in an aggregate amount not less than ___% of the Purchase Price.

Extensions in Response to Payment. The Owners may be willing to extend if they are relieved of the burden of carrying costs generated by the Property. If so, the Option Holder may want to offer periodic payments calculated to offset the Owners' obligations to pay taxes, insurance and maintenance during the extension period. The Closing Date may be substituted for the Option Exercise Date in the following example:

The Option Exercise Date is automatically extended an additional _____ (___) days upon payment to Owners, not later than the then-scheduled Option Exercise Date, of the sum of \$_____ (each, an "Extension Payment"). Extension Payments are non-refundable, whether or not the Purchase Option is exercised; however, if the Purchase Option is exercised, Extension Payments are credited against the balance of the Purchase Price otherwise due at Closing.

If the Owners are unwilling to allow unlimited extensions, add the following to the end of the above provision: "Owners have no obligation to extend the Option Exercise Date past _____."

6. Transactional Costs and Expenses

Purpose. To allocate, as between the Owners and Option Holder, the costs and expenses of Closing and other transactional expenses.

Clear Title. The Owners are required to clear title to the Property interests by removing liens for taxes and other items that can be removed by the payment of money. This section may be deleted if a purchase and sale agreement was incorporated into the Grant (*see* commentary to §1 above).

Transactional Costs. The Option Holder is responsible for all transactional costs and expenses but for Owners' obligations under §5.1.

Realty Transfer Tax. In Pennsylvania, a 2% tax is assessed on all transfers of real property (other than certain statutorily excluded transactions). By custom, the seller and buyer split the tax (1% each).

- Transfer to a conservancy that is tax exempt pursuant to §501(c)(3) of the Internal Revenue Code and has a primary purpose of preserving land for historic, recreational, scenic, agricultural or open space opportunities is an [excluded transaction](#); thus, there will be no transfer tax assessed if the Option Holder is a conservancy with such qualifications.
- Absent an agreement to the contrary, the Owners receive a windfall (1% tax savings) arising solely from the Option Holder's status as a conservancy. To allow the Option Holder the benefit of that savings, add the following subsection to the end of the section:

6.3 **Realty Transfer Tax.** Option Holder is entitled to a credit against the Purchase Price payable at Closing for the realty transfer tax otherwise due from Owners on the transfer of the Property interests but for the status of Option Holder as a tax-exempt conservancy.

7. Transfer of Purchase Option

Purpose. To maximize flexibility of the Purchase Option. The rationale underlying the right to assign freely is that the Owners' interest is to receive payment in full of the Purchase Price at the time of transfer. The identity of the transferee is irrelevant.

Limited to Qualified Organization. The Owners may want to restrict assignment of the Purchase Option to a qualified organization as defined in §170(h) of the Internal Revenue Code, if, for example, they are agreeing to a Purchase Price below fair value because it is for a conservation cause or if they are seeking tax benefits for a bargain sale of the Property Interests. In such cases, substitute the following for the default provision:

Option Holder may not assign this Purchase Option except to a qualified organization as defined in §170(h) of the Internal Revenue Code.

8. Condition of Property

Purpose. To assure that natural resources within the Property will not be degraded during the term of the Grant.

Portion of the Property. If the condition of only a portion of the Property has bearing on the Property Interest, replace “Owners must maintain the Property...” with “Owners must maintain the portion of the Property subject to the Property Interests...”

9. Attachments

Purpose. To incorporate attachments referred to in the Grant into the document.

Other Attachments. The Property Description is always attached. The Sketch Plan is needed to locate an easement or other area that is the subject of a Property interest. Other documents to be delivered at Closing may be attached as discussed in §1.

10. Recording

Purpose. To assure the Option Holder of the opportunity to exercise the Purchase Option whether or not the identified Owners continue to own the Property.

Release. If the Purchase Option is not exercised by the Option Exercise Date, the model requires the Option Holder to sign a release in recordable form to clear the Grant from the Public Records. If the Owners are concerned about the Option Holder’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 Option Exercise Date passes without exercise of the Purchase Option.

Privacy Concerns. The Owners or Option Holder may want to keep the terms or the very existence of the Purchase Option entirely private.

- One alternative is to **record a redacted version** of the Grant that eliminates sensitive information. For example, the text of §3 (Purchase Price) may be deleted and the following substituted: “Intentionally omitted in recorded document.”
- A second alternative is to **record a short summary** of the essential information needed to furnish public notice of the existence (but not the terms) of the Purchase Option. The document would need to include only the following items:
 - A title, for example, “Memorandum of Grant of Purchase Option”;
 - County recording office requirements for recording above the title of the document, for example, parcel identification number;

- Date of Grant, Owners, Option Holder and Option Exercise Date;
 - Description of the property subject to the option;
 - A closing recital, for example, “Intending to be legally bound, Owners have signed delivered this Memorandum of Grant of Purchase Option as of the Date of Grant identified above”; and
 - Signature lines and acknowledgments.
- A third alternative is to **record nothing at all** and to **replace §10** of the model with a provision captioned “Confidentiality” as furnished below.

10. Confidentiality [Alternative for §10. Recording]

Owners agree to keep the existence this Grant and the terms of the Purchase Option completely confidential through the Option Exercise Date. Owners must not disclose or discuss with anyone the terms of this Purchase Option, the prospective sale to Option Holder or the reasons why Option Holder may be interested in the Property.

Purpose. To keep Option Holder’s interest in acquiring the Property from becoming public knowledge. Control of public information may serve a number of purposes:

- The Option Holder may want to delay public disclosure until it is certain that the project will be a success.
- The Option Holder may want to delay announcement of the project until it has had a chance to gather public support and minimize adverse opinion.
- Disclosure of the Option Holder’s interest before other parcels key to the project are under the Holder’s control may result in the owners of those parcels escalating their demands regarding the sale of their parcels.

Closing Matters

Closing. When a person making a promise gets nothing of value in return—receives no *consideration*—the law may not require the promise to be kept. Rather than risk that the mutual promises contained in the agreement won’t be seen as consideration under the law, the model includes a legally sufficient substitute for consideration. The phrase *intending to be legally bound* is a valid substitute for consideration in the Commonwealth of Pennsylvania (but not necessarily other states).

Signature Lines. Space has been provided for signature by two individual Owners. The Option Holder may, but need not, sign the Grant. 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 of the exercise of the Purchase Option.

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.