Texas Department of Housing and Community Affairs

Competitive 9% Housing Tax Credit Pre-Application

Application Number: 20153
Submitted Date: 1/6/2020 3:30PM
Submitted By: Kit Sarai

Contact Information

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Email: ajcarpen@gmail.com

Development Information

Name of Proposed Entity: Provision at Bomber Road, LP
Development Name: Provision at Bomber Road
Development Type: New Construction
Secondary Type: None
Previous TDHCA #: None
Initial Construction Year:
Units Demolished: 0
Units Reconstructed:
# of Non-Contiguous Sites: 1
# of Census Tracts: 1
Target Population: General
Development Address: NWQ Silver Creek Rd and Bomber Rd
White Settlement, TX 76108
ETJ?: N
County: Tarrant
Region: 3
Rural/Urban: Urban
Census Tracts: 48439110701
Total LI Units: 110
Total MR Units: 10
Total Units: 120
HTC Request: $1,500,000.00
Pre-App Fee Due: $1,200.00
Has Fee already been submitted?: No
Name on Check: none
Set-Aside Election:

Notifications

U.S. Representative: Kay Granger
District: 12
State Senator: Jane Nelson
District: 12
State Representative: Charlie Geren
District: 99
School Superintendent: Frank Molinar
School District: White Settlement ISD
School District Address: 401 S. Cherry Lane
                     Fort Worth, TX  76108

Presiding Officer of
Board of Trustees: Randy Armstrong
Address: 401 S. Cherry Lane
         Fort Worth, TX  76108

Elected Officials: B. Glen Whitley
                   Roy Charles Brooks
                   Devan Allen
                   Gary Fickes
                   J.D. Johnson
                   Ronald A. White
                   Paul Moore
                   Evelyn Spurlock
                   Amber Munoz
                   Christina Grudzinski
                   Gregg Geesa

County Judge
County Commissioner
County Commissioner
County Commissioner
Mayor
City Council Member
City Council Member
City Council Member
City Council Member
City Council Member

Neighborhood Organizations: None

Competitive Housing Tax Credit Selection Self-Score

Criteria Promoting Development of High Quality Housing

  Unit Sizes:  6
  Unit Features:  9
  Sponsor Characteristics:  2
  High Quality Housing Total:  17

Criteria to Serve and Support Texans Most in Need

  Income Levels of Residents:  15
  Rent Levels of Residents:  11
  Resident Services:  11
  Opportunity Index:  0
  Underserved Area:  4
  Tenant Populations with Special Housing Needs:  3
  Proximity to Jobs:  5
  Serve and Support Texans Most in Need Total:  49

Criteria Promoting Community Support and Engagement

  Commitment of Development Funding by Local Political Subdivision:  1
  Declared Disaster Area:  10
  Community Support and Engagement Total:  11
Criteria Promoting Efficient Use of Limited Resources and Applicant Accountability

Financial Feasibility: 26
Cost of Development per Square Foot: 12
Pre-Application Participation: 6
Leveraging Private, State and Federal Resources: 3
Extended Affordability: 4
Historic Preservation: 0
Right of First Refusal: 1
Funding Request Amount: 1
Efficient Use of Limited Resources and Applicant Accountability Total: 53
Point Adjustment: 130

Total Applicant Self-Score: 130

Intent to Request Points for Items not Included in the Applicant's Self-Score

Readiness to Proceed: 0 points
Government Support: 17 points
Quantifiable Community Participation: 4 points
Community Support from a State Representative: 8 points
Input from Community Organizations: 4 points
Concerted Revitalization Plan: 7 points

Attachments and Certifications

Site Control Documentation: Site Control_Provision at Bomber Road WS.pdf
Census Tract Map: Gardner_Map- Census Tract- bomber Rd.pdf
Neighborhood Risk Factors:
Other Pertinent Information:
Tarrant County, Texas

EARNEST MONEY CONTRACT AND
PURCHASE AND SALE AGREEMENT FOR REAL ESTATE (UNIMPROVED)

Gardner Capital Investment Fund, LLC, a Texas limited liability company, or its assigns (collectively the "Purchaser"), offers to purchase from Ili Villas LLC (the "Seller") certain real estate being a tract or tracts of land consisting of approximately 7 acres, more or less, located at approximately 800 Bourland Drive, located in The City of White Settlement, Tarrant County, Texas, described more specifically on Exhibit "A" (the Legal Description) attached hereto, together with all improvements thereon and appurtenances and hereditaments thereunto belonging (all of which is hereinafter referred to as the "Real Estate"), for the total sum of ONE MILLION EIGHT HUNDRED ANF FIFTY THOUSAND DOLLARS AND 00/100 ($1,850,000.00) of gross acreage as set forth in the Survey (and further defined in Paragraph 7.2) (the "Purchase Price") of the Real Estate, subject to the following and only the following, written terms and conditions of this Earnest Money Contract and Purchase and Sale Agreement for Real Estate (this "Contract").

1. Earnest Money Deposits. Purchaser shall deposit within five (5) business days to the Escrow Agent of the Title Company (the "Escrow Agent") the initial sum of Twenty Thousand and No/00 Dollars ($20,000.00) (the "Initial Deposit") as earnest money for this transaction (the "Initial Deposit) and shall be nonrefundable and distributed by Title Company to Seller on April 15th, 2020, provided this Contract has not previously been terminated, with such amount applied to the Sales Price at Closing. Purchaser shall deposit an additional sum of Thirty thousand and No/00 Dollars ($30,000.00) by April 16, 2020, as a second Earnest Money Deposit (the "Second Deposit") which shall become nonrefundable and distributed by Title Company to Seller on September 1, 2020, provided this Contract has previously been terminated, with such amount applied to the Sales Price at Closing. Upon completion of the inspections and submission of both preliminary and full tax credit applications and supplemental documentation to the Texas Department of Housing and Community Affairs ("TDHCA") and the release of initial TDHCA scoring logs, Purchaser shall determine to proceed with or terminate contract. If Purchaser elects to proceed, Purchaser shall instruct Escrow Agent to release to Seller the Initial Deposit on or before April 15th, 2020. Upon written notice of an allocation of tax credit awards, Purchaser shall instruct Escrow Agent to release to Seller the Second Deposit on or before September 1, 2020. At the Closing, the Initial Deposit and Second Deposit (collectively, the "the Earnest Money") shall be credited to the Purchase
Price.

If Purchaser, in its sole discretion determines prior to April 15, 2020, not to proceed with a purchase of the Real Estate, then the Purchaser shall notify the Seller and Escrow Agent in writing that the Purchaser intends to terminate this Contract, in which event the Purchaser shall receive a refund of the Initial Deposit per the terms of Section 1, this Contract shall be automatically terminated, Purchaser shall deliver a copy of the third party reports related to the Real Estate to Seller at this time and the parties shall have no further obligations one to the other. If Purchaser, in its sole discretion determines after April 15th, 2020, but prior to August 31, 2020, not to proceed with the purchase of the Real Estate, then the Purchaser shall notify the Seller and Escrow Agent in writing that the Purchaser intends to terminate this Contract, in which event the Purchaser shall receive a refund of the Second Deposit per the terms of Section 1, this Contract shall be automatically terminated, and the parties shall have no further obligations one to the other.

All materials furnished by Seller during Inspection Period shall be returned to Seller; and all due diligence materials, including surveys, environmental studies, geotechnical reports, and feasibility reports prepared on behalf of the Purchaser during the Inspection Period shall be provided to the Seller upon receipt of the Initial Deposit.

1.1  Payment on Closing. At Closing, Purchaser shall pay to Seller the entire Purchase Price; provided that Purchaser shall receive a credit against the Purchase Price at Closing in the amount of the Earnest Money and any other credits to which Purchaser is entitled under this Contract.

2.  The Real Estate.

2.1  It is hereby acknowledged and understood by Seller that Purchaser intends to develop the Real Estate as a residential apartment complex (hereinafter sometimes referred to as "Purchaser's Use"), and it is therefore a condition of this Contract that Purchaser must be able to determine to its satisfaction, in its sole discretion, each of the following matters prior to the expiration of the Inspection Period (as defined in Section 5 below);

2.1.1  that all utilities, specifically water, electric, telephone, cable and gas, access easements, as well as sanitary and drainage sewers, are available to the Real Estate at a reasonable cost and in enough size and capacity to adequately serve Purchaser's Use;

2.1.2  that the environmental conditions of the Real Estate as they relate to the Purchaser's Use, including without limitation, topography, soil consistency, geotechnical analysis, floodway designation, wetlands and animal preservation issues, are satisfactory to Purchaser; and

2.1.3  that the development of Purchaser's Use upon the Real Estate is economically feasible in all respects.

2.2  It is hereby understood and acknowledged by Seller that, if Purchaser is unable to obtain satisfactory results with respect to the matters specified in Paragraph 2.1 on or before the expiration of the Inspection Period, then Purchaser may, at its election, notify Seller in writing, at the place herein provided for notices, that it is dissatisfied with one or more of the matters specified in Paragraph 2.1, and that it thereby cancels and terminates this Contract, in which case neither party shall have further liability
to the other arising out of this Contract, and the Title Company shall distribute the Earnest Money then on deposit in accordance with Section 1 above depending upon the time of the termination. In the event Purchaser fails to so notify Seller of its election to cancel and terminate this Contract, then such conditions shall be deemed satisfactory to Purchaser.

3. **Reports: Due Diligence Materials.** On or before five (5) days after Seller's acceptance hereof, Seller shall furnish to Purchaser copies of any existing environmental assessment reports, existing surveys, existing inspections, existing soil/geotechnical reports or other existing reports relating to the Real Estate in Seller's possession. During the Inspection Period Purchaser shall have the right, at its expense, to obtain an environmental Phase I assessment for the Real Estate from an environmental consulting firm reasonably acceptable to Purchaser (the "Consultant"), the results of which shall be set forth in a report certified by the Consultant to Purchaser, which results shall be satisfactory in all respects to Purchaser. In the event any such report reveals defective conditions, Purchaser shall have thirty (30) days from receipt of such report to notify Seller of the defective conditions, and within thirty (30) days from receipt of such notice Seller shall notify Purchaser in writing that (a) Seller will correct such conditions and the time frame in which the same will be corrected, or (b) that Seller will not correct such conditions, in which event Purchaser may terminate this Contract, receive the return of any refundable portion of the Earnest Money and the parties shall be relieved of all further obligations under this Contract.

4. **Financing.** It is a condition precedent to Purchaser's obligations hereunder that Purchaser shall receive an allocation of tax credits from the TDHCA for the development of the Real Estate, all in an amount and upon terms and conditions acceptable to Purchaser in its sole discretion (the "Allocation"). It is hereby understood and acknowledged by Seller that if after diligent pursuit Purchaser does not receive the Allocation, then Purchaser may cancel and terminate this Contract by notification thereof to Seller, and the Title Company shall immediately disburse the refundable portion of the Earnest Money to Purchaser in accordance to this Contract, any non-refundable portion of the Earnest Money to Seller, and thereafter both parties shall be relieved of all further obligations under this Contract.

5. **Inspection Period.** Purchaser shall have until 5:00 p.m. Central Time, August 31, 2020 (the "Inspection Period") to perform all due diligence and to compile all documents deemed necessary by Purchaser, in its sole discretion, for submittal of an application and supporting documents including third party reports, letters, and resolutions (collectively, the "Application") to TDHCA for an allocation of housing tax credits.

If Purchaser, in its sole discretion, determines prior to the conclusion of the Inspection Period not to proceed with the Application, then the Purchaser shall provide written notification to the Seller and Escrow Agent prior to 5:00 p.m., Dallas, Texas time on the last day of the Inspection Period. The Purchaser may terminate, and the refund shall be determined on the following basis:

(a) If this Contract is terminated prior to January 31, 2020, the Initial Earnest Money shall be returned to Purchaser and copies of all Purchaser acquired third party reports (not including financial work papers of Purchaser) will be provided to the Seller.
(b) If this Contract is terminated after January 31, 2020, but prior to 5:00 p.m. Dallas, Texas time of August 31, 2020 the non-refundable portion of the Second Deposit shall be disbursed to Seller, and the refundable portion shall be disbursed to Purchaser, and copies of all Purchaser acquired third party reports (not including financial work papers of Purchaser) will be provided to Seller.

(c) All materials furnished by Seller during the Inspection Period shall be returned to Seller upon Purchasers’ receipt of the Initial Earnest Money.

(d) If Purchaser fails to give Seller timely written notice that Purchaser has elected to terminate this Contract prior to the expiration of the Inspection Period, the Purchaser shall be deemed to have waived its right to terminate based upon its inspection of the Real Estate and the Earnest Money shall be released to the Seller.

**Insurance Coverage.** Purchaser represents, warrants and covenants that, in making any entry onto or any intrusive or non-intrusive physical or environmental inspections of the Real Estate, Purchaser and all of Purchaser’s Agents entering onto or accessing the Property shall carry not less than One Million Dollars ($1,000,000.00) comprehensive general liability insurance insuring all activity and conduct of Purchaser and Purchaser’s Agents while exercising such right of inspection, entry and access. Upon request, Purchaser shall provide or cause Purchaser’s Agents to provide proof of insurance meeting the minimum amounts and requirements defined herein. The foregoing covenant of Purchaser and minimum insurance amount shall not impair, limit or reduce the scope, extent or amount of the Purchaser’s Indemnity Obligations under this Agreement.

**Notice of Inspection.** Purchaser agrees that in exercising its right of access hereunder, Purchaser will use and will cause Purchaser’s Agents to use their best efforts not to interfere with Seller’s use of its adjacent property. Purchaser shall, at least 48 hours prior to inspection, give Seller written notice, of its intention to conduct any inspections. Purchaser agrees to cooperate with any reasonable request by Seller in connection with the timing of any such inspection. Purchaser agrees (which agreement shall survive Closing or termination of this Agreement) to provide Seller with a copy of any and all information, materials and data that Purchaser and/or Purchaser’s Agents discover, obtain or generate in connection with or resulting from its inspection of the Real Estate.

**Restoration of Property.** Purchaser shall, at its sole cost and expense, promptly restore any physical damage or alteration of the physical condition of the Real Estate that results from any inspections conducted by or on behalf of Purchaser. The provisions of this Section shall survive the termination of this Contract.

**Indemnification.** PURCHASER AGREES (WHICH AGREEMENT SHALL SURVIVE CLOSING OR TERMINATION OF THIS AGREEMENT) TO INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM ANY LOSS, INJURY, DAMAGE, CLAIM, CAUSE OF ACTION, LIEN, COST OR EXPENSE, INCLUDING ATTORNEYS’ FEES AND COSTS, ARISING OUT OF A BREACH OF THE FOREGOING AGREEMENTS BY PURCHASER IN CONNECTION WITH THE INSPECTION OF THE PROPERTY, OR OTHERWISE FROM THE EXERCISE BY PURCHASER OR PURCHASER’S AGENTS OF THE RIGHT OF INSPECTION, ENTRY OR ACCESS
UNDER THIS CONTRACT (COLLECTIVELY, "PURCHASER'S INDEMNITY OBLIGATIONS"). THIS SECTION SHALL SURVIVE CLOSING OR THE TERMINATION OF THIS CONTRACT.

6. Purchaser's Conditions to Sale

6.1 Finance Contingency. Purchaser's obligation to purchase the Real Estate is conditioned upon the Purchaser's ability to secure financing through an allocation of Housing Tax Credits (an "Award") from TDHCA. Purchaser anticipates that TDHCA will provide a notification of Award for the intended development on or before July 31, 2020 and written notification of commitment for funding on or before August 31, 2020.

6.2 Entitlement Contingency. Purchaser's obligation to purchase the Real Estate is conditioned upon the Purchaser's ability to secure all state and municipal approvals (the "Entitlements") including but not limited to rezoning, variances and permits reasonably deemed necessary by the Purchaser, in its sole discretion, to develop and operate the Real Estate for Purchaser's Use. Seller shall reasonably assist Purchaser in submittal of applications required for Entitlements but shall be under no obligation to expend any funds in so doing. Purchaser's right to terminate under this contingency expires on August 31, 2020.

6.3 Access and Utilities Contingency. Purchaser's obligation to purchase the Real Estate is conditioned upon the following:

(a) The Purchaser's ability to obtain all rights-of-way, easements and licenses including but not limited to all ingress and egress, parking, grading, and utility easements (the "Easements") necessary for the Purchaser to access, develop, and operate the Real Estate for Purchaser's Use. Seller shall reasonably assist Purchaser in securing and documenting the Easements but shall be under no obligation to expend any funds in so doing.

(b) The Purchaser's ability to extend an entrance drive and extend utilities including but not limited to electricity, water, and sanitary sewer (the "Improvements") to the Real Estate, Purchaser's ability to make connections to existing utilities (including but not limited to electricity water and sanitary sewer) and Purchaser’s ability to construct Improvements to the standards and specifications required by the City, State, and/or utility providers. Seller shall reasonably assist Purchaser in securing approvals to construct Improvements but shall be under no obligation to expend any funds in so doing.

7. Survey/Title. Seller shall provide evidence of any existing survey (if available) and title, and Purchaser shall review the same, as follows:

7.1 Within thirty (30) days after Purchaser's receipt of the last of the Title Commitment as set forth in more detail in Sections 7.3 and 7.4 below, and Survey as set forth in Section 7.2, Purchaser shall notify Seller in writing of any objections by the time periods noted. If Purchaser fails to notify Seller, Purchaser shall be deemed to have accepted all exceptions to title and all other matters shown on the Commitment.

7.2 Within sixty (60) days after Seller's acceptance of this Contract. Purchaser shall obtain a new staked survey of the Real Estate prepared and certified by a Registered Professional Land Surveyor.
(the “Survey”). The Survey shall set forth the net acreage of the Real Estate, which shall be equal to the
gross acreage excluding any portion of the Real Estate lying within a flood zone, wetlands, easements, or
existing highway or public right-of-way. The gross acreage shall be used to calculate the Purchase Price.
The survey description shall be used in Seller’s deed conveying the Real Estate to Purchaser. In any event,
the Survey shall be enough to cause the Title Company to delete the standard survey exceptions from the
Title Policy described in Paragraph 7.3 below. Upon acceptance of the Survey by parties and the Title
Company, the legal description from the Survey shall automatically be substituted for Exhibit “A” attached
hereto without the need for further amendment of this Earnest Money Contract and Purchase and Sale
Agreement. If the Property is required to be platted or re-platted prior to Closing, the parties will
cooperate with one another to do so and the resulting platted legal description shall be further substituted
and be utilized at Closing.

7.3 Within thirty (30) days from Seller’s acceptance of this Contract, Seller shall furnish to
Purchaser a title insurance commitment, issued by the Title Company, showing the condition of Seller’s
title to the Real Estate and any easements, restrictions, agreements or other matters burdening and/or
benefiting the Real Estate (the “Title Commitment”).

7.4 Within thirty (30) days after receipt of the later of (a) the Title Commitment (together
with legible copies of all instruments noted in the Title Commitment as special exceptions, and any
endorsements to the Title Commitment that Purchaser wishes to receive) and (b) the Survey, Purchaser
shall notify Seller of any objections to title and/or Survey. Seller shall have thirty (30) days (or such longer
period as mutually agreed in writing between Purchaser and Seller) to cure such objections or remove any
such unacceptable defects, but Seller is not obligated to spend any money to do so (“Seller’s Cure Period”).
If Seller is unable or unwilling to cure or remove such defects within said period, Purchaser may cancel
and terminate this Contract upon written notice to Seller delivered to Seller within ten (10) days after the
end of Seller’s Cure Period, in which event the Title Company shall immediately return the refundable
portion of the Earnest Money to Purchaser. Seller shall be obligated to pay any amounts necessary to
cause the removal at or before Closing of all monetary liens, mortgages, security instruments and UCC
financing statements affecting the Real Estate. If Purchaser fails to notify Seller of an objection to an
exception to title as reflected on the Title Commitment or any objection as to the Survey within the time
provided herein, then Purchaser shall be deemed to have accepted the status of title and Survey as
reflected therein. Any exceptions to title reflected on the said Commitment to which Purchaser fails to
timely object (except monetary liens, mortgages, security instruments and UCC financing statements to
be released at or before Closing) shall be deemed a “Permitted Exception”. Upon Closing, Seller shall
provide to Purchaser, at Seller’s sole cost and expense, an owner’s policy of title insurance (the “Title
Policy”) issued by the Title Company, in the amount of the Purchase Price, showing good and indefeasible
fee simple title in the Real Estate in Purchaser, subject only to current taxes and assessments not then
due and payable and Permitted Exceptions; all premium for endorsements to the Title Policy will be at
Purchaser’s sole cost and expense.

8. **Taxes and Assessments.** Purchaser assumes and agrees to pay all assessments for municipal
improvements made after Closing and so much of the real estate taxes assessed for and becoming a lien
on the Real Estate during the calendar year in which Closing occurs as shall be allocable to Purchaser from
and after Closing (i.e., prorated to date of Closing). Any taxes not assumed by Purchaser and which are not due and payable at the time of Closing shall be allowed to Purchaser as a credit on the cash payment required at Closing, and Seller shall not be further liable for such taxes. If the actual tax rate is not known on the date of Closing, the taxes shall be prorated based upon the prior year’s tax rate. Anything to the contrary contained herein notwithstanding, Seller will be solely responsible for all rollback taxes assessed against the Real Estate after closing, including those associated with periods prior to closing.

9. **Closing.** If this offer is accepted as herein provided (subject to Purchaser’s rights to terminate this Contract as provided in this Contract), the transaction contemplated hereby shall be closed (the “Closing”) in the offices of the Title Company, or such location as agreed upon by the parties, on or before October 31, 2020 (the “Closing Date”). Purchaser shall have the right to extend the Closing Date for one (1) period of sixty (60) calendar days (the “Extension Period”) upon written notice to Seller on or before the Closing Date. Purchaser shall place in escrow an additional non-refundable Twenty-five Thousand and No/100 ($25,000.00) (the “Extension Deposit”) for the Extension Period. The Extension Deposit shall be delivered to the Title Company to be immediately released to Seller. The Extension Deposit shall not be applicable to the Purchase Price at Closing.

At Closing, Seller agrees to deliver to Purchaser, in accordance with the terms of this Contract, the following:

(a) a duly authorized and executed special warranty deed in recordable form, conveying good and indefeasible fee simple title to the Real Estate, subject only to current taxes not yet due and payable and the Permitted Exceptions, and standard exceptions unless otherwise agreed in writing by Purchaser;

(b) all other documentation which may be required by the Title Company to insure Purchaser with good and indefeasible fee simple title to the Real Estate;

(c) the Title Policy;

(d) a closing statement; and

(e) all other documents necessary or appropriate to complete the transaction contemplated by this Contract.

10. **Possession.** Seller shall deliver exclusive possession of the Real Estate to Purchaser at Closing. The Real Estate shall not be subject to any leases or tenancies as of the date possession is delivered to Purchaser.

11. **Right of Inspection and Tests.** After Seller’s acceptance, hereof and throughout the term of this Contract, Purchaser and its agents and representatives shall have the right to enter upon the Real Estate to make tests as to the adaptability of the Real Estate for Purchaser’s Use, such tests to include without limitation soil borings, surveys, drilling and all tests normally performed for the determination of the suitability of real estate for Purchaser’s Use and for the collecting of all information necessary thereto. All such tests made by the Purchaser are to be made at Purchaser’s expense, and Purchaser shall be liable for any damage caused to the Real Estate or to any persons thereon during said tests, and hereby agrees to
indemnify and hold harmless Seller from and against any such damage or injury or claims and causes of action resulting therefrom.

12. **Representations and Warranties.** As a material inducement to Purchaser for entering into this Contract, Seller hereby represents, warrants and covenants to Purchaser that to the best of Seller’s knowledge:

   (a) Seller owns good and indefeasible fee simple title to the Real Estate, subject only to the lien of current, non-delinquent real estate taxes.

   (b) There are no notices received by Seller of violations of any laws, regulations, codes, ordinances, orders or requirements affecting the Real Estate.

   (c) There is no litigation or proceeding pending or, to the best knowledge of Seller, threatened against or relating to the Real Estate, including, without limitation, any proceedings for condemnation or other exercise of eminent domain.

   (d) To the best of Seller’s knowledge, the Real Estate is not currently, and has never been used as a hazardous waste disposal facility as defined in 40 C.F.R. § 260.10; and the Real Estate has never been used as a landfill. For purposes of this provision, the term “hazardous waste” includes those substances listed in 40 C.F.R. § 261.30, or previously determined to be hazardous by any applicable state or federal law, statute or regulation.

   (e) There are no parties in possession of any portion of the Real Estate except Seller or tenants under written leases which will be terminated at Closing.

   (f) Seller has the legal right, power and authority to enter into this Contract and to perform all its obligations hereunder.

   (g) Other than as expressly set forth above, Seller makes no representations or warranties regarding the Real Estate, including, without limitation, the quality, nature, adequacy and physical condition of the Real Estate, the suitability of the Real Estate for Purchaser’s Use and the presence of hazardous waste on the Real Estate. Purchaser is buying the Real Property in its “AS IS, WHERE IS” condition.

13. **Condemnation.** If prior to Closing the Real Estate shall be subjected to a taking, either total or partial, by eminent domain, condemnation, or for any public or quasi-public use, Purchaser shall have the right to either (i) terminate this Contract by providing written notice thereof to Seller at the place designated herein for such notices, or (ii) proceed to close the transaction contemplated by this Contract, in which event Seller shall assign to Purchaser at Closing all of the condemnation awards from such condemnation action.

14. **DEFAULT:**

14.1 Unless otherwise provided for herein, if the transaction contemplated hereby is not consummated by reason of Purchaser’s breach or other failure to timely perform all obligations and conditions to be performed by Purchaser (after the expiration of the Inspection Period and so long as this Contract has not been terminated by Purchaser as permitted hereunder), Seller may, as Seller’s sole and exclusive remedy, terminate this Contract and to the extent not already delivered to Seller, receive the remaining Earnest Money Deposit previously delivered by Purchaser to the Title Company as liquidated damages; Purchaser and Seller hereby agree that actual damages would
be difficult or impossible to ascertain and such amount is a reasonable estimate of the damages for such breach or failure.

14.2 Unless otherwise provided for herein, if the transaction contemplated hereby is not consummated by reason of Seller’s breach or other failure to timely perform all obligations and conditions to be performed by Seller, Purchaser may either (i) enforce specific performance of Seller’s obligations hereunder, or (ii) terminate this Contract and receive the Earnest Money Deposit less the non-refundable portion. If Purchaser enforces specific performance of this Contract by Seller, Purchaser shall accept whatever title Seller has to the Property, if any, subject to all liens, encumbrances and other matters affecting title to the Real Property as reflected in the Commitment, Survey or as otherwise disclosed in writing to Purchaser and Seller prior to the Closing (all of which shall be deemed Permitted Exceptions) except for (i) liens, encumbrances and other matters placed by Seller on the Property or suffered by Seller to come into existence after the Effective Date without Purchaser’s written consent, (ii) any liens granted by Seller under a deed of trust or other security instrument securing indebtedness of Seller or any mechanics’ or materialman’s liens or other liens for labor or materials or mowing or like assessments, or (iii) unpaid taxes and special assessments for any years prior to the year of Closing during which Seller has had title to the Property (the matters described in items (i), (ii), and (iii) are referred to herein as “Non-Permitted Liens”), with no reduction in the Sales Price, and in no event shall Seller be obligated to cure or remove or bond against any title defects, liens, encumbrances or other matters affecting title, other than Non-Permitted Liens. Notwithstanding the foregoing, in the event Purchaser is ready, willing and able to close and Seller fails and refuses to close, Seller acknowledges that Purchaser will have incurred substantial due diligence and financing costs, including possible loss of tax credits.

15. Notices. All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered personally, or sent by facsimile with electronic confirmation of receipt by the recipients, or, if mailed, on the second day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first day after deposit with a nationally-recognized overnight delivery service (e.g., FedEx), in all events addressed appropriately as follows:

If to Seller: III Villas LLC
c/o Naga Kishor Vankayala
117 Ridgecrest Ct
Coppell, TX 75019
Email: vnagakishor@gmail.com

With a copy to: Patel Law Group

Attn: Shameer Soni

1125 Executive Circle, Suite 200

Irving, TX 75038

Email: ssoni@patellegal.com (Legal)
If to Purchaser:  Gardner Capital Investment Fund, LLC
2501 N. Harwood St., Suite 1520
Dallas, TX 75201
Attn: Ryan Combs, John W. Palmer
Email: rcombs@gardnercapital.com; jpalmer@gardnercapital.com

With a copy to: Gardner Capital, Inc.
4803 S. National, Suite 200
Springfield, MO 65810
Attn: Rowland H. Geddie, Ill
Email: rgeddie@gardnercapital.com

With a copy to: David E. Brusilow, Esq.
Coats Rose, PC
14755 Preston Road, Suite 600
Dallas, TX 75254
Email: brusilow@coatsrose.com

Either party may change its address for purposes of this Paragraph by giving the other party written notice of the new address in the manner set forth above.

16. **Entirety of Agreement; Amendments.** This Contract shall be binding upon and inure to the benefit of the respective heirs, representatives, successors and assigns of the parties hereto. This Contract embodies the entire agreement between the parties hereto and there are no representations, promises, understandings or agreements, oral or written, between the parties which are not set forth herein. This Contract may be amended only by a written instrument signed by Purchaser and Seller.

17. **Survival.** All the representations, warranties and covenants of Seller stated herein shall survive the Closing and the conveyance of the Real Estate to Purchaser and shall be binding upon and inure to the parties hereto and their respective heirs, successors, and assigns.

18. **Governing Law.** This Contract shall be construed and enforced in accordance with the laws of the State of Texas.

19. **Attorneys’ Fees.** In the event of any controversy, claim, or dispute between Purchaser and Seller arising out of or related to this Contract or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable attorneys’ fees, legal assistant fees, costs and expenses.

20. **Memorandum of Contract.** Upon execution of this Contract, the parties will simultaneously execute and cause the Title Company to record a Memorandum of this Contract, (without the disclosure of the purchase price) but that Purchaser has certain rights to acquire the Property. The Memorandum of Contract shall terminate upon the termination of this Contract, if this Contract is not closed, or if this Contract does close, once the Deed to Purchaser, or its permitted assigns, is recorded. In the event that this Contract does not close, Purchaser shall be required, within two (2) business days after the Contract has been terminated, to execute a commercially reasonable and recordable form terminating the Memorandum of Contract. Purchaser’s failure to comply with this provision shall be a default by Purchaser under the Contract, and with respect to such default, Seller shall (1) be permitted to pursue all of its remedies at law and in equity and (2) be permitted to record an affidavit in the public records reciting such facts and terminating the Memorandum of Contract.
21. Counterparts. This Contract may be executed in any number of counterparts with the same effect as if all such parties executed the same document. All such counterparts shall constitute one agreement.

22. Assignment. Purchaser shall be entitled to assign its rights and obligations in and under this Contract to any of its affiliates without the prior written consent of Seller.

[Remainder of page intentionally left blank]
Dated: effective as of the 2 day of January, 2020

"PURCHASER"

Gardner Capital Investment Fund, LLC

By: [Signature]

Name: Michael Gardner
Title: Member/Manager
ACCEPTANCE OF OFFER

The undersigned hereby accepts the foregoing offer effective the 6 day of January 2019.

"SELLER"

III Villas LLC

By: Naga K. x hove Yon Kangal

Name: III Villas LLC

Title: Manager
“TITLE COMPANY”

Fidelity National Title
1125 Executive Circle, Suite 200
Irving, TX 75038

Attn: Michael Buchanan
Email: mbuchanan@fidelityplg.com
Phone: 972-650-6848

By: __________________________
   Name: ________________________
   Title: _________________________

Dated: effective as of the _____ day of ________________, 2019
Exhibit A

All or a portion of a certain tract or tracts of land consisting of approximately 7 acres, more or less, located at approximately 800 Bourland Drive, located in The City of White Settlement, Tarrant County, Texas
Census Tract Map
Provision at Bomber Road

Source: https://www.huduser.gov/portal/sadda/sadda_qct.html