

# RIGHT OF FIRST REFUSAL AGREEMENT

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This Right of First Refusal Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and between:

[GRANTOR LEGAL NAME], a [STATE] [ENTITY TYPE OR "an individual"] with its [principal place of business / residence] at [GRANTOR ADDRESS] (the "**Grantor**"); and

[HOLDER LEGAL NAME], a [STATE] [ENTITY TYPE OR "an individual"] with its [principal place of business / residence] at [HOLDER ADDRESS] (the "**Holder**").

The Grantor and the Holder are each a "**Party**" and together the "**Parties**."

**Recitals.** The Grantor owns or controls [DESCRIBE THE PROPERTY, INTEREST, OR ASSET, e.g. the real property at [ADDRESS]; [NUMBER] membership units in [COMPANY]; specific equipment] (the "**Subject Property**"). The Grantor is willing to grant the Holder a right of first refusal to acquire the Subject Property if the Grantor later decides to sell or transfer it, on the terms below. In consideration of the mutual promises below, and other good and valuable consideration, the Parties agree as follows.

## 1. Definitions and Interpretation

**1.1 Subject Property.** "**Subject Property**" means the property, interest, or asset described in the Recitals, more fully described in **Exhibit A**, together with any rights appurtenant to it.

**1.2 Transfer.** "**Transfer**" means any sale, assignment, conveyance, or other disposition of all or a defined portion of the Subject Property to a Third Party for value, but excludes the Excluded Transfers listed in Section 2.4.

**1.3 Third-Party Offer.** "**Third-Party Offer**" means a bona fide, written, arm's-length offer from a Third Party that the Grantor is willing to accept to acquire the Subject Property, stating the price, payment terms, and other material terms.

**1.4 Right of First Refusal.** "**Right of First Refusal**" or "**ROFR**" means the Holder's right, on the terms of this Agreement, to acquire the Subject Property on the same material terms as a Third-Party Offer before the Grantor may complete that Transfer.

**1.5 Interpretation.** Headings are for convenience only. "Including" means "including without limitation." "Third Party" means any person other than the Parties and their affiliates.

## 2. Grant of the Right of First Refusal

**2.1 Grant.** The Grantor grants the Holder a Right of First Refusal with respect to any Transfer of the Subject Property during the Term, on and subject to the terms of this Agreement.

**2.2 Trigger.** The ROFR is triggered when the Grantor receives a Third-Party Offer that the Grantor is willing to accept, or otherwise decides to Transfer the Subject Property on defined terms.

2.3 **No obligation to sell.** This Agreement does not obligate the Grantor to Transfer the Subject Property. It governs only the Holder's priority right if and when the Grantor decides to Transfer.

2.4 **Excluded Transfers.** The ROFR does not apply to **[CHOOSE / EDIT: transfers to the Grantor's affiliates or family members; transfers by gift, inheritance, or estate planning; pledges as bona fide loan collateral; or other transfers listed in Exhibit B]**, provided the transferee takes subject to this Agreement.

### 3. Notice and Exercise

3.1 **Offer notice.** When the ROFR is triggered, the Grantor will give the Holder written notice (the "**Offer Notice**") that includes a copy of, or a complete description of, the material terms of the Third-Party Offer, including price, payment terms, closing date, and any contingencies.

3.2 **Exercise period.** The Holder may exercise the ROFR by delivering written notice of exercise to the Grantor within **[NUMBER, e.g. 15]** days after receiving the Offer Notice (the "**Exercise Period**"). Time is of the essence as to the Exercise Period.

3.3 **Matching terms.** If the Holder exercises the ROFR, the Holder will acquire the Subject Property on the same material terms as the Third-Party Offer, except that **[OPTIONAL: any non-cash consideration in the Third-Party Offer may be satisfied by its fair cash equivalent, determined as set out in Exhibit C]**.

3.4 **Closing.** If the Holder exercises the ROFR, the Parties will close the Transfer within **[NUMBER, e.g. 30]** days after the Holder's exercise (or on the closing date in the Third-Party Offer, if later), at which time the Grantor will deliver the Subject Property free of liens except those the Holder agreed to assume.

### 4. Effect of Non-Exercise

4.1 **Right to proceed.** If the Holder does not exercise the ROFR within the Exercise Period, the Grantor may complete the Transfer to the Third Party, but only on terms no more favorable to the Third Party than those in the Offer Notice and only within **[NUMBER, e.g. 120]** days after the Exercise Period ends.

4.2 **Re-offer on changed or stale terms.** If the Transfer is not completed within that period, or if the material terms change in the Third Party's favor (for example, a price reduction of more than **[e.g. 5%]**), the ROFR is reinstated and the Grantor must deliver a new Offer Notice before proceeding.

4.3 **Transferee takes subject to ROFR.** Unless the Transfer is completed in full compliance with this Agreement and the ROFR is thereby exhausted as to that Subject Property, any transferee takes the Subject Property subject to the Holder's continuing Right of First Refusal.

### 5. Representations and Covenants

5.1 **Authority.** Each Party represents and warrants that it has full power and authority to enter into and perform this Agreement, that this Agreement is duly authorized and binding on it, and that entering into it does not breach any law or agreement to which it is bound.

5.2 **Ownership.** The Grantor represents and warrants that it owns or controls the Subject Property and that, as of the Effective Date, it has not granted a conflicting right of first refusal, option, or right of first offer except as disclosed in **Exhibit B**.

5.3 **Good faith.** The Grantor will not structure a Transfer, or the terms of a Third-Party Offer, with the purpose of defeating or circumventing the Holder's Right of First Refusal.

5.4 **Further assurances.** Each Party will execute such further documents and take such further actions as the other reasonably requests to give effect to this Agreement, including, where applicable, a memorandum of this

Agreement suitable for recording against the Subject Property.

## 6. Term and Termination

**6.1 Term.** This Agreement begins on the Effective Date and continues until the earliest of: (a) **[END DATE OR NUMBER OF YEARS]**; (b) a Transfer completed in full compliance with this Agreement that exhausts the ROFR; or (c) the Parties' written agreement to terminate (the "**Term**").

**6.2 Survival.** Provisions that by their nature should survive, including confidentiality and any accrued payment or closing obligations, survive termination.

**6.3 Rule against perpetuities savings.** If any right or interest created by this Agreement would otherwise be void under any applicable rule against perpetuities or similar law, that right will terminate no later than the maximum period permitted by that law.

## 7. Confidentiality

**7.1 Obligation.** Each Party will keep confidential the terms of this Agreement and any non-public information about a Third-Party Offer or the Subject Property learned in connection with it, using at least reasonable care.

**7.2 Permitted disclosures.** A Party may disclose such information to its advisors, lenders, and insurers bound by confidentiality obligations at least as protective as these, and to the extent required by law or court order.

## 8. General Provisions

**8.1 Governing law and venue.** This Agreement is governed by the laws of the State of **[STATE]**, without regard to its conflict-of-laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts located in **[COUNTY, STATE]**. Where the Subject Property is real property, the law of the jurisdiction where it is located may also apply to matters of title and recording.

**8.2 Assignment.** **[CHOOSE: The Holder may not assign the ROFR without the Grantor's prior written consent / The Holder may assign the ROFR only to [PERMITTED ASSIGNEES].]** The ROFR binds and benefits the Parties' permitted successors and assigns.

**8.3 Specific performance.** The Subject Property is acknowledged to be unique, and the Holder is entitled to seek specific performance and injunctive relief to enforce the ROFR, in addition to any other remedy.

**8.4 Entire agreement; amendment.** This Agreement is the entire agreement between the Parties on its subject and may be amended only by a writing signed by both Parties.

**8.5 Severability and waiver.** If any provision is unenforceable, the rest remains in effect. A Party's failure to enforce a provision is not a waiver.

**8.6 Notices.** Notices must be in writing and sent to the addresses above (or as updated in writing) and are effective on receipt.

**8.7 Counterparts and electronic signature.** This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**GRANTOR**

**HOLDER**

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Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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Printed name: **[NAME]**

Printed name: **[NAME]**

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Title: **[TITLE OR N/A]**

Title: **[TITLE OR N/A]**

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Date: \_\_\_\_\_

Date: \_\_\_\_\_

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