

# Model Grant of Right of First Refusal with Commentary

Prepared by the  
Pennsylvania Land Trust Association

with support from the

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Colcom Foundation

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William Penn Foundation

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Community Conservation Partnerships Program,  
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of Conservation and Natural Resources,  
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# Preface

## Creating an Opportunity to Purchase

A right of first refusal allows its holder to match any purchase offer that the owners of a property are willing to accept and to buy the property under the exact terms of that offer.

A right of first refusal comes into play after the owners have exposed their property to the real estate market (or received an unsolicited offer). In contrast, the holder of a right of first offer has the opportunity to make an offer to or receive an offer from the owners before the property is marketed to others.

Owners who are not ready to sell their property, but are willing to guarantee that a conservation organization will someday get a chance to purchase it from them or their heirs, may grant to the organization a right of first offer, a right of first refusal, or both. The rights are often combined so that the holder has the first opportunity to act on the owners' interest in selling and the assurance that, if the owners' initial expectations are unrealistic (likely because the property has not been on the market), there is still the opportunity to match a price offered by a third party buyer after the property has been exposed to the market.

The guide [\*Rights of First Purchase \(Offer, Negotiation and Refusal\)\*](#), published by the Pennsylvania Land Trust Association, describes these rights and how to obtain them. The [\*Model Grant of Right of First Refusal\*](#) and the [\*Model Grant of Right of First Offer\*](#) provide tools for documenting the granting of such rights by owners.

## Commentary

The commentary to the [\*Model Grant of Right of First Refusal\*](#) 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.

## Other Tools for Facilitating Acquisitions

The [\*Model Grant of Purchase Option\*](#) may be useful when the landowners are willing to (1) sell their land or an easement to the conservation 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](mailto: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](http://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 Refusal

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 §5.

### I Intent to accept Third Party Offer

- 1.1 **Notice.** If the Owners receive a Third Party Offer that the Owners intend to accept, the Owners must notify the Grantee of their intent, and not accept the Third Party Offer, until the Grantee has had the opportunity to purchase described in this Grant. The Owners' notice must incorporate a complete and accurate counterpart of the Third Party Offer.
- 1.2 **Less than whole.** If a Third Party Offer applies to only a portion of the Property, then the Grantee's opportunity to purchase and the Grantee's rights ending as described in §§1-3 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 refusal

- 2.1 **Offer.** The Owners' notice of intent to accept the Third Party Offer constitutes the Owners' offer to Transfer the Property to the Grantee on the same terms as set forth in the Third Party Offer.
- 2.2 **Acceptance Period.** The Owners' offer must remain open for acceptance by the Grantee for a period of ten days after receipt by the Grantee of the Owners' notice (the "**Acceptance Period**").

2.3 **Extension to finalize sales contract.** If the Third Party Offer does not incorporate a complete sales contract, then the Grantee may notify the Owners within the Acceptance Period of the Grantee's acceptance of the Owners' offer on the terms of the Third Party Offer reserving the right to withdraw its acceptance by notice to the Owners if, within thirty days following the end of the Acceptance Period (the "**Finalization Period**") the Owners and the Grantee, both using good faith efforts, fail to find mutually acceptable terms for the sale of the Property (other than the terms set forth in the Owners' offer, which are fixed unless otherwise agreed by the Owners and the Grantee) and memorialize those terms in a written sales contract signed by both the Owners and the Grantee. If not otherwise agreed, the form of sales contract is the then-current form of agreement for the sale of real estate published by the Pennsylvania Association of Realtors.

### 3 End of Grantee's rights

3.1 **Conditions that end rights.** But for the reinstatement right in §3.2, the Grantee's rights under this Grant are ended and the Owners are free to accept the Third Party Offer if:

- (a) at the end of the acceptance period, the Owners have not received notice that the Grantee either accepts the Owners' offer or accepts the Owners' offer conditionally under the terms of §2.3; or
- (b) at the end of the Finalization Period, (notwithstanding the good faith efforts of each) the Owners and the Grantee have failed to sign a mutually binding sales contract.

3.2 **Reinstatement of rights.** The Grantee's rights under this Grant, including notice and opportunity of first refusal described in §1 and §2, are reinstated if:

- (a) within one year following the end of the acceptance period, either the Owners do not complete a Transfer of the Property pursuant to the Third Party Offer or the Owners intend to accept a new Third Party Offer; or
- (b) the Owners and the Third Party materially change the terms of sale of the Third Party Offer originally delivered to the Grantee or enter into a sales contract that includes the terms of the Third Party Offer and substantially the same terms that were proposed by the Grantee to complete a sales contract under §2.3. The Owners must promptly furnish to the Grantee any amendment, rider or other document changing the terms of the Third Party Offer or, if applicable, the sales contract with the Grantee.

### 4 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.

### 5 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.

**“Third Party Offer”** means a firm written offer to purchase or otherwise accept the Transfer of the Property tendered by a Third Party to 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). An involuntary taking by eminent domain is not a Transfer for purposes of this Grant; accordingly, receipt of a notice of condemnation or notice of intent to condemn or offer to acquire all or a portion of the Property in lieu of condemnation is not a Third Party Offer for purposes of this Grant.

## 6 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.

[THE REMAINDER OF THE PAGE IS INTENTIONALLY BLANK.]

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 Refusal** (edition of March 21, 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.

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# Commentary to the Model Grant of Right of First Refusal

## 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](http://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 Refusal” differentiates the granting document (the “Grant”) from the real estate interest (the right of first refusal) granted by execution and delivery of the document.

**Date of Grant.** Identify the date the right of first refusal 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 refusal and who are granting the right of first refusal 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 refusal to whom, the property that is subject to the right of first refusal, and the consideration provided.

**Intending to be legally bound.** The grant of a right of first refusal must be supported by consideration, or a legally sufficient substitute for consideration, to be enforceable against the Owners (defined in §5 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.

**Nominal consideration.** If the Owners prefer selling to a conservation organization, all other factors being equal, they may be willing to grant the right of first refusal for no or nominal (e.g., one or ten dollars) consideration.

**Nominal consideration is unnecessary.** If the phrase “intending to be legally bound” is used, the inclusion of nominal consideration is unnecessary to make an instrument legally binding under *Pennsylvania* law; 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 §5, which defines certain initially capitalized terms.

## Main Body of the Grant

### 1 Intent to accept Third Party Offer

The right of first refusal process begins when the Owners receive an Offer for the Property from a Third Party that they intend to accept.

**Importance of offer.** As discussed in the guide [Rights of First Purchase](#), the fundamental value of a right of first refusal is the opportunity to purchase at competitive terms. Appraisals estimate a property’s value based on quantitative analysis (using comparable sales or other methodology) and qualitative judgments of an appraiser. However, the most useful indicator of value is a bona fide offer for that specific Property from a Third Party not under any compulsion to purchase.

#### 1.1 Notice

**Purpose.** To describe when the Grantee’s rights and the Owners’ obligations begin.

**Key terms.** The obligation to furnish notice of intent is triggered by the Owners’ intent to accept a *Third Party Offer* from a *Third Party* for the *Property*:

- The “Third Party Offer” is defined in §5 to assure that it is a document delivered to the Owners evidencing a firm commitment of a Third Party to purchase the Property that, when accepted by the Owners, forms a legally binding contract.
- A “Third Party” is defined in §5 to assure the Owners that they are free to Transfer to family members, to trusts for the benefit of family members, and

to controlled companies without triggering the rights of the Grantee to match what may be favorable terms or no consideration at all. Second, it assures the Grantee that the Offer it must match or lose its rights to purchase is not an insider transaction intended to boost the price above the market value.

## 1.2 Less than whole

**Purpose.** This provision serves multiple purposes: (1) to assure the Grantee that a response to a Third Party Offer for a portion of the Property does not exhaust the right as to the remainder of the Property, and (2) to assure the Owners that, if they intend to sell only a portion of the Property, the Grantee cannot claim the right to purchase the entire Property on the same terms.

- **Example.** The Owners receive a Third Party Offer to purchase 10 acres out of 50. If the Grantee fails to exercise the right of first refusal as to the 10 acres, the Grantee's right remains in effect for the remaining 40 acres.
- **Example.** A Third Party Offer to purchase *10 acres* at \$500 per acre does not afford the Grantee an opportunity to buy *50 acres* at \$500 per acre.

## 2 Opportunity of first refusal

**Purpose.** To set forth the process that will provide the Grantee with the opportunity to purchase the Property by matching a bid the Owners intend to accept from another prospective buyer.

### 2.1 Offer

**Purpose.** To establish that the notice of intent to accept the Third Party's Offer constitutes a firm offer by the Owners to the Grantee to sell at the same price and terms as the Third Party Offer.

**Why not just refer to the Third Party Offer?** A right of first refusal may be informally described as a right to match an offer made by another but that's not quite accurate. This section clarifies that the Owners' notice to the Grantee creates a legally binding obligation on the part of the Owners to sell to the Grantee on identical terms as the Third Party Offer. The Grantee has the right to accept the Owners' offer within the response time whether or not the Third Party has revoked its offer.

### 2.2 Acceptance Period

**Purpose.** To stipulate the number of days the Owners' offer remains open for acceptance by the Grantee.

**Number of days.** The number of days (ten) in the default provision is merely a placeholder. Any number of days may be substituted.

**Short period benefits Owners.** The Owners may want a short response time because they are concerned that they may lose a satisfactory offer while awaiting the end of the Acceptance Period. It is not unusual for Owners to insist on a very brief response time, perhaps as short as two or three days. The typical agreement of sale provides a window of at least a few days for the seller to accept the buyer's offer. If the Grantee must respond to the Owners' offer quickly, it increases the likelihood that the Third Party Offer will remain open and available for acceptance by the Owners.

**Right of first offer can ameliorate short Acceptance Period.** A conservation organization's internal review process may take longer than the Owners are willing to provide for an Acceptance Period. Also, the organization may have to deal with matters such as funding approvals that make it impossible for it to act swiftly on a right of first refusal. It may not be feasible for the Grantee to obtain a longer Acceptance Period but, as discussed in [Rights of First Purchase](#), a right of first offer (even if it does not result in a deal) will alert the Grantee to the probability that the right of first refusal may be triggered in the near future.

### 2.3 Extension to finalize sales contract

**Purpose.** To allow time to finalize a contract evidencing all of the terms agreed upon between the parties if the Third Party Offer outlines the material terms of sale but is not, itself, a complete agreement.

**Number of days.** The number of days (thirty) in the default provision is merely a placeholder. Any number of days may be substituted.

**Good faith.** Both the Owners and the Grantee are obliged to make good faith attempts to find mutually acceptable contract terms. Good faith 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.

**Incorporate different form of sales contract.** The model incorporates as a default the then-current form of sales contract published by the Pennsylvania Association of Realtors. This form was selected because it is readily available and buyers and sellers generally find it acceptable. If the Owners or the Grantee prefer a different form, replace the last sentence of §2.3 with the following:

If not otherwise agreed, the form of sales contract attached to and incorporated into this Grant will be used as the basis to reflect the terms of the Owners' offer accepted by the Grantee and such other terms as are agreed upon by the Owners and Grantee.

## 3 End of Grantee's rights

### 3.1 Conditions that end rights

**Purpose.** To establish the date when the Owners may accept the Third Party Offer.

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

- If the Third Party's Offer is not, itself, a completed sales contract, Grantee's rights to purchase continue until the end of the Finalization Period. (§2.3)
- The Grantee's rights end only with respect to the Property transferred, which may not be the entirety of the Property. (§1.2)
- The Grantee's rights may be reinstated if a transfer of the Property is not consummated on the terms of the Third Party Offer within a reasonable period of time. (§3.3)

### 3.2 Reinstatement of rights

**Purpose.** To assure the Grantee that, if the Grantee chooses not to accept the Owners' offer, the Owners cannot then sell the Property on terms different from those rejected by the Grantee.

- **Example.** The Third Party Offer, which was conditioned on the Third Party obtaining municipal approvals to develop 20 lots, set a purchase price unaffordable to the Grantee. When the Grantee failed to accept the offer, the Owners completed the purchase agreement with the Third Party. Subsequently, the municipality approved only 10 lots, and the Owners agreed to cut the price by 50%. The reinstatement right affords the Grantee the opportunity to purchase at the reduced price.
- **Example.** The Third Party Offer received at the end of November is in the form of a letter of intent and includes a very short (or no) time for any inspection or financing contingencies and calls for closing on or before December 31. The Grantee cannot accept those risks or fund the closing in such a short time. After the right of first purchase is ended, the parties to the letter of intent enter into a full agreement that greatly extends the time for contingencies and closing. The reinstatement right affords the Grantee with the opportunity to accept or refuse the offer with these materially changed timing terms.

**Thwarts attempts to defeat right.** In either example, the Third Party Offer could have been purposely structured to make it difficult or impossible for the Grantee to exercise the right of first refusal. The reinstatement provision is intended to thwart attempts at defeating a right of first purchase— attempts that utilize a strategy of including commercially unreasonable terms in the Third Party Offer and changing them later.

**Material change.** The parties may want greater specificity as to the changes considered "material." A reduction of the purchase price is certainly material.

The materiality of other changes (for example, an extension of the due diligence period or an extension of the closing date) may depend on a multiplicity of factors difficult to capture in a definition of *materiality* of reasonable length and complexity.

**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 a typical time frame for closing a sale of real estate similar to the Property.

#### 4 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.

#### 5 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 Refusal.”

**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 refusal 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 refusal to incentivize acquisition for a conservation purpose, they may want to restrict assignment of the right of first refusal 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 refusal 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 refusal. The list may be expanded or shortened to fit the needs and goals of the parties.

**Third Party Offer.** The definition (a) clarifies that offers from Persons other than Third Parties are excluded and (b) rules out non-binding letters of intent and term sheets for negotiating purposes. A writing is an offer if the signature of the Owners immediately binds them to sell and the offering party to purchase.

**Transfer.** The definition establishes the scope of changes in ownership and control of the Property that trigger the right of first refusal.

## 6 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.

### Intentionally Not Addressed in the Grant

**Confidentiality.** Due to the perception that the Grant may discourage interest in the Property, Owners sometimes request that the right of first refusal be kept off the Public Record and, to assure privacy, request inclusion of a confidentiality provision in the Grant. Neither of these potential requests are provided for in the Grant or commentary. The Grantee is advised to consult with counsel to consider the legal risks of an off-record Grant and whether there is potential liability if the Owners elect not to disclose the right of first refusal to prospective purchasers or agents.

If the Grant isn't recorded and if the Owners subsequently sell the Property to a Third Party without the Owners first honoring their commitment to the Grantee, the Third Party takes the property free of any duty to the Grantee. In other

words, the Third Party has no obligation to honor an unrecorded promise made by the Owners.

The Grantee may also consider the public relations ramifications (if any) of the Owners' election not to disclose. Disgruntled would-be purchasers tend to complain loudly and claim they were misled by a failure to disclose, whether or not anyone had a duty to disclose the information to them.

## 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.