

6976145

**PURCHASE OFFER
WITH CONDITIONAL CLOSING**

(VACANT LAND WITH PROPOSAL)

THIS AGREEMENT made this 21st day of November, 2016 by and between the **CITY OF ROCHESTER**, City Hall, 30 Church Street, Rochester, New York 14614, hereinafter called the "City", and **ROCHESTER HOUSING CHARITIES**, with offices at 675 W Main St, Rochester, NY 14611 hereinafter called "Purchaser".

1. **PROPERTY**

The Purchaser hereby agrees to purchase the following property known as 3- 3.5 Diamond Pl, (Map Assessment No. 107.53-1-35), 12 Diamond Pl (Map Assessment No. 107.53-1-28.1) and 15 Diamond Pl (Map Assessment No. 107.53-1-30.1)

2. **PURCHASE PRICE**

The Purchaser agrees to pay for these properties the sum of \$1,075.00 payable as follows: \$50.00 for 3-3.5 Diamond Pl, \$550.00 for 12 Diamond Pl and \$475.00 for 15 Diamond Pl.

DEPOSIT of \$1,000.00 submitted at the time of proposal submission, to be held until closing at which time it shall become part of the purchase price, or returned if this offer is not accepted by the City or the deposit retained as provided herein.

BALANCE of \$ 0 payable in cash or certified check at the time of conditional closing.

3. **IN LIEU OF TAX PAYMENTS AND DEED RECORDING FEES**

In addition to the purchase price, the Purchaser hereby pays to the City of Rochester the additional sum of \$ 908.00 (12 Diamond Pl) and \$420.00 (15 Diamond Pl), which represents an in lieu of City tax payment for the 12 month period commencing with the first day of the month following the Council Approval date. Purchaser shall also pay deed recording fees in the amount of \$ 938.00 for the 3 properties.

If all provisions of this Agreement are satisfied and the title is transferred (deed recorded) prior to the end of the 12 month period referenced above, the City shall credit the pro rata share of the above in lieu of tax payment toward the Purchaser's next full tax bill. The property becomes fully taxable upon transfer of title to the Purchaser.

If the transfer of title and recording of deed **does not** take place by the end of the 12 month period referenced above, then the Purchaser, prior to transfer of title, agrees to pay an **additional** in lieu of tax payment equal to a pro rata share of full City and School taxes and embellishments adjusted from the first day of the thirteenth month after the Council Approval date, to date of transfer of title, based on full assessment and then current tax rates and charges.

4. **DEVELOPMENT PLANS**

- A. **SUBMISSION OF PLANS** - The Purchaser shall submit development plans for the property to the Commissioner of Neighborhood and Business Development or his/her delegated representative within 30 days from the date of this Agreement. If Purchaser fails to so submit the development plans, the City may declare this contract null and void by written notice to the Purchaser and shall retain all deposit and payments made by the Purchaser.
- B. **CITY'S PLANS APPROVAL** - The Commissioner of Neighborhood and Business Development or his/her delegated representative shall approve, disapprove or request modifications of the development plans submitted by the Purchaser within 30 days from submission of the plans to the City. If the Commissioner or his/her representative disapproves of the plan, or if the Purchaser does not agree to the modifications requested within ten (10) days of receipt of the City's request for modification, then the City may declare this contract null and void by written notice to the Purchaser and shall return to the Purchaser all deposits and payments.

5. **MAINTENANCE / CODE COMPLIANCE**

- A. At all times from the date on which the City Council ordinance accepting this Offer is deemed duly adopted (the "Council Approval Date"), the Purchaser shall be responsible for:
- (1) The care, custody and control of the subject property;
 - (2) Maintaining all yard(s) in a safe and sanitary condition, in compliance with City Code Chapter 90, the "Property Conservation Code." This maintenance shall include mowing the grass and keeping the premises free of trash and debris;
 - (3) Preventing illegal activity at the subject property. Illegal activity for purposes of this Section shall include, but not be limited to, discovery of stolen, illegal, or controlled substances pursuant to execution of a search warrant at the property, or apprehension of a suspect upon the property pursuant to an arrest warrant.
- B. At all times from the date of conditional closing, the Purchaser is responsible for:
- (1) All activities set forth in subsections 5A.(1), 5A.(2), 5A.(3) above;
 - (2) To maintain all building(s) and yard(s) of the subject property in a safe and sanitary condition in compliance with City Code Chapter 90, the "Property Conservation Code," and with all other applicable laws, codes, rules and regulations of the City of Rochester and other applicable governmental jurisdictions.
- C. The Purchaser shall be responsible for compliance with all governmental notices, orders and demands regarding the care, custody, control and maintenance of the subject

property from the Council Approval Date, including "Notice and Orders" issued by the City. The Purchaser shall pay any fines, fees and other expenses arising from non-compliance with such governmental notices, orders and demands. This subsection shall apply even if such governmental notices, orders and demands are issued to, or such fines, fees and other expenses are charged to, the City of Rochester as legal owner.

6. CONDITIONAL CLOSING/TITLE TRANSFER WITH REVERTER

- A. This property is sold subject to the condition that the Purchaser complete the conditional closing within a period of 30 days from the date of City Council approval of this Agreement as provided in Section 13. This Agreement shall be submitted to City Council within 30 days of City's approval of Purchaser's Development Plans.
- B. The Purchaser may request that the conditional closing requirement be waived. Such request must be made in writing no later than 30 days from date of City Council approval. Approval by the City is subject to the following conditions:
- (1) The Purchaser must have immediate title to the subject property to meet the participating lending institution requirement for financing. The Purchaser must provide a letter from the participating lending institution to the City containing this requirement. The amount of the financial commitment shall be an amount not less than the estimated cost of the proposed improvement as approved by the City;
 - (2) The Purchaser must provide the City with a financial guarantee for completion of the proposed improvements to the property, as approved by the City. The amount of the guarantee shall be not less than the estimated cost of the improvements. The guarantee shall be in the form of a Letter of Credit, Performance Bond, or other collateral pledged by the Purchaser to the City, as approved by the City. Upon satisfaction by the Purchaser of the reverter clause requirements stated in Section 6.B.3 below, the City shall release to the Purchaser the financial guarantee pledged to the City for property development;
 - (3) This commitment shall be delivered to the City of Rochester within 30 days from date of City Council approval;
 - (4) The deed to the subject property shall include a Reverter clause. The Reverter clause shall require the Purchaser to complete the improvements as called for in the development plans within the time frame approved by the City. Failure by the Purchaser to comply shall be grounds for the City to commence court proceedings to revest title to the property in the name of the City and for the City to use the financial guarantee pledged to the City to complete development of the property;
 - (5) Prior to title transfer, the Purchaser shall obtain any zoning variances, site plan approval and other zoning/planning approvals required for Purchaser's intended use of the property. Purchaser shall apply for any such approvals within 30 days of the Council Approval Date.

7. **COUNTY TAX**

The Purchaser agrees to pay any future County tax liens and Pure Waters charges pertaining to the subject property that are levied after the Council Approval date.

8. **WATER/PURE WATERS/OTHER UTILITIES**

Purchaser agrees to pay for any and all City water and Pure Water charges and for all other utilities for the subject property commencing on the first day of the month after Council approval of this offer.

9. **CANCELLATION**

- A. The City shall cancel this sale, without refund of any deposit payment or in lieu of tax payment, upon the occurrence of any of the following:
- (1) Purchaser's failure to comply with Section 4 and 5 herein;
 - ~~(2) If the Purchaser fails to complete the conditional closing, pursuant to Section 13 herein;~~
 - (3) If the Purchaser fails to commence and diligently proceed with the development of this property as required in this Agreement, in accordance with City codes, in compliance with Section 13.C. herein;
 - (4) If the Purchaser fails to complete the proposed improvements as approved by the City in the development plans, in accordance with City codes, within the time frame approved by the City, or within such longer time period as granted in writing by the City, in compliance with Section 13.C. herein;
 - (5) If the Purchaser fails to complete the "Final Closing" pursuant to Section 13.D. herein.
- B. This cancellation shall be effective upon a written notice mailed to the Purchaser. The City shall retain (1) as liquidated damages, twenty-five percent (25%) of the purchase price or \$50, whichever is greater, and the in lieu of tax payments, and (2) the amount of any unpaid fines, fees and other expenses arising from non-compliance with governmental notices, orders and demands regarding the care, custody, control and maintenance of the subject property.

10. **TERM OF OFFER**

This Offer shall be irrevocable for 60 days from the date of Purchaser's execution of this "Purchaser Offer with Conditional Closing."

11. **TITLE DOCUMENTS**

The City shall order, at Purchaser's expense and payable at closing, a title report (not an abstract of title), City and County tax searches and Federal Bankruptcy search, showing title in the City. The City shall convey title to the Purchaser by a quit claim deed. Purchaser takes the property subject to any rights of tenants, and any covenants, easements and restrictions of record in the Monroe County Clerk's Office. Purchaser shall pay for the title report and all recording and filing fees and transfer tax, including, but not limited to, the charges set forth in paragraph 13 (D), hereinafter set forth.

If title to any portion of this property is not insurable, Purchaser or the City shall have the right to cancel this contract. In the event of such cancellation by either party, then any money deposited with the City shall be returned to the Purchaser and there shall be no further liability on the part of either party. The City shall order the insurance at Purchaser's expense. Purchaser shall pay the title insurance premium at closing.

Purchaser accepts the property in "as is" condition. No oral warranties or representation, whether expressed or implied, by the City, its agents, employees, representatives, assignees, servants or contractors shall be deemed to be binding on the City. Failure of Purchaser to inspect the subject premises prior to, or after execution of this contract, shall not be grounds for the rescission or revocation of this contract. No claim for damages will exist against the City because of defective title.

12. **RIGHT OF POSSESSION**

- A. **LICENSE** - The City hereby grants the Purchaser a revocable license to enter the subject premises from the date of Council Approval for carrying out the activities set forth in Section 5 herein and for cleaning and debris removal. The Purchaser shall be deemed responsible for all persons present upon the property and for all activity conducted thereon. This revocable license does not authorize entry upon the property for any purpose other than the activities set forth in Section 5 herein and in this subsection.

This license is subject to the cancellation provisions of Section 9 of this Agreement. This License shall continue until cancellation of this purchase by the City or the recordation of the deed to the Purchaser in the Monroe County Clerk's Office, whichever occurs first.

- B. **INSURANCE** - The Purchaser agrees to defend, indemnify and hold the City of Rochester harmless from any and all claims for bodily injury or property damage occurring or alleged to have occurred at the subject property during the license period set forth in subsection A. above. Purchaser shall insure the property with liability insurance (in a Builder's All-Risk policy or other applicable policy) with limits of not less

than \$100,000 with respect to each person, not less than \$300,000 with respect to any one occurrence and \$50,000. For property damage; or such other limits as may be approved by the City. All such insurance policies shall be issued in the name of the Purchaser and the City as an additional insured, and a copy of a bona fide certificate of insurance evidencing the coverage provided in the policy shall be delivered by the Purchaser to the City on or before the date of conditional closing.

C. **ASSUMPTION OF RISK** - The Purchaser shall take possession of the property pursuant to Section 12 at his/her own risk, and accepts, from the Council Approval Date, responsibility and liability for the property and the activities set forth in Section 5 herein, and assumes from the Council Approval Date risk of loss for damage to the property, from whatever cause. Any such damage shall not relieve the Purchaser from completing this purchase.

D. **IMPROVEMENTS/PERSONAL PROPERTY** - The Purchaser understands and agrees that the City shall not be liable to the Purchaser for any reimbursements for any improvements, or expenditures made upon the property by the Purchaser, his/her agents, contractors, servants, assigns, heirs or successors. If the property contains items of personal property, it shall be the responsibility of the Purchaser to establish ownership to the personal property and the Purchaser shall hold the City harmless from any claims relating to the personal property.

13. **CONDITIONAL CLOSING**

This Agreement shall be submitted to City Council within 30 days of City's approval of Purchaser's development plans pursuant to Article 6. A conditional closing shall take place at City Hall, 30 Church Street, Rochester, New York within 30 days from the Council Approval Date, or within such time as may be approved by the City. At the conditional closing:

A. The Purchaser shall pay to the City by cash, certified check or bank draft made payable to the City Treasurer the balance of the purchase price.

B. IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT TIME IS OF THE ESSENCE, AND IN THE EVENT PURCHASER FAILS TO COMPLETE THE CONDITIONAL CLOSING WITHIN THE TIME SET FORTH ABOVE, THEN THE CITY MAY CANCEL THIS CONTRACT BY WRITTEN NOTICE MAILED TO THE PURCHASER, AND THE CITY SHALL RETAIN AS LIQUIDATED DAMAGES THE DEPOSIT AND IN LIEU OF TAX PAYMENT MADE HEREIN, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS AGAINST THE OTHER.

C. Development/ Improvements to the Land.

If Purchaser is going to make improvements to the land,

(1) The improvement work shall be fully completed within the time period agreed upon by the Purchaser and the City of Rochester in accordance with the Purchaser's approved development plan.

- (2) If requested in writing by the Purchaser, the City may consider granting the Purchaser an extension of the time limit for improvement construction. Such consideration would be solely at the discretion of the City and the City would be under **no obligation** to grant an extension of time. If the City consents in writing to grant to the Purchaser an extension of time for improvement construction, then the Purchaser, in consideration for such extension(s), agrees to pay at such time an **additional** in lieu of tax payment that is equal to the full City and School taxes and embellishments for the time period of the extension, based on full assessment and then current tax rate and charges. If the Purchaser completes the terms and conditions of the development proposal prior to the expiration of the time the in lieu of tax payment required to be made pursuant to this paragraph, then the Purchaser shall be refunded the pro rata portion of the in lieu of tax payment required to be made pursuant to this paragraph, which shall be equal to a pro rata share of full City and School taxes and charges. The property becomes fully taxable upon transfer of title to the Purchaser.
- (3) Use of the property will comply with the requirements of the existing zoning classification, and the regulations of the Zoning Ordinance of the City of Rochester, and any changes of land use classification desired will be initiated by the Purchaser and completed prior to the date of transfer of title.

- (4) Title to the property will not be conveyed to the Purchaser until the completed improvement receives the approval of the Commissioner of Community Development and, if applicable, a Certificate of Occupancy or Letter of Compliance is issued by Code Enforcement.
- (5) During the development period, before title is transferred, the Purchaser shall notify the City Real Estate Office of any change of Purchaser's address and the Purchaser shall contact the City NSC Office on a monthly basis for the purpose of arranging regular City monthly inspections.
- (6) During the development period, until the sooner of (a) transfer of title to the Purchaser or (b) cancellation of this Agreement, the provisions of Section 12, subsection B (Insurance), subsection C (Assumption of Risk), and subsection D (Improvements/Personal Property), with any reference therein to the "license period" deemed to mean the "development period".
- (7) If the Purchaser fails to complete the improvements as approved by the City in the development plans in accordance with City codes, within the time frame approved by the City, or within such longer time period as granted in writing by the City, then the cancellation provisions of Section 9 shall apply.

D. FINAL CLOSING

If the terms and conditions of this Agreement are satisfied, and the Purchaser has completed the development plans in a satisfactory manner, and a Certificate of Completion or Certificate of Occupancy issued if applicable within the time limits of this Agreement, a final closing between the City and the Purchaser shall take place at City Hall. At the final closing, the Purchaser shall pay to the City, by cash, certified check or bank draft, the following amounts:

Fee to record Deed	\$55.00
Filing fee for Form TP-584	5.00
Filing fee for RP-5217 form	250.00
N.Y.S Transfer Tax	4.00 per \$1,000 of Purchase Price
Title Insurance Premium*	Per Schedule
Title Report*	Per Title Company charge(s)

*applicable if Purchaser's development plans entail construction of a building improvement.

(Please Note: These fees are subject to change between the date of this Agreement and final closing.)

The City shall then record the Deed to the Purchaser at the Monroe County Clerk's Office.

14. NON-ASSIGNABLE

This contract shall not be assigned, transferred or pledged by the Purchaser without the written consent of the City.

15. APPROVAL OF PURCHASE OFFER

Approval of this Purchase Offer, if given, shall be by ordinance enacted by the Rochester City Council and approved by the Mayor. Approval is effective on the date the ordinance is deemed duly adopted (herein, the "Council Approval Date"). City Council and the Mayor reserve the right to reject any and all Purchase Offers. If City Council and/or the Mayor do not approve this Purchase Offer, this Purchase Offer shall be null and void without further liability on the part of either party. Purchaser understands that the individual or corporate name, as the case may be, hereinafter set forth, is the name to be submitted for City Council approval. Names cannot be changed after the Council Approval Date.

16. **WARRANTY**

The Purchaser hereby states that he/she is not an employee of the City of Rochester, that he/she is not the former owner, nor a principal of the former owner or a part of the immediate family of the former owner, and that he/she is not making this purchase for such former owner nor for the purpose of transferring the property to such former owner.

17. **SUB-SOIL CONDITIONS / ENVIRONMENTAL ISSUES**

- A. The Purchaser understands and agrees that the property is being sold "as is". The City of Rochester makes no warranties, expressed or implied, as to the sub-soil conditions of said property. The Purchaser agrees that the City of Rochester shall not be liable for damages because of any sub-soil conditions nor shall said conditions be grounds for non-performance by the Purchaser.
- B. The Purchaser hereby agrees to accept the Property in "as is" condition, including the existence of hazardous materials and/or toxic substances on the subject property and the Purchaser will conduct, at its own cost, the removal of any such hazardous materials and toxic substances. Purchasers agree to hold the City harmless for any costs, claims, damages and injuries resulting from any environmental contamination, including but not limited to petroleum, hazardous materials and toxic substances present on, below or emanating from the subject property.

18. **ATTORNEY REPRESENTATION**

The Purchaser acknowledges that the City's attorney represents the City's interests, not the Purchaser's, even if the Purchaser chooses not to be represented by an attorney. The City's attorney(s) cannot render legal advice to the Purchaser, nor are they under any legal obligation to disclose matters which are a matter of record which the Purchaser may ascertain.

19. **NO WAIVER**

In the event that the terms and conditions of this Agreement are not strictly enforced by the City of Rochester, such non-enforcement shall not act as, or be deemed to act as, a waiver or modification of this Agreement, nor shall non-enforcement prevent the City of Rochester from enforcing each and every term of this Agreement thereafter.

20. **SEVERABILITY**

If any provision of this Agreement is held invalid by a court of law, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

21. **PROHIBITION ON RE-SALE**


This contract is made subject to the Purchaser agreeing not to transfer, re-sell or convey the subject premises to a tax-exempt organization for a period of five (5) years from the date of the recording of the deed from the City of Rochester. This covenant shall be contained in the deed from the City of Rochester to the Purchaser.

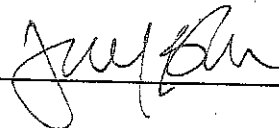
22. **NO TAX EXEMPTION IF NOT WITHIN 500 FEET OF EXISTING TAX-EXEMPT PROPERTY**

If the Purchaser is a tax exempt entity, the Purchaser agrees that the subject premises, unless located within 500 feet of property already owned by the Purchaser, shall be taxable for a period of five (5) years from the date of the recording of the deed from the City of Rochester in the Monroe County Clerk's Office. This covenant shall be contained in the deed from the City of Rochester to the Purchaser.

23. See Schedule B.

DATED: 11/29/16


PURCHASER

WITNESS: 

PURCHASER

