Option to Sell (Put Option)

An option to sell may be used to assure that a property acquisition can be undone if expectations are not met.

INTRODUCTION

The holder of an option to sell (sometimes called a "put" or "put option") has the right, but not the obligation, to sell a specified property interest to the grantor of the put option at a certain price within a certain period of time. The grantor of the put option has the obligation to purchase the property interest if the holder exercises the option. The option holder typically will have sought the put option at the time they acquired the property to ensure that they can undo the acquisition if their expectations regarding funding or other matters related to the acquired property are not met.

Described below are three situations in which a put option could be an appropriate tool.

TEMPORARY ACCOMMODATION

Sometimes a land trust, trail group, or other organization may help another by acquiring land or an easement and holding it on a temporary basis until the other organization, slated to be the permanent owner or holder, raises sufficient funding to purchase the property. To ensure that a temporary accommodation does not turn into a permanent arrangement, the accommodating organization may want a mechanism to compel the other to buy out its investment after a certain period of time. A put option will ensure that the accommodating organization is relieved of its burden and compensated for its investment.

ENSURING PROJECT PARTICIPATION

An organization may be willing to acquire a property relying on the promises of other project participants to raise funds for long-term stewardship. To protect itself from being saddled with the burdens of ownership without proper funding, the organization may require, as a condition to accepting ownership, the right to sell the property to other project participants if, after a certain date, the required stewardship funding is not in place.

UNWINDING A COLLABORATION

The partners in a conservation project may need to address the possibility that circumstances may occur when they will want or need to go their own way. For example:

> A land trust enters a joint venture with an educational organization to acquire land for use as a nature preserve with an environmental study center. If the sale of a conservation easement (which will finance the land trust's stewardship of the land) to a government agency does not materialize, the land trust does not want to remain as a co-owner. If a grant from another government agency to build and operate the center does not materialize, the educational organization does not want to remain as a co-owner.

The collaboration may be structured so that each organization has an option to make the other buy out its interest if its project expectations are not met.

The collaboration may be further structured so that if, say, organization A exercises its put option and organization B subsequently defaults on its obligation to purchase organization A's interest, organization A can have the right (a purchase option) to purchase the organization B's interest (perhaps at a discounted price) so as to be in a position to control a sale to a third party of the entire set of property interests related to the joint venture.

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