



## TERMS AND CONDITIONS FOR COMMUNITY GARDENS, OPEN SPACE AND RECREATIONAL AREAS

This Purchase Application (“Purchase Application”) is for the potential purchase of property owned by the City of Philadelphia (“City”), the Philadelphia Housing Development Corporation (“PHDC”), the Philadelphia Land Bank (“Land Bank”), or the Philadelphia Redevelopment Authority (“PRA”). The term “Owner” refers to either the City, PHDC, the Land Bank, or PRA as the owner of Property (as defined below) as the context requires. The Applicant acknowledges and agrees to the following terms and conditions:

- i. Any and all information regarding any and all properties being offered for sale (“Property”) is provided for informational purposes only and shall not constitute a representation, warranty, or guarantee by the Owner. The applicant submitting this Purchase Application (the “Applicant”) have not relied, and are not relying, upon any information, document, report, statement, projection, representation, warranty, or guarantee, whether express or implied, oral or written, past or present, material or immaterial, that may have been given, or made by or on behalf of, the Owner. The Applicant shall rely solely on its own inspection, investigation, confirmation, due diligence, and analysis of the Property and all information which the Applicant deems necessary or prudent in evaluating and analyzing the proposed purchase and development of the Property.
- ii. The Property is being sold in its “AS IS, WHERE IS” condition “WITH ALL FAULTS” and specifically and expressly without any representations, warranties, or guarantees, express or implied, of any kind, nature, or type whatsoever from, or on behalf of, the Owner. The Property may be subject to easements, zoning restrictions, and other encumbrances.
- iii. The Owner reserves the right, at any time and from time to time, and without notice to any applicant, in their sole and absolute discretion,
  - (a) to reject any and all submissions for the Property;
  - (b) to cancel, postpone, or extend the sale of the Property or any other time period;
  - (c) to expressly waive any informality, defect, non-responsiveness, exception, deviation, inadequacy, or technicality in any or all submissions for the Property;
  - (d) to solicit new submissions for the Property;
  - (e) to negotiate with one or more applicants concerning any aspect of a submission including, without limitation, price;
  - (f) to terminate negotiations with any or all applicants;
  - (g) to require additional information or clarification, confirmation, or modification of any information from any or all applicants;
  - (h) to supplement, amend, substitute, modify, or re-issue the sale of the Property including, without limitation, with materially different terms and conditions;
  - (i) to conduct interviews with one or more applicants;
  - (j) to reject any applicant if the applicant has ever defaulted on, or failed to complete construction with respect to, a contract or agreement involving the acquisition or development of property from the City, PHDC, the Land Bank, or PRA;

- (k) to reject any applicant if the applicant has either
    - (1) been involved in a bankruptcy in the past five (5) years or
    - (2) been a party in any lawsuit or other legal proceeding involving any federal, state, or city political subdivision or related entity including, without limitation, including, without limitation, the City, PHDC, the Land Bank, or PRA;
  - (l) to reject any applicant if the applicant, or any individual or entity identified on the Purchase Application form, is not in compliance with all City obligations or in an agreement to become compliant;
  - (m) to permit or reject amendments, modifications, alterations, or corrections by any or all applicants including, without limitation, information inadvertently omitted;
  - (n) to request that any or all applicants modify their submission based upon the Owner's review and evaluation; and
  - (o) to rescind a selection prior to execution of a purchase agreement for any reason or no reason.
- iv. The Owner is not under any obligation to convey any Property to any party, including, without limitation, the Applicant or the highest scoring/recommended applicant. The Owner may terminate negotiations with any party at any time for any reason or no reason. In no event shall the Owner be responsible for any costs, expenses, or fees incurred by, or on behalf of the Applicant or any other party relating to any Property or its submission.
  - v. The sale is subject to approval from Philadelphia City Council, and, for PHDC, Land Bank or PRA property, the applicable Board of Directors. The sale is further subject to the City's and the Owner's respective policies and guidelines and all applicable ordinances.
  - vi. All projects that exceed \$100,000 (subject to change) will be required to execute a legally binding Economic Opportunity Plan to promote the use of certified Minority, Women, Disabled, and Disadvantaged Business Enterprises and minority and female workers in all aspects of the project in accordance with the City's baseline goal. Purchase Application Form
  - vii. The Applicant, if selected, agrees to be bound by all published special provisions of the sale including, without limitation, use restrictions and completion deadlines. The Applicant acknowledges having reviewed the form purchase agreement, which the selected applicant will be required to sign. The terms of the purchase agreement are subject to change at the Owner's sole and absolute discretion prior to signing.
  - viii. Prior to the full execution of a purchase agreement, the following will be treated as an event of default and disqualification, and the deposit will be forfeited as liquidated damages and not as a penalty:
    - (a) the Applicant's withdrawal after the deposit has been provided;
    - (b) failure to timely execute the purchase agreement;
    - (c) any false statement, misrepresentation, misstatement, or omission in any form, document, or item submitted, or otherwise made to the Owner; and
    - (d) failure to timely provide any additional information when requested. Regarding a violation of (c) above:
      - (i) the Applicant may also be barred from purchasing any Property,
      - (ii) the Applicant may also be barred from purchasing any future properties from the City, PHDC, the Land Bank, and PRA, and
      - (iii) the Applicant and the undersigned may also be subject to such penalties and damages as are now or may in the future be prescribed by law or equity.

- ix. The Applicant and the undersigned agree to indemnify, defend, and hold harmless the City, the Land Bank, PRA, and PHDC from and against any and all liabilities, obligations, losses, fines, penalties, expenses (including, without limitation, attorneys' fees, court, and settlement expenses) claims, statutory claims, judgments, settlements, suits, actions, arbitration proceedings, requests for relief, forbearance, appeals, and demands of any kind whatsoever, whether or not involving a third party, sustained or alleged to have been sustained in connection with or resulting from, directly or indirectly, (i) the submission of the Purchase Application; (ii) the delivery by the Applicant to the Owner of any documents or information; and (iii) any conduct undertaken by the Applicant in furtherance of or in relation to its submission for any Property. The Applicant and the undersigned agree that their duty to indemnify, defend, and hold harmless shall not be limited to the terms of any liability insurance, if any.
- x. To the maximum extent of the law, Applicant and the undersigned hereby forever remise, release, and discharge the City, the Land Bank, PRA, and PHDC and their respective directors, officers, employees, staff, and agents (collectively, the "Released Parties") from any and all actions, suits, liabilities, losses, damages, claims, statutory claims, and demands of any kind or character whatsoever, known or unknown, in contract or in tort, at law or in equity which the Applicant or the undersigned has or had or may have against the Released Parties, or any of them, which relates in whole or in part, directly or indirectly, to the Applicant's submission for any Property.
- xi. Any Purchase Application and other materials or documentation that do not adhere strictly to any requirement, is conditioned in any way, is deemed incomplete, or is not responsive may, in the sole discretion of the Owner, be rejected, as not responsive, without further consideration. The Owner reserves the right, in its sole and absolute discretion, to determine whether any deviation, exception, condition, or inadequacy makes the Applicant's submission non-responsive, incomplete, or otherwise unacceptable such that the Applicant will be rejected without further consideration.
- xii. The Owner shall have the right to disclose all materials and documentation submitted by the Applicant or the undersigned to any person or entity in order to evaluate the Applicant's submission to purchase any Property, including, without limitation, employees, staff, consultants, contractors, agents, and evaluators. The Applicant acknowledges (i) that any person evaluating the Applicant's submission (an "Evaluator") may be a private individual and may not be an employee, staff, or affiliate of the Owner; and (ii) that all materials and documentation submitted by the Applicant may be disclosed to any Evaluator in order to evaluate the Applicant's submission to purchase any Property, notwithstanding any notice or statement by the Applicant (whether made in the Purchase Application or otherwise) asserting the confidential or proprietary nature of any information or of any materials submitted by the Applicant.
- xiii. **THE OWNER MAY BE SUBJECT TO THE PENNSYLVANIA RIGHT TO KNOW LAW. THIS PURCHASE APPLICATION AND ALL INFORMATION PROVIDED HEREIN AND OTHERWISE SUBMITTED MAY BE SUBJECT TO DISCLOSURE TO THE PUBLIC AND MAY ALSO BE REQUIRED TO BE DISCLOSED BY APPLICABLE LAW, SUBPOENA, OR COURT ORDER.**