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To: Philadelphia Land Bank Board
1234 Market St., 17th Floor
Philadelphia, PA 19107

Re: The impact of the 30-year mortgage requirement on community garden dispositions

Dear Chair Fadullon and Land Bank Board of Directors:

We are community gardens, nonprofits, and other allied organizations across Philadelphia who seek to secure our community-owned gardens and green spaces through the Land Bank. We aim to protect and support community gardens and urban farms as critical neighborhood anchors that increase access to fresh food; foster safer, stronger, healthier communities; and contribute to climate resiliency, reducing dangerous high heat temperatures, flooding, and air pollution. We are writing to urge the Land Bank to reconsider its relatively recent practice of placing a 30-year self-amortizing mortgage and note on nominal land dispositions for community gardens and open spaces.

The Philadelphia Land Bank's Disposition Policy, overseen by Philadelphia Housing Development Corporation (PHDC) staff, requires only that one of four restrictions be applied to nominal land dispositions for uses such as community gardens and open space. Prior to 2020, PHDC required an open space deed restriction and a reversionary clause to successfully ensure that properties acquired through nominal land dispositions for open space and community gardens could not be developed or sold for other uses. Since 2020, PHDC has been requiring a 30-year self-amortizing mortgage and note.

Self-amortizing mortgages are often used as a tool for affordable housing and homeownership, but they are not an appropriate tool for preserving land for open space and agriculture. Not only is a 30-year self-amortizing mortgage and note not required under the Land Bank nominal land Disposition Policy, but the use of a 30-year mortgage and note jeopardizes the ability of nonprofit organizations to preserve community gardens and open spaces. Indeed, the 30-year mortgage has a significant adverse impact on the financial health of the nonprofit organizations best suited to acquire and preserve these properties.

A Deed Restriction and Reversion Clause Ensure that Community Gardens and Open Spaces Are Not Later Redeveloped

Philadelphia has a long history of nonprofit organizations successfully preserving community gardens through nominal dispositions from the City with deed restrictions that ensure that the land can only be used as open space or a community garden and cannot be developed. We are not aware of any community garden disposition conveyed under these conditions that was ever "flipped" or sold for development purposes.

Where a reversion clause is also added to the deed, the land reverts to the City if it can no longer be maintained as a community garden or open space. These conditions can be featured prominently and clearly in the deed to ensure that they are immediately flagged in a title search. We propose that the City

return to using these two control measures for nominal open space, community garden and farm dispositions.

The 30 Year Mortgage Harms the Preservation of Community Gardens and Open Spaces

- **IMPACT TO VALUE:** The mortgage and note amount used by PHDC is based on the market valuation of the property as a developable site. However, the presence of the open space deed restriction reduces the property's value significantly. This puts nonprofits in a difficult financial position of having their mortgage liabilities exceed the value of their underlying land collateral. Further, contrary to the recommendation of the Land Bank's auditor, the valuation is not determined by an independent appraiser. Other major cities use an independent appraiser to ensure an objective and unbiased valuation.
- **JEOPARDIZES NONPROFIT'S FINANCIAL HEALTH:** With the use restricted as open space, the value of the asset is significantly less than the liability/mortgage. This jeopardizes an organization's financial health, showing up in audits or financial statements and making an organization ineligible for grants and funding opportunities. For example, two of the Neighborhood Gardens Trust's (NGT) 10 pending dispositions have received valuations totaling \$3.3 million. Urban Creators' farm has been valued at \$1.4 million.
 - Certain garden dispositions have been subject to a Recourse Mortgage, meaning in the case of default, the City could initiate a foreclosure or take other legal action to collect the entire mortgage amount and any portion of the judgment that is not covered by the sale of the property.
 - The Recourse Mortgage provided to Urban Creators would place an undue financial burden. If, for example, 15 years into the loan term the Garden was found in default of the mortgage, and the value of the property had decreased or was sold at Sheriff sale for less than the mortgage value, then Urban Creators would not only lose their land, but the City could get a deficiency judgment to go after their assets to recoup the difference.
- **AMBIGUOUS TERMS JEOPARDIZE LAND PROTECTION AND COMMUNITY INVESTMENT:** The terms for default in the mortgage are not clearly defined, leaving the property vulnerable for repossession via foreclosure and depriving organizations of their interest and rights in the property. For example, a garden could be in default of the mortgage and foreclosed upon if it is not "clean and free of debris." That ambiguity puts significant community investments at risk. Using the same two examples:
 - Urban Creators has invested \$2.2 million into the creation of Life Do Grow Farm and management of its community programs since 2011.
 - NGT's Summer Winter Garden has a 40-year history as a community garden, with hundreds of residents spending thousands of hours transforming a rubble and debris filled lot into a beautiful flourishing garden, with over \$700,000 invested by the community, Pennsylvania Horticultural Society, and Drexel University. Today, the Garden sits in the middle of Drexel's campus and would be subject to a \$2.8 million mortgage and could be subject to default and foreclosure if not kept "clean and free of debris."
- **HINDERS ACQUISITION OF THE MOST THREATENED GARDENS:** The 30-year mortgage makes it more expensive and difficult to secure state land acquisition grants and prevents nonprofits from leveraging the value of nominal fee land dispositions to raise needed resources from the Commonwealth. For example, in 2019 NGT was able to secure a \$92,000 state grant from the Department of Conservation and Natural Resources to acquire land from a

developer at a community garden in Kensington by matching the grant with a nominal fee disposition by the City. Today, with the new requirements and the artificially inflated value of the property, this would be impossible. The Department would not accept the mortgaged property as a match.

- **NOT A RECOGNIZED BEST PRACTICE:** The Center for Community Progress, a nationally recognized leader working with land banks across the country, is not aware of any other municipalities that enforce the use of 30-year self-amortizing mortgages on open space, urban farms or community gardens and do not recommend this as a best practice.
 - The few land banks that use mortgages on open space and community garden dispositions have significantly shorter terms (5 or 10 years) and much lower valuations (\$5,000 to \$20,000).
- **BURDENSOME PAPERWORK:** the mortgage creates administrative burdens on the City which must provide an annual statement on the outstanding mortgage amount for each property to each property owner for 30 years.

In sum, the PHDC has several options to ensure that land conveyed pursuant to the nominal disposition policy remains a community garden or open space and does not unnecessarily burden nonprofit organizations who are trying to preserve these important neighborhood spaces. We urge you to adopt one of these workable alternatives that address both the City's and the organizations' concerns. We also welcome the opportunity to meet with you and others at the Land Bank for further discussion. It is a high priority to work together to resolve these issues to ensure we all can deliver on our missions. We look forward to hearing from you.

Sincerely,

Public Interest Law Center
Neighborhood Gardens Trust
Urban Creators
Iglesias Gardens
Urban Tree Connection
The People's Kitchen Philadelphia
Moore to Love Garden
Original American Foundation
Holly Street Neighbors Community Garden
One Art Community Center
Arcadia Commons
Neighbors of 5852 Vine St
Hunting Park Community Garden &
Orchard
Philadelphia Orchard Project
Norris Square Neighborhood Project
Brewerytown Garden
Hawthorne Garden
Pemberton Sitting Garden
Farm on Florence
15th Street Garden

Pennsylvania Horticultural Society
Spooky Garden
The Wiota Street Garden
Summer Winter Garden
East Park Revitalization Alliance
The Village of Arts and Humanities
Food Policy Advisory Council (FPAC)
Soil Generation
Merck Family Fund (allied in support)
Claneil Foundation (allied in support)