

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

BRISBEN TIERRA BAY LIMITED
PARTNERSHIP,

Petitioner,

vs.

FHFC Case No: _____
Application No. 2002-145B

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION FOR
INFORMAL ADMINISTRATIVE HEARING**

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FINANCE CORPORATION

Petitioner, BRISBEN TIERRA BAY LIMITED PARTNERSHIP ("Tierra Bay"), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-21.0035 and 28-106.301, Florida Administrative Code ("F.A.C."), hereby requests an informal administrative hearing to challenge the rejection of its Application for 2002 bond financing by Respondent, the FLORIDA HOUSING FINANCE CORPORATION ("FHFC"), and states:

1. The name and address of the agency affected by this action are:

Florida Housing Finance Corporation
City Center Building, Suite 5000
227 N. Bronough Street
Tallahassee, Florida 32301-1329

2. The address and telephone number of the Petitioner are:

Brisben Tierra Bay Limited Partnership
7800 East Kemper Road
Cincinnati, OH 45249
Telephone No. (513) 489-1990

3. The name, address, telephone number, and fax number of the Petitioner's representative, which shall be the address for service purposes during the course of this proceeding, are:

Warren H. Husband
Metz, Hauser & Husband, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
Telephone No. (850) 205-9000
Facsimile No. (850) 205-9001

The Multi-Family Mortgage Revenue Bond Program

4. To encourage the development of affordable rental housing for low-income families, FHFC provides low-interest mortgage loans to developers of qualified multi-family housing projects. In exchange for an interest rate lower than conventional market rates, the developer agrees to "set-aside" a specific percentage of the rental units for low-income tenants.

5. Through its Multi-Family Mortgage Revenue Bond Program (the "Bond" program), FHFC funds these mortgage loans through the sale of tax-exempt and taxable bonds. Applicants then repay the loans from the revenues generated by their respective projects.

6. At the beginning of each year, pursuant to the provisions of the Internal Revenue Code, the State of Florida receives authority to issue a specified amount of tax-exempt bonds to finance a variety of different government programs, including the development of affordable housing. In accord with section 159.804, Florida Statutes (2001),

FHFC receives a fixed percentage of this total tax-exempt bonding authority, and may subsequently receive additional authority from other Florida agencies and programs that are unable to use all of their annual bonding authority by the end of the calendar year.

7. Because FHFC's available pool of tax-exempt bond financing is limited, qualified projects must compete for this funding. To determine which proposed projects will put the available funds to the best use, FHFC has established a competitive application process to assess the relative merits of proposed projects.

8. For applicants competing for bond financing in 2002, FHFC's competitive application process involves: (a) the publication and adoption by rule of an application package; (b) the completion and submission of applications; (c) FHFC's preliminary scoring of applications; (d) an initial administrative challenge in which an applicant may take issue with FHFC's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE"); (e) FHFC's consideration of the NOPSE's submitted, with notice to applicants of any resulting change in their preliminary scores; (f) an opportunity to submit additional materials to FHFC to "cure" any items for which the applicant received less than the maximum score; (g) a second administrative appeal process whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD"); (h) FHFC's consideration of the NOAD's submitted, with notice to applicants of any resulting change in their scores; (i) an opportunity for applicants to challenge, via informal or formal administrative hearings, FHFC's scoring of any item for

which the applicant received less than the maximum score; and (j) final scores, ranking, and allocation of bond funding established by final order. See Rules 67-21.002(8), (97); 67-21.003; 67-21.0041; F.A.C.

The Tierra Bay 2002 Bond Application

9. Effective March 17, 2002, FHFC adopted by reference in its rules the application package for FHFC's 2002 Multi-Family Bond cycle, Form "UA 1016." See Rule 67-21.002(8), (97), F.A.C. For the first time in 2002, FHFC utilized a single application and scoring process for its Multi-Family Bond Program and its other large multi-family housing finance programs -- Housing Credits, SAIL, and HOME.

10. On or about April 15, 2002, Tierra Bay and others submitted applications for bond financing in the 2002 Cycle. Tierra Bay requested \$20,980,000 in tax-exempt bond funding to help finance its project, a 272-unit garden-style apartment complex in Collier County, Florida. All of these units are dedicated to housing families earning 60% or less of the area median income.

11. FHFC staff evaluated all applications and notified applicants of their preliminary scores by overnight mail on May 14, 2002. Applicants were then required to file, on or before May 24, 2002, any NOPSE's challenging FHFC's preliminary scoring of competing applications.

12. After considering all NOPSE's, FHFC notified applicants by overnight mail on June 11, 2002, of any resulting changes in the scoring of their applications. Applicants

were required to submit, on or before June 26, 2002, “cure” materials to correct any alleged deficiencies in their applications previously identified by FHFC. Applicants were then required to file, on or before July 8, 2002, NOAD’s raising any scoring issues arising from a competing applicant’s cure materials.

13. On July 23, 2002, after FHFC considered all NOAD’s, Tierra Bay and the other applicants received notice of their scores by overnight mail. As more fully set forth below, FHFC erroneously determined to reject Tierra Bay’s application and eliminate its chance to receive 2002 bond funding. As such, Tierra Bay’s substantial interests have been materially and adversely affected by FHFC’s actions.

Evidence of Site Control

14. One of FHFC’s primary considerations in evaluating applications for funding is whether the applicant can demonstrate that it is ready to proceed with development and construction of its proposed project. As part of this demonstration, FHFC’s application requires all applicants to document that they have legal title to the property on which the project is proposed to be constructed, or that they have the legal right to acquire such title, e.g., through a contract for sale or a long-term-lease. This demonstration of control of the development site is a “threshold” requirement – failure to document site control results in rejection of the application and its elimination from any chance for FHFC funding.

15. In particular, with regard to demonstrating site control through a contract for sale, the Application states:

2. Evidence of Site Control (Threshold)

Applicant must demonstrate site control by providing the documentation required in Sections a., b. or c., as indicated below. The required documentation must be provided behind a tab labeled “**Exhibit 23**”. Site control must be demonstrated for all sites if proposed Development consists of Scattered Sites.

a. A qualified contract is one that has a term which does not expire before the last expected closing date of December 31, 2002 or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date not earlier than December 31, 2002; provides that the buyer’s remedy for default on the part of the seller includes or is specific performance; and the buyer **MUST** be the Applicant unless a fully executed assignment of the qualified contract which assigns all of the buyer's rights, title and interests in the qualified contract to the Applicant, is provided.

Universal Application Instructions, p. 17.

16. In its original Exhibit 23, the Applicant submitted the following:
- (a) A contract for the sale of approximately 66.01 acres (the “66-acre parcel”) from Kenneth D. Goodman, Trustee of the Manatee Road Land Trust, to John D. Jassy, Trustee, “or assigns” (the “Goodman/Jassy Contract”) (attached hereto as “Exhibit A”);
 - (b) A contract for the sale of approximately 34 acres (the “development site” or the “34-acre parcel”) from John D. Jassy, Trustee, to Brisben Advisors, Inc. (the “Jassy/Brisben Contract”) (attached hereto as “Exhibit B”);¹ and

¹ This contract specifically acknowledges the existence of the Goodman/Jassy Contract for the purchase of the larger 66-acre parcel, of which the development site is a part.

- (c) An “Assignment and Assumption Agreement” in which Brisben Advisors, Inc. (“Brisben”), assigns to Brisben Tierra Bay Limited Partnership (the “Applicant”) all of Brisben’s rights to acquire the development site under the Jassy/Brisben Contract (attached hereto as “Exhibit C”).

17. In its initial scoring, FHFC found that the documents submitted in the Application sufficiently demonstrated site control and met FHFC’s threshold requirements. See FHFC 2002 Universal Scoring Summary (Applic. #2002-145B) (05/13/2002) (attached hereto as “Exhibit D”).

18. In response to a NOPSE filed by a competing applicant, however, FHFC reversed its earlier determination and took the position that the Application had failed this threshold requirement. The only notice from FHFC as to the reason for this failure was as follows:

Applicant does not have a qualified contract for purchase of the site.

See FHFC 2002 Universal Scoring Summary (Applic. #2002-145B) (06/10/2002) (attached hereto as “Exhibit E”).

19. As a fundamental matter of due process, this notice from FHFC was required to reasonably inform the Applicant of the specific defect that formed the basis of FHFC’s decision to reject the Application. See Cottrill v. Dep’t of Insurance, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Guerra v. Dept’ of Labor & Empl. Security, 427 So. 2d 1098 (Fla. 3^d DCA 1983). This must particularly be the case where such notice triggered the Applicant’s right under FHFC’s rules to submit additional documentation to “cure” the alleged defect at

issue and avoid the rejection of the Application. Ordinarily, FHFC does give applicants such specific notice, ensuring that they have a fair chance to remedy identified problems through the submission of cure materials. See Exhibit H (Composite of Excerpts from FHFC 2002 Scoring Summaries).

20. While the above notice from FHFC was not sufficiently definite for the Applicant to determine the specific problem FHFC had identified in the site control documents, the Applicant sought to clarify its legal right to acquire the development site by submitting in its cure materials a separate document, dated June 25, 2002, entitled “Partial Assignment and Assumption Agreement.” See Exhibit F. This “Partial Assignment” effected an express assignment from Jassy to the Applicant of all of Jassy’s “rights, title and interest” to acquire the 34-acre development site, based upon the terms stated in the Jassy/Brisben contract relative to purchase price, closing, etc.

21. In response to a subsequent NOAD filed by a competing applicant, FHFC again took the position that the Application failed the threshold site control requirement. The only additional notice from FHFC as to the reason for this failure was as follows:

The cure for 2T still does not provide a qualified contract for purchase of the site. The assignment fails to assign all of the buyer's rights, title and interests in a qualified contract to the Applicant. In addition, the Applicant did not submit a qualified contract that contains a term which does not expire before the last expected closing date of December 31, 2002.

See FHFC 2002 Universal Scoring Summary (Applic. #2002-145B) (07/22/2002) (attached hereto as “Exhibit G”).

A. FHFC Failed to Give an Adequate Notice and Cure Opportunity to the Applicant Regarding the Alleged Closing Date Defect.

22. In the above-referenced notice, FHFC supplies two distinct reasons for rejecting Tierra Bay's Application. First, FHFC's remarks on "[t]he assignment" are apparently directed at the "Partial Assignment and Assumption Agreement" supplied by the Applicant in its cure materials. This is an appropriate subject for FHFC to comment upon, since NOAD's, and any resulting scoring changes, are required to be based upon the cure materials submitted by an applicant. See Rule 67-21.0035(6)-(9), F.A.C.

23. FHFC's second reason for rejection, however, was clearly not based upon this Partial Assignment. FHFC's second rationale refers to its requirement that a qualified land contract must remain valid through December 31, 2002, i.e., that the last available date for closing (the "outside closing date") under the contract must be on or after December 31, 2002. The Partial Assignment, however, never mentions anything about closing dates and does not purport to alter or affect in any way the outside closing dates stated in the Goodman/Jassy contract or the Jassy/Brisben contract. These contracts, both of which were included in the original Application, are the **only** documents that speak to outside closing dates. Thus, for the first time, and after it was already too late to cure any alleged defect, FHFC advised the Applicant that it also believed there was a problem with the outside closing dates expressed in these documents contained in the original Application.

24. As a matter of law, this defect in notice regarding the new closing date issue is legally impermissible and cannot form the basis for an FHFC finding that the Application has failed to achieve threshold for site control. See Brisas Del Mar, Ltd. v. FHFC, FHFC Case No. 2001-087 (FHFC Final Order Sept. 20, 2001) (Recommended Order, p. 2 -- FHFC conceded at hearing that it had not given sufficient notice to the applicant of a curable defect in Form 7 regarding the omission of the word “street” from the Development Address during its preliminary scoring, and rescinded the resulting 1.5-point penalty imposed).

25. Just as in the case cited above, the alleged defect at issue was curable and could have been easily remedied. FHFC never provided Tierra Bay with adequate notice of the alleged closing date defect contained in the documents in Tierra Bay’s original Application, and thus never gave Tierra Bay the same opportunity it gave other applicants to definitively cure such defects.

26. Notably, FHFC did give such specific notice and opportunity to cure in its scoring of many other applications, including a related development, Meadow Pointe, both of which are being developed by Brisben Advisors, Inc. See Exhibit H & FHFC 2002 Universal Scoring Summary (Applic. #2002-166BS) (05/13/2002) (“The contract does not have a term which does not expire before the last expected closing date of December 31, 2002.”). As such, this issue may not lawfully form the basis for rejecting the Application.

B. Tierra Bay's Site Control Documents Demonstrate That the Outside Closing Date for the Development Site, with Applicable Extensions, Is at Least March 10, 2003.

27. In fact, the documents submitted in the original Application plainly evidence that the outside closing date for the property at issue far exceeds the minimum December 31, 2002, date required by FHFC.

28. FHFC's requirement regarding outside closing dates are stated in the Application Instructions as follows:

A qualified contract is one that has a term which does not expire before the last expected closing date of December 31, 2002 or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date not earlier than December 31, 2002

Universal Application Instructions, p. 17.

29. The obvious purpose of this requirement regarding outside closing dates is to insure that the Applicant is in a legal position to maintain its control of the property for as long as FHFC expects it will take for FHFC to formally allocate its bond funding to 2002 Applications.

30. In compliance with this FHFC requirement, the site control documents submitted by the Applicant demonstrate that it can maintain control of the subject property through December 31, 2002.

31. First, the Goodman/Jassy Contract contains extensions that take the outside closing date well beyond December 31, 2002. Time periods in this contract are measured from the contract's "Effective Date," which is defined as the "date on which the last of the parties initials or signs the latest offer." See Exhibit A, p. 4 (¶9). The last signatory of the contract was Jassy, on December 10, 2001. Id., p. 6.

32. The closing on the Goodman/Jassy Contract is to be held within 30 days "after the earlier of: (i) Buyer [Jassy] has met or waived the Permitting Contingency and the Access Contingency, or (ii) the expiration of the Permitting Contingency Period, as extended." See Exhibit A, Addendum, p. 2 (¶6). The referenced Permitting Contingency and Access Contingency gives the Buyer [Jassy] 9 months from Effective Date to: (a) extend and modify permits from the Army Corps of Engineers and the Southwest Florida Water Management District; (b) obtain site plan approval and building permits from Collier County; and (c) seek an access agreement with a neighboring property owner. Id., p.1 (¶¶3-4). This contingency period puts the outside closing date on the contract at September 10, 2002 (9 months from the Effective Date of December 10, 2001).

33. The contract, however, also gives the Buyer [Jassy] the ability to extend the original 9-month contingency period for up to 2 additional 90-day periods with an additional deposit of \$10,000 for each extension. See Exhibit A, Addendum, pp. 1-2 (¶5). These two extensions place the outside closing date at March 10, 2003, well beyond the December 31, 2002, outside closing date required in FHFC's application. This fact is confirmed in "Exhibit

D” to the subsequent Jassy/Brisben Contract, in which Jassy’s attorney, who prepared the Goodman/Jassy Contract, attests that Jassy “has legal site control of the Property described therein, at a minimum, through March 10, 2003.” See Exhibit B, Vogel Affidavit, ¶3.²

34. Turning now to the Jassy/Brisben Contract, both parties to that contract have agreed to fully cooperate with each other in the site plan designs for the smaller 34-acre parcel being acquired by Brisben and the remainder of the 66-acre parcel to be retained by Jassy. See Exhibit B, p. 8 (¶6.d). The closing on the smaller parcel is expressly contingent upon receipt of tax-exempt bond and/or tax credit funding, completion of a feasibility study, zoning, site plan approval, etc. Id., pp. 4-5 (¶5.a).

35. Upon satisfaction of all the contingencies, “a land closing shall be held at a mutually agreed upon time and location on or before March 10, 2003.” Id., p. 6 (¶5.b). This closing may be extended for an unlimited number of 30-day periods, with the payment of \$10,000 per extension, until the Purchaser [Brisben] “receives full development plan approvals from all necessary governmental authorities.” Id., p. 6 (¶5.b).

36. Thus, the Applicant can clearly maintain its legal right to acquire the subject property at least through December 31, 2002, as required by FHFC’s Application. Since the

² In addition, the “Attachment” referenced at the end of paragraph 5 of the Addendum creates a paragraph 5.a. which gives the Buyer [Jassy] unlimited additional 90-day extensions of the contingency period for as long as necessary for actual construction of an access road and the receipt of all permits and approvals necessary to develop the site. This Attachment was included in the Applicant’s original Exhibit 23.

relevant approvals and permitting for the entire 66-acre parcel must necessarily be accomplished in concert between Jassy and Brisben, and since Jassy is contractually obligated to Brisben to insure an outside closing date of March 10, 2003, on the 34-acre parcel, FHFC simply has no basis upon which to conclude that the Applicant will be unable to maintain its legal right to acquire the subject property at least through December 31, 2002.

C. The Assignment and Assumption Agreement

37. As noted above, in response to a NOAD filed by a competing applicant, FHFC's scorers determined that the Application failed to meet threshold for site control, citing the following as one of their reasons for rejection:

The cure for 2T still does not provide a qualified contract for purchase of the site. The assignment fails to assign all of the buyer's rights, title and interests in a qualified contract to the Applicant.

See Exhibit G.

38. As stated in FHFC's Application Instructions (quoted at length in paragraph 15 above), FHFC required the Applicant to submit a "qualified contract" for the development "site" – the real property on which the proposed development is to be constructed. In this case, the "site" on which Tierra Bay is proposed to be built is the 34-acre parcel that is the subject of the "qualified contract" between Jassy and Brisben Advisors, Inc., as submitted in the Applicant's original Exhibit 23.

39. Recognizing that land contracts such as these are generally initiated by the developer rather than the single-purpose applicant entity, FHFC requires that the buyer in the

qualified contract must be the Applicant “unless a fully executed assignment of the qualified contract which assigns all of the buyer's rights, title and interests in the qualified contract to the Applicant, is provided.” Universal Application Instructions, p. 17.

40. In full compliance with this requirement, the original Exhibit 23 of the Application included an “Assignment and Assumption Agreement,” dated April 12, 2002. In this Assignment, Brisben Advisors, Inc., assigned to the Applicant, Brisben Tierra Bay Limited Partnership, “all of Assignor’s right title and interest in and to the Contract [the Jassy/Brisben contract] and the Property [the 34-acre site].” See Exhibit C, ¶1.

41. Thus, as FHFC concluded in its initial scoring of these documents, FHFC’s requirements have been fully satisfied, and the Applicant has adequately demonstrated its legal right to acquire the property on which the project is proposed to be built.

42. From the most recent comments provided by FHFC, it appears that FHFC’s scorers have shifted their focus and are now interpreting the Goodman/Jassy Contract as the Applicant’s “qualified contract” to purchase the development site. On the contrary, however, the “qualified contract” by which the Applicant is acquiring the 34-acre development site is the Jassy/Brisben Contract. The Applicant only submitted the Goodman/Jassy Contract because: (a) it is specifically referenced in the Jassy/Brisben Contract; and (b) FHFC would have almost certainly penalized the Applicant for failing to include this document in its Application. Moreover, the Applicant submitted the Goodman/Jassy Contract to demonstrate

that Jassy has the legal right to acquire the larger 66-acre parcel, and thus to ultimately convey the 34-acre development site to Brisben.

43. Apparently, FHFC's scorers were unclear on the contractual relationships involved, since they indicated that the Application failed threshold because "[t]he assignment fails to assign all of the buyer's rights, title and interests in a qualified contract to the Applicant." See Exhibit G. The "Assignment and Assumption Agreement" between Brisben and the Applicant does in fact assign to the Applicant all of Brisben's right, title, and interest under the Jassy/Brisben Contract (the "qualified contract") to acquire the 34-acre development site. See Exhibit C. By contrast, the "Partial Assignment" between Jassy and the Applicant is, of necessity, a partial assignment, because the Applicant does not need the full 66 acres that is the subject of the Goodman/Jassy Contract in order to construct the Tierra Bay project. See Exhibit F.

44. While the transaction at issue contemplates an intermediate seller [Jassy] and the Applicant's purchase of something less than the entire parcel that Jassy is acquiring, there is nothing in FHFC's rules or Application that expressly prohibit such a structure. If there is any ambiguity as to whether the Application Instructions permit such a structure, such ambiguity

should be decided in favor of the applicants. To do otherwise would unfairly place the applicants in the unfortunate role of having to guess at their risk how to resolve any ambiguity inherent in the Corporation rule.

Ybor III. Ltd., v. FHFC, FHFC Case No. 2001-091 (FHFC Final Order Sept. 20, 2001)

(Recommended Order at pp. 10-11). This must particularly be the case here where the construction apparently adopted by FHFC would result in the harshest of consequences – rejection of the Application.

45. Every seller in a land contract, whether they are the present owner or not, has a duty to take those actions necessary to enable the seller to convey marketable title to the buyer at the time of closing. See 48 Fla. Jur. 2d Specific Performance §91 (2002); 44 Fla. Jur. 2d Real Property Sales & Exchanges §47 (2002). Regardless of whether the contract is with an intermediate seller or a seller who purports to be the present owner of the property, it is never necessary that the seller have

good, indefeasible, and unincumbered [sic] title at the time he entered into the contract of sale. It is sufficient that he be able to convey when he be required to do so.

Board of Public Instruction of Palm Beach County v. McDonald, 196 So. 859, 862 (Fla. 1940).

46. Once Jassy, like any seller, can produce marketable title to the property, the Applicant can require Jassy to convey title to the 34-acre development site through an action for specific performance.

A person holding only a contract for the purchase of land may agree to convey the title to another, and when he later acquires the title his agreement to convey may be specifically enforced against him.

Smith v. Kallio, 114 So. 666, 667 (Fla. 1927); see Kingdon v. Walker, 156 So. 2d 208, 212 (Fla. 2d DCA 1963) (observing that, where the seller has acquired title after execution of his

contract to convey, specific performance may be ordered against the seller), cert. denied, 165 So. 2d 179 (Fla. 1964). Likewise, once Jassy can produce marketable title, he can require the Applicant, through an action for specific performance, to fulfill its obligations under the qualified contract and accept title to the 34-acre development site. Brinson v. Luley, 448 So. 2d 583 (Fla. 5th DCA 1984).

47. Since Jassy has the legal right to require the owner [Goodman] to specifically perform its contract and transfer title, the Applicant may also maintain an action against Jassy to force him to acquire the title and convey it to the Applicant. If a complaint for specific performance shows that

the vendor or its successor in title . . . was in such relation of contract to the title that it was only necessary for him to act . . . , and that he was neglecting to do an act clearly within his power by which he might perfect it, a court of equity . . . would control him to the performance of this act, and the performance of this contract.

Knox v. Spratt, 19 Fla. 817 (Fla. 1883); see Miller v. Dyer, 127 P.2d 901, 902 (Cal. 1942) (where an intermediate buyer “has the right to call for the legal title, specific performance will be decreed at the suit of his vendee.”).

48. Moreover, the Applicant may also bring a joint action for specific performance against both Goodman and Jassy to force the ultimate conveyance to the Applicant. Miller v. Dyer, 127 P.2d 901 (Cal. 1942) (approving specific performance action against owner and intermediate seller brought by ultimate buyer); Mechanick v. Duschaneck, 99 N.J. Eq 86, 132 A. 854 (N.J. Ch. 1926) (“There is authority for maintaining a suit by a subvendee against the

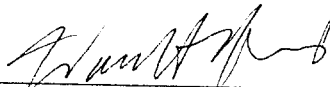
owner to compel him to perform his contract with his vendee, and in the same suit to compel the complainant's vendor to specifically perform his contract.”); accord Hancock v. Hancock, 17 Ky. (1 T.B. Mon.) 121 (Ky. 1824).

49. Indeed, FHFC’s recent changes to its 2002 application make clear that FHFC is no longer concerned with the seller’s demonstrated ability, at the time of the Application, to convey clear title to the Applicant. Just this year, FHFC abandoned its previous requirement that Applicant’s demonstrate the marketability of title to their site by including in their Application a commitment for title insurance. See 2001 Combined Rental Cycle Application, Form 7, p. 4 (attached hereto as “Exhibit I”). Thus, FHFC now accepts the risk in every application that the seller of the subject property will be unable to convey marketable title at the time of closing. Indeed, this is but one of the many contingencies to actual closing on a property that FHFC routinely accepts. Others would include the receipt of site plan approval, receipt of permits, etc.

WHEREFORE, Petitioner, Brisben Tierra Bay Limited Partnership, requests that:

- a. FHFC reinstate Tierra Bay's Application and allow Tierra Bay to compete for 2002 bond financing from FHFC;
- b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;
- c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;
- d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order reinstating Tierra Bay's Application and allowing Tierra Bay to compete for 2002 bond financing from FHFC;
- e. FHFC enter a Final Order reinstating Tierra Bay's Application and allowing Tierra Bay to compete for 2002 bond financing from FHFC; and
- f. Tierra Bay be granted such other and further relief as may be deemed just and proper.

Respectfully submitted on this 13th day of August, 2002.



WARREN H. HUSBAND
FL BAR No. 0979899
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850/205-9000
850/205-9001 (Fax)
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 13th day of August, 2002.



Attorney

VOGEL LAW OFFICE
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Vacant Land Contract
FLORIDA ASSOCIATION OF REALTORS

1. SALE AND PURCHASE:

PARTIES AND DESCRIPTION OF PROPERTY

Kenneth D. Goodman, Trustee of the Manatee Road Land Trust
and John D. Jassy, Trustee, or assigns ("Seller")
agree to sell and buy on the terms and conditions specified below the property ("Property") described as: ("Buyer")
Address: _____

Legal Description: 66.01 acres more or less located in Section 10, T51B, R26E, Collier County, Florida, more particularly described on Exhibit "A" attached hereto and by reference incorporated herein

including all improvements and the following additional property: N/A

2. PURCHASE PRICE:

PRICE AND FINANCING

(a) \$ 25,000.00

\$ 2,800,000.00 payable by Buyer in U.S. funds as follows:
Deposit received (checks are subject to clearance) _____

by _____ for Goodman & Breen

Signature _____ for Name of Company: _____ ("Escrow Agent")

Additional deposit to be made by _____
Total Financing (see Paragraph 3 below) (express as a dollar amount or percentage) _____

Other: _____
Balance to close (not including Buyer's closing costs, prepaid items and prorations). All funds paid at closing must be paid by locally drawn cashier's check or wired funds.

(f) (complete only if purchase price will be determined based on a per unit cost instead of a fixed price) The unit used to determine the purchase price is lot acre square foot other (specify: _____) per unit based on a calculation of total prorating areas of less than a full unit. The purchase price will be \$ _____ in accordance with Paragraph 8(c) of this Contract. The following rights of way and other areas will be excluded from the calculation: _____

3. CASH/FINANCING: (Check as applicable) (a) Buyer will pay cash for the Property with no financing contingency.
 (b) This Contract is contingent on Buyer qualifying and obtaining the commitment(s) or approval(s) specified below within _____ days from Effective Date (if left blank then Closing Date or 30 days from Effective Date, whichever occurs first). Buyer will apply for financing within _____ days from Effective Date (5 days if left blank) ("Application Period") and will timely provide any and all credit, employment, financial, and other information required by the lender. If Buyer, after using diligence and good faith, cannot obtain the financing, either party may cancel this Contract and Buyer will return to Seller all title evidence and surveys provided by Seller, and Buyer's deposit(s) will be returned after Escrow Agent receives proper authorization from all interested parties. Buyer will pay all loan expenses, including the lender's title insurance policy.

(1) New Financing: Buyer will secure a commitment for new third party financing for \$ _____ or _____ % of the purchase price at the prevailing interest rate and loan costs. Buyer will keep Seller and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to Seller and Broker.

(2) Seller Financing: Buyer will execute a first second purchase money note and mortgage to Seller in the amount of \$ _____ bearing annual interest at _____ % and payable as follows: _____ The mortgage, note, and any security agreement will be in a form acceptable to Seller and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if Buyer defaults; will give Buyer the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require Buyer to keep liability insurance on the Property, with Seller as additional named insured. Buyer authorizes Seller to obtain credit, employment and other necessary information to determine creditworthiness for the financing. Seller will, within 10 days from Effective Date, give Buyer written notice of whether or not Seller will make the loan.

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(3) Mortgage Assumption: Buyer will take title subject to and assume and pay existing first mortgage to _____ currently payable at \$ _____ LN# _____ in the approximate amount of _____ insurance and having a fixed other (describe) _____ per month including principal, interest, taxes and _____ % which will will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. Buyer will purchase Seller's escrow account dollar for dollar. If the lender disapproves Buyer, or the interest rate upon transfer exceeds _____ % or the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing which this agreement will terminate and Buyer's deposit(s) will be returned.

CLOSING

4. CLOSING DATE; OCCUPANCY: This Contract will be closed and the deed and possession delivered on or before _____, unless extended by other provisions of this Contract. If on Closing Date insurance underwriting is suspended, Buyer may postpone closing up to 5 days.

5. CLOSING PROCEDURE; COSTS: If title insurance insures Buyer for title defects arising between the title binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to Seller and brokerage fees to Broker as per Paragraph 17. In addition to other expenses provided in this Contract, Seller and Buyer will pay the costs indicated below.

(a) Seller Costs: Seller will pay taxes on the deed and recording fees for documents needed to cure title; certified, confirmed and ratified special assessment liens; title evidence (if applicable under Paragraph 8); Other: _____

(b) Buyer Costs: Buyer will pay taxes and recording fees on notes and mortgages and recording fees on the deed and financing statements; loan expenses; pending special assessment liens; lender's title policy at the simultaneous issue rate; inspections; survey and sketch; insurance; Other: _____

(c) Title Evidence and Insurance: Check (1) or (2):

(1) Seller will provide a Paragraph 8(a)(1) owner's title insurance commitment as title evidence. Seller Buyer will select the title agent; Seller Buyer will pay for the owner's title policy, search, examination and related charges. Each party will pay its own closing fees.

(2) Seller will provide title evidence as specified in Paragraph 8(a)(2). Seller Buyer will pay for the owner's title policy and select the title agent. Seller will pay fees for title searches prior to closing; Including tax search and lien search fees, and Buyer will pay fees for title searches after closing (if any), title examination fees and closing fees.

(d) Prorations: The following items will be made current and prorated as of the day before Closing Date: real estate taxes, interest, bonds, assessments, leases and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

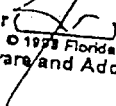

(e) Tax Withholding: Buyer and Seller will comply with the Foreign Investment in Real Property Tax Act, which may require Seller to provide additional cash at closing if Seller is a "foreign person" as defined by federal law.

PROPERTY CONDITION

6. LAND USE: Seller will deliver the Property to Buyer at the time agreed in its present "as is" condition, with conditions resulting from Buyer's inspections and casualty damage, if any, excepted. Seller will maintain the landscaping and grounds in a comparable condition and will not engage in or permit any activity that would materially alter the Property's condition without the Buyer's prior written consent.

(a) Flood Zone: Buyer is advised to verify by survey, with the lender and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(b) Government Regulation: Buyer is advised that changes in government regulations and levels of service which affect Buyer's intended use of the Property will not be grounds for canceling this Contract if the Feasibility Study Period has expired or if Buyer has checked choice (c)(2) below.

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(c) Inspections: (check (1) or (2) below)

(1) Feasibility Study: Buyer will, at Buyer's expense and within 90 days from Effective Date ("Feasibility Study Period"), determine whether the Property is suitable, in Buyer's sole and absolute discretion, for residential multi-family development. During the Feasibility Study Period, Buyer may conduct a Phase I environmental assessment and any other tests, analyses, surveys and investigations ("Inspections") that Buyer deems necessary to determine to Buyer's satisfaction the Property's engineering, architectural and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that Buyer deems appropriate to determine the Property's suitability for the Buyer's intended use. If the Property must be rezoned, Buyer will obtain the rezoning from the appropriate government agencies. Seller will sign all documents Buyer is required to file in connection with development or rezoning approvals.

Seller gives Buyer, its agents, contractors and assigns, the right to enter the Property at any time during the Feasibility Study Period for the purpose of conducting Inspections; provided, however, that Buyer, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees, from expenses and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by Buyer. Buyer will not engage in any activity that could result in a construction lien being filed against the Property without Seller's prior written consent. If this transaction does not close, Buyer will, at Buyer's expense, (1) repair all damages to the Property resulting from the inspections and return the Property to the condition it was in prior to conduct of the inspections, and (2) release to Seller all reports and other work generated as a result of the inspections.

(2) No Feasibility Study: Buyer is satisfied that the Property is suitable for Buyer's purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management and environmental conditions, are acceptable to Buyer. This Contract is not contingent on Buyer conducting any further investigations.

7. RISK OF LOSS; EMINENT DOMAIN: If any portion of the Property is materially damaged by casualty before closing, or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings, or if an eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may cancel this Contract by written notice to the other within 10 days from Buyer's receipt of Seller's notification, failing which Buyer will close in accordance with this Contract and receive all payments made by the government authority or insurance company, if any.

TITLE

8. TITLE: Seller will convey marketable title to the Property by statutory warranty deed or trustee, personal representative or guardian deed as appropriate to Seller's status.

(a) Title Evidence: Title evidence will show legal access to the Property and marketable title of record in Seller in accordance with current title standards adopted by the Florida Bar, subject only to the following title exceptions, none of which prevent Buyer's intended use of the Property as residential multi-family development: covenants, easements and restrictions of record; matters of plat; existing zoning and government regulations; oil, gas and mineral rights of record if there is no right of entry; current taxes; mortgages that Buyer will assume; and encumbrances that Seller will discharge at or before closing. Seller will, prior to closing, deliver to Buyer Seller's choice of one of the following types of title evidence, which must be generally accepted in the county where the Property is located (specify in Paragraph 5(c) the selected type). Seller will use option (1) in Palm Beach County and option (2) in Dade County.

- (1) A title insurance commitment issued by a Florida-licensed title insurer in the amount of the purchase price and subject only to title exceptions set forth in this Contract.
- (2) An existing abstract of title from a reputable and existing abstract firm (if firm is not existing, then abstract must be certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments affecting title to the Property recorded in the public records of the county where the Property is located and certified to Effective Date. However if such an abstract is not available to Seller, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage. Seller will pay for copies of all policy exceptions and an update in a format acceptable to Buyer's closing agent from the policy effective date and certified to Buyer or Buyer's closing agent, together with copies of all documents recited in the prior policy and in the update. If a prior policy is not available to Seller then (1) above will be the title evidence. Title evidence will be delivered no later than 10 days before Closing Date.

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(b) **Title Examination:** Buyer will examine the title evidence and deliver written notice to Seller, within 5 days from receipt of title evidence but no later than closing, of any defects that make the title unmarketable. Seller will have 30 days from receipt of Buyer's notice of defects ("Curative Period") to cure the defects at Seller's expense. If Seller cures the defects within the Curative Period, Seller will deliver written notice to Buyer and the parties will close the transaction on Closing Date or within 10 days from Buyer's receipt of Seller's notice if Closing Date has passed. If Seller is unable to cure the defects within the Curative Period, Seller will deliver written notice to Buyer and Buyer will, within 10 days from receipt of Seller's notice, either cancel this Contract or accept title with existing defects and close the transaction.

(c) **Survey:** Buyer may, prior to Closing Date and at Buyer's expense, have the Property surveyed and deliver written notice to Seller, within 5 days from receipt of survey but no later than closing, of any encroachments on the Property, encroachments by the Property's improvements on other lands or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and Buyer's and Seller's obligations will be determined in accordance with subparagraph (b) above. If any part of the Property lies seaward of the coastal construction control line, Seller will provide Buyer with an affidavit or survey as required by law delineating the line's location on the property, unless Buyer waives this requirement in writing.

MISCELLANEOUS

9. EFFECTIVE DATE; TIME: The "Effective Date" of this Contract is the date on which the last of the parties initials or signs the latest offer. Time is of the essence for all provisions of this Contract. All time periods expressed as days will be computed in business days (a "business day" is every calendar day except Saturday, Sunday and national legal holidays). If any deadline falls on a Saturday, Sunday or national legal holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local time (meaning in the county where the Property is located) of the appropriate day.

10. NOTICES: All notices will be made to the parties and Broker by mail, personal delivery or electronic media. Buyer's failure to deliver timely written notice to Seller, when such notice is required by this Contract, regarding any contingencies will render that contingency null and void and the Contract will be construed as if the contingency did not exist.

11. COMPLETE AGREEMENT: This Contract is the entire agreement between Buyer and Seller. Except for a brokerage agreement, no prior or present agreements will bind Buyer, Seller or Broker unless incorporated into this Contract. Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound. Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will not be recorded in any public records.

12. ASSIGNABILITY; PERSONS BOUND: Buyer may not assign this Contract without Seller's written consent. The terms "Buyer", "Seller", and "Broker" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives and assigns if permitted of Buyer, Seller and Broker.

DEFAULT AND DISPUTE RESOLUTION

13. DEFAULT: (a) **Seller Default:** If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, refuses or neglects to perform this Contract, Buyer may choose to receive a return of Buyer's deposit without waiving the right to seek damages or to seek specific performance as per Paragraph 16. Seller will also be liable to Broker for the full amount of the brokerage fee. (b) **Buyer Default:** If Buyer fails to perform this Contract within the time specified, including timely payment of all deposits, Seller may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages or to seek specific performance as per Paragraph 16; and Broker will, upon demand, receive 50% of all deposits paid and agreed to be paid (to be split equally among cooperating brokers) up to the full amount of the brokerage fee.

14. DISPUTE RESOLUTION: This Contract will be construed under Florida law. All controversies, claims, and other matters in question between the parties arising out of or relating to this Contract or its breach will be settled as follows:

(a) **Disputes concerning entitlement to deposits made and agreed to be made:** Buyer and Seller will have 30 days from the date conflicting demands are made to attempt to resolve the dispute through mediation. If that fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration, a Florida court or the Florida Real Estate Commission. Buyer and Seller will be bound by any resulting settlement or order.

(b) **All other disputes:** Buyer and Seller will have 30 days from the date a dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration in the county where the Property is located. The arbitrator may not alter the Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Any disputes with a real estate licensee named in Paragraph 17 will be submitted to arbitration only if the licensee's broker consents in writing to become a party to the proceeding. This clause will survive closing.

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(c) Mediation and Arbitration; Expenses: "Mediation" is a process in which parties attempt to resolve a dispute by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Mediation Association or other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. "Arbitration" is a process in which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the rules of the American Arbitration Association or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees, costs and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees of arbitration. In a civil action to enforce an arbitration award, the prevailing party to the arbitration shall be entitled to recover from the nonprevailing party reasonable attorneys' fees, costs and expenses.

ESCROW AGENT AND BROKER

15. ESCROW AGENT: Buyer and Seller authorize Escrow Agent to receive, deposit and hold funds and other items in escrow and, subject to clearance, disburse them upon proper authorization and in accordance with the terms of this Contract, including disbursing brokerage fees. The parties agree that Escrow Agent will not be liable to any person for misdelivery of escrowed items to Buyer or Seller, unless the misdelivery is due to Escrow Agent's willful breach of this Contract or gross negligence. If Escrow Agent interpleads the subject matter of the escrow, Escrow Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. All claims against Escrow Agent will be arbitrated, so long as Escrow Agent consents to arbitrate.

16. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting contracts, determining the effect of laws on the Property and transaction, status of title, foreign investor reporting requirements, etc.) and for tax, property condition, environmental and other specialized advice. Buyer acknowledges that Broker does not reside in the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records unless Broker indicates personal verification of the representation. Buyer agrees to rely solely on Seller, professional inspectors and governmental agencies for verification of the Property condition and facts that materially affect Property value. Buyer and Seller respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from Buyer's or Seller's misstatement or failure to perform contractual obligations. Buyer and Seller hold harmless and release Broker and Broker's officers, directors, agents and employees from all liability for loss or damage based on (1) Buyer's or Seller's misstatement or failure to perform contractual obligations; (2) Broker's performance, at Buyer's and/or Seller's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor; (3) products or services provided by any vendor; and (4) expenses incurred by any vendor. Buyer and Seller each assume full responsibility for selecting and compensating their respective vendors. This paragraph will not relieve Broker of statutory obligations. For purposes of this paragraph, Broker will be treated as a party to this Contract. This paragraph will survive closing.

17. BROKERS: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." Seller and Buyer acknowledge that the brokerage(s) named below are the procuring cause of this transaction. Instruction to Closing Agent: Seller and Buyer direct closing agent to disburse the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the brokers, unless Broker has retained such fees from the escrowed funds. In the absence of such brokerage agreements, closing agent will disburse brokerage fees as indicated below.

Kenneth D. Goodman
Real Estate Licensee

Rich Sommerville
Real Estate Licensee

Gulf Coast Realty of Naples

Coldwell Banker Inc.

Broker / Brokerage fee: _____

Broker / Brokerage fee: N/A

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ADDITIONAL TERMS

18. ADDITIONAL TERMS:

This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney prior to signing.

OFFER AND ACCEPTANCE

(Check if applicable: Buyer received a written real property disclosure statement from Seller before making this Offer.)
Buyer offers to purchase the Property on the above terms and conditions. Unless this Contract is signed by Seller and a copy delivered to Buyer no later than _____ a.m. p.m. on _____ this offer will be revoked and Buyer's deposit refunded subject to clearance of funds.

Date: 12/20/01 Buyer: [Signature] Tax ID/SSN: 364485545
Print name: John J. Jassy, Trustee

Date: _____ Buyer: _____ Tax ID/SSN: _____
Phone: 941-592-0192 Print name: _____
Fax: 941-566-7708 Address: _____

Date: 12-05-01 Seller: [Signature] Tax ID/SSN: _____
Print name: Kenneth D. Goodman, Trustee

Date: _____ Seller: _____ Tax ID/SSN: _____
Phone: 941-403-3000 Print name: _____
Fax: 941-403-0010 Address: _____

Seller counters Buyer's offer (to accept the counter offer, Buyer must sign or initial the counter offered terms and deliver a copy of the acceptance to Seller by 5:00 p.m. on _____). Seller rejects Buyer's offer.

Effective Date: _____ (The date on which the last party signed or initialed acceptance of the final offer.)

Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is Page 6 of 6 Pages.

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ADDENDUM TO VACANT LAND CONTRACT

Seller: Kenneth D. Goodman, Trustee of the Manatee Road Land Trust

Buyer: John D. Jassy, Trustee, or assigns

1. Existing Documentation and Survey. Seller will, within fifteen (15) days of the Effective Date, deliver to Buyer copies of any and all existing environmental reports, zoning ordinances, permitting documents, prior surveys, site plans, and any other documentation relating to this Property in Seller's possession or control.
2. Environmental Concerns. To the best of Seller's knowledge, there does not exist on the Property any hazardous or toxic substance, material waste, or similar materials, and Seller has received no notice or otherwise been informed of the existence of any such hazardous substances or materials on any adjoining or nearby properties.
3. Permitting Contingency. The property is currently zoned RMF-16 (8 units per acre). Buyer proposes to make use of the property as a residential multi-family development. Seller had Army Corp of Engineer's (ACOE) and South Florida Water Management District (SFWMD) permits for the construction of up to 528 residential units on the Property. However, said permits expired in November of 2001. Buyer shall have nine (9) months from the Effective Date (the "Permitting Contingency Period") to extend and modify the ACOE and SFWMD permits and also to obtain (at Buyer's option) Site Development Plan approval and building permits from Collier County. If Buyer is unable to obtain said local, state, and Federal permits for Buyer's intended development within the Permitting Contingency Period, as it may be extended (in form and substance satisfactory to Buyer, in Buyer's sole discretion), then Buyer may terminate this Agreement and receive a full refund of all deposits made.
4. Access Contingency. The Property is abutted on the south by a parcel of approximately 36 acres owned by Martin S. Adler (the "Adler Parcel"). The Adler Parcel is also contiguous to, and enjoys access to, Collier Boulevard (SR-951). Seller, or Seller's representatives, have had discussions with the owner of the Adler Parcel regarding providing vehicular and utility access from Collier Boulevard to the southern boundary of the Property over the Adler Parcel. Said access would include a paved roadway meeting Collier County Land Development Code Standards, signage on Collier Boulevard identifying the project to be constructed on the Property, directional signage as appropriate, and applicable easements and facilities for water, sewer, electrical, telephone and cable utilities as needed. Buyer acknowledges that said access, easements, and improvements may require a monetary contribution of \$200,000 to \$225,000 from Buyer. Buyer shall negotiate with the owner of the Adler Parcel the terms of the access agreement during the 9 month Permitting Contingency Period. If Buyer is unable to obtain an access agreement with the Adler Parcel owners that is satisfactory to Buyer, in Buyer's sole discretion, on or before the expiration of the Permitting Contingency Period, as it may be extended, then Buyer may terminate this Agreement and receive a full refund of all deposits made.
5. Contingency Extensions. If Buyer is unable, through no fault of Buyer, to obtain satisfactory permits or a satisfactory access agreement pursuant to the Permit Contingency and the Access Contingency, respectively, within the Permitting Contingency Period, then Buyer shall be entitled to extend the Permit Contingency Period for up to two (2) additional periods of ninety (90) days each. Each

such extension exercised by Buyer shall require a deposit of an additional \$10,000.00 in escrow. The additional deposits shall be applied to the purchase price at closing, or shall be refunded to Buyer upon proper termination of this Agreement. *See attachment.*

6. Closing. Closing shall take place within thirty (30) days after the earlier of: (i) Buyer has met or waived the Permitting Contingency and the Access Contingency, or (ii) the expiration of the Permitting Contingency Period, as extended. Buyer shall give Seller at least twenty (20) days notice of the date, time, and place of closing.

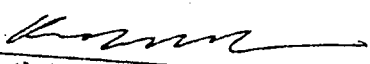
7. Seller Cooperation. Seller agrees to cooperate with Buyer in any rezoning and permitting efforts, provided that Seller shall not be required to expend any of its own funds in order to provide such cooperation. Seller agrees to consent to rezoning petitions, permit applications, proposed plats, PUDs, Site Development Plans, Multi-Family declarations or other documents subdividing the property, or any portion thereof, provided that the same conforms to Collier County Development standards. In conjunction with the platting or Multi-Family Development of the property, or the creation of any PUD, Seller further agrees to join in the dedication of the property, or the creation of any PUD, and Seller further agrees to join in the dedication of any necessary easements, including drainage, utilities and road easements, in and over the property pursuant to and which are required by the proposed plan and rezoning for the development of the property.

8. Buyer Updating Seller. Buyer shall provide Seller with quarterly progress updates and copies of all documents filed with Collier County. If this transaction fails to close for any reason, Buyer shall provide Seller with all surveys, engineering, permitting and environmental reports in Buyer's possession.

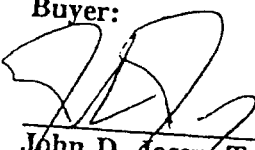
9. Assignability/Persons Bound. Buyer may assign this contract without Sellers' consent. The terms "Buyer", "Seller", and "Broker" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives and assigns (if permitted) of Buyer, Seller and Broker.

10. Brokerage Disclosure. No brokers and/or real estate agents have been involved in this transaction other than Kenneth D. Goodman of Gulf Coast Realty of Naples, who is a licensed real estate broker in the State of Florida, and may be involved in the ownership of the property. The parties hereby represent to each other that except for the broker(s) identified herein, they have not dealt with any broker or finder with respect to the transaction contemplated hereby, and each hereby indemnifies the other against any cost, expense, claim, liability or damage, including reasonable attorney's fees and costs, resulting from any breach of the representation and warranty contained herein. *See attachment.*

Seller:


Kenneth D. Goodman, Trustee
Date: 12/9/01

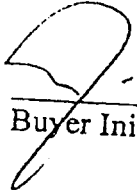
Buyer:


John D. Jassy, Trustee
Date: 12/10/01

Attachment Goodman/Jassy

5a. Seller shall grant to buyer at no additional cost, further 90 day extensions of the contingency period for as long as necessary for construction of access road on Adler parcel and for buyer to obtain all necessary permits and approvals for the development of this site. This is conditional upon buyer using his best efforts to obtain these items.

11a. Rich Sommerville of Coldwell Banker Inc. represents buyer in this transaction and shall be paid that portion of the commission by seller upon closing.



Buyer Initials



Seller Initials

Exhibit "A"

Legal Description

[TO BE PROVIDED BY SELLER]

• WELL

A SURVEY OF THE FOLLOWING DESCRIBED PROPERTY

STRAP # 512610-102.000 FURTHER DESCRIBED AS ALL THAT PART OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 28 EAST, COLLIER COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE PRESENT EASTERLY RIGHT-OF-WAY OF S.R. 951 WITH THE NORTHERLY LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 28 EAST, COLLIER COUNTY, FLORIDA; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 0°24'33" WEST 30.01 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF C.R. 31, THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE AND 30 FEET SOUTH OF AND PARALLEL WITH THE NORTHERLY LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 10, NORTH 88°42'20" EAST 500.00 FEET TO THE NORTHWEST CORNER OF GULF WINDS EAST UNIT 1, A CONDOMINIUM AS RECORDED IN CONDOMINIUM PLAT BOOK 4, PAGES 153 AND 154, COLLIER COUNTY PUBLIC RECORDS, COLLIER COUNTY, FLORIDA, THENCE ALONG THE WEST LINE OF GULF WINDS EAST, SOUTH 0°24'33" WEST, 706.32 FEET TO THE SOUTHWEST CORNER OF SAID GULF WINDS EAST, THENCE ALONG THE SOUTH LINE OF SAID GULF WINDS EAST NORTH 88°42'20" EAST 849.37 FEET; THENCE ALONG THE EAST LINE OF SAID GULF WINDS EAST NORTH 1°17'40" WEST 706.05 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID C.R. 31, THENCE RUN NORTH 88°40'46" EAST 170.93 FEET TO THE POINT OF BEGINNING; CONTINUE EASTERLY 1091.84 FEET, THENCE RUN SOUTH 0°05'07" EAST 1339.18 FEET; THENCE ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 10, SOUTH 0°03'33" EAST 684.81 FEET; THENCE ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 10, SOUTH 88°45'40" WEST 1369.18 FEET; THENCE ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 10, SOUTH 88°45'54" WEST 739.18 FEET; THENCE RUN NORTH 0°24'51" EAST 671.07 FEET; THENCE RUN NORTH 88°42'20" EAST 1039.52 FEET; THENCE RUN NORTH 1°17'40" WEST 1350.18 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, DRAINAGE AND UTILITIES OVER, UNDER AND ACROSS ALL THAT PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 951 WITH THE NORTHERLY LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 28 EAST, THENCE SOUTH 0°24'33" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE 1295.47 FEET TO THE POINT OF BEGINNING OF THE EASEMENT HEREIN BEING DESCRIBED; SAID POINT BEING THE BEGINNING OF A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00", THENCE SOUTHERLY, SOUTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AN ARC DISTANCE OF 39.27 FEET; THENCE SOUTH 89°35'27" EAST 474.73 FEET; THENCE SOUTH 0°24'51" WEST 60.00 FEET; THENCE NORTH 89°35'27" WEST 474.72 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE WESTERLY, SOUTHWESTERLY, AND SOUTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE AN ARC DISTANCE OF 39.27 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 951; THENCE NORTH 0°24'33" EAST 110.00 FEET TO THE POINT OF BEGINNING OF THE EASEMENT HEREIN DESCRIBED.

WELL•

Boundary Survey provided by
applicant but too large to scan.

This document may be
reviewed upon request at
Florida Housing Finance
Corporation.

REAL ESTATE PURCHASE AGREEMENT

This real estate purchase agreement (the "Agreement") is made and entered into this 11 day of April 2002 by and between John D. Jassy, Trustee, whose address is 895 Turtle Ct., Naples, FL 34108, hereinafter referred to as "Seller" and BRISBEN ADVISORS, INC. whose address is 7800 East Kemper Road, Cincinnati, Ohio 45249, hereinafter referred to as "Purchaser". The Seller and Purchaser may hereinafter be referred to collectively as the "Parties." This Agreement shall become effective upon the latest date of final execution hereof by all necessary parties hereto (the "Effective Date").

RECITALS

WHEREAS, Seller is the Contract Vendee with Kenneth D. Goodman, Trustee of the Manatee Road Land Trust the "Owner" of approximately 66 acres ± of real estate located near Collier Boulevard in Collier County, Florida, (the "Larger Parcel") of which the Purchaser intends to purchase approximately 34 acres + as necessary to construct its proposed 272 residential multifamily development and more particularly described on the attached Exhibit "A1", and is hereinafter referred to as the "Real Estate"; and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Real Estate on the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties hereby incorporate the above recitals into this Agreement and further agree as follows:

1. **REAL ESTATE.** Subject to the terms hereof, Seller agrees to sell and Purchaser agrees to purchase the Real Estate.
2. **PRICE AND PAYMENT.** The purchase price of the Real Estate shall be Sixty-Eight Thousand Dollars (\$68,000.00) per gross acre for not less than 34 acres (8 units per acre x \$68,000) as necessary for the development of a minimum of 272 residential multifamily units (or 224 residential multifamily units depending upon financing contingencies) for a total purchase price of Two Million Three Hundred Twelve Thousand Dollars (\$2,312,000.00) (the "Purchase Price") and shall be paid as follows (the actual Purchase Price shall be based on an acreage calculation as certified by the surveyor

hired by Buyer to determine the legal description of the Real Estate):

a. The Purchaser shall pay an earnest money deposit of Twenty-Five Thousand Dollars (\$25,000.00) by cash or check within ten (10) business days of the Effective Date of this Agreement (the "Earnest Money Deposit").

b. The Purchaser shall pay the balance of the Purchase Price after netting out all deposits, extension fees, etc. to be credited to the Purchase Price in cash, by cashier's check or by wire transfer at the time of the Closing as provided in Paragraph 5.

c. The deposit paid pursuant to Paragraph 2(a) above shall be held by Commercial Title Agency as escrow agent (the "Escrow Agent"). Provided, however, the Purchaser shall not be required to make the Earnest Money Deposit until the Seller has provided a legal description for the Larger Parcel, a metes and bounds survey for the Larger Parcel, and the ad valorem tax billings for the Larger Parcel for the latest year, which legal description, survey, and tax assessment billings shall be attached hereto as Exhibits "A1, A2, A3" and incorporated herein by reference. At the Closing, the Escrow Agent shall deliver the escrowed funds to the Seller. In the event the conditions set forth in Paragraphs 5 and 6 are not satisfied or waived, the Escrow Agent shall deliver the escrowed funds to Purchaser at the time of the termination of this Agreement. Purchaser shall be entitled to any interest earned on the escrowed funds. The Escrow Agent shall serve without compensation for its services, and shall exercise its duties in accordance with the terms of this Agreement and in good faith, but under no circumstances shall it be held liable to Seller or Purchaser except for acts constituting gross neglect of duty or dishonesty. Upon delivery of the escrowed funds in accordance with the terms of this Agreement, its duties as Escrow Agent shall terminate.

3. CONVEYANCE AND SURVEY.

a. Seller shall convey title to the Real Estate by special warranty deed at Closing. Said deed shall convey marketable and indefeasible title in fee simple absolute, with release of dower, subject only to real estate taxes not then delinquent and easements and restrictions of record that were not objected to during, or did not arise after, Purchaser's Due Diligence Period. As of the date hereof, Purchaser has not examined the title to the Real Estate. Within thirty (30) days of the Effective Date, the Purchaser shall obtain a search of the county and/or state records, as applicable, for Uniform Commercial Code financing statements, a Fifty (50) year chain of title, and an ALTA Owner's Title Insurance Commitment (the "Commitment"), which will commit to insure title to the Real Estate. If such

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Commitment discloses any title defects or other matters which, in Purchaser's judgment, interfere with Purchaser's intended use of the Real Estate, or which render the title unmarketable or defeasible, then, prior to expiration of the Due Diligence Period, Purchaser shall provide written notice thereof to Seller. In such event, if Seller is unable to or does not elect to remedy any such title defects or other such matter of title at Seller's sole cost and expense on or prior to the Closing date, then Purchaser at its election, may either acquire the Real Estate subject to the effect of the same or terminate this Agreement without further liability to either party, and the deposit shall be returned by the Escrow Agent to Purchaser. Seller and Buyer shall, at the Closing, each pay for one-half of the cost of issuance of an ALTA Title Insurance Policy to Purchaser in the amount of the Purchase Price. Possession of the Real Estate shall be delivered to Purchaser at Closing. If there are any buildings or other structures on the Real Estate, upon request by Purchaser, Seller shall have such buildings and/or other structures removed from the Real Estate prior to Closing. During the term of this Agreement, Seller shall not convey any interest in the Real Estate without the prior written approval of Purchaser.

b. Within thirty (30) days of the Effective Date, the Purchaser shall, at its expense, obtain a wetlands assessment of the Real Estate and the Larger Parcel, a topographic survey and an ALTA survey of the Real Estate (collectively, the "Surveys"), sufficient to allow for the removal of the survey exception in the Title Commitment, all prepared by a registered surveyor or engineer, as appropriate. The Seller hereby agrees to share equally in the cost of the wetlands assessment, estimated at One Thousand Two Hundred Dollars (\$1,200). The legal description for the Real Estate shall be prepared from the Surveys and be used in Seller's deed, provided that all necessary governmental authorities have approved said description. The Purchaser shall cause its engineers to delineate the wetlands as required for the Purchaser to obtain site plan approvals and building permits. Provided, however, if the Purchaser is required to delineate wetlands on the remaining acreage to be retained by Seller, at closing the Seller shall reimburse the Purchaser the Seller's pro-rata share of said delineation upon receipt of a reasonably detailed invoice from Purchaser and subject to Seller's approval of the surveyor or engineer, not to be unreasonably withheld.

c. The Purchaser requires an approved (unappealed and unappealable) wetlands delineation in order to develop the site as proposed from the appropriate local, state and federal authorities as applicable (the "Approved Wetlands Delineation"). The Seller and Purchaser hereby agree to fully cooperate one with the other in the wetlands assessment and in the submission of an application for the Approved Wetlands Delineation, however at no expense to Seller other than as provided in paragraph (b) above.

4. **REAL ESTATE TAXES AND ASSESSMENTS.** Real estate taxes shall be prorated as of the date of the Closing, based upon the amount of the most recent available real estate tax bills. Seller shall not be responsible for any real estate taxes that are recouped or recaptured as the result of Purchaser's proposed development of the Real Estate. Seller shall be responsible for all assessments against the Real Estate (whether recorded or in the process of being certified) as of the date of the Closing, but not including any deferred sewer or water tap-in fees or impact fees of any kind. All delinquent real estate and personal property taxes and any amounts owing on the lien of any general or special assessments shall be paid by Seller at the time of Closing. If the amount of the real estate taxes prorated at the Closing differs from the amount of the actual real estate taxes for the tax period in question by more than ten percent (10%), the Parties will re-prorate based on the actual tax bill and credit the appropriate party within thirty (30) days after receipt of such tax bill. Seller and Buyer shall each be responsible for one-half of the Florida State Documentary Stamp Tax.

5. **CLOSING DATE AND CONTINGENCIES.**

a. Purchaser intends to construct certain improvements on the Real Estate. By reason thereof, it is necessary for Purchaser to make certain determinations as to the suitability of the Real Estate for Purchaser's proposed development. Therefore, the consummation of this transaction is conditioned upon:

i. **Financing.** Purchaser shall have obtained, on terms and conditions acceptable to Purchaser, tax-exempt bond financing and/or an allocation of tax credits for the acquisition and development of the Real Estate.

ii. **Feasibility Study.** Purchaser shall determine whether there is adequate access to the Real Estate, whether utilities adequate to serve the Real Estate exist or will exist, whether soil and subsoil conditions, presence of wetlands, presence of hazardous or toxic substances on the Real Estate as well as other economic factors, will permit the efficient and economical construction of Purchaser's proposed improvements. Purchaser, in its sole discretion, shall determine the feasibility of the its intended use of the Real Estate, based upon but not limited to following: access to the Real Estate, availability of utilities adequate to serve the proposed improvements, soil and subsoil conditions, environmental conditions, water and drainage conditions, the existence of wetlands, and any other factors affecting the efficient and economic construction of the Purchaser's proposed improvements and intended use of the Real Estate.

iii. **Zoning.** The Purchaser requires multifamily zoning to a density permitting the construction of Two Hundred Seventy Two (272) residential multifamily units on the Real Estate.

iv. **Title and Survey Defects.** If the Purchaser determines in its sole discretion that the Commitment, the lien search, or the survey reveal any defects affecting good and marketable title to the Real Estate, the Purchaser shall provide the Seller notice of such defects as soon as practicable, but prior to the expiration of the Due Diligence Period. The Purchaser may either waive the defects or request that the Seller correct the defects solely at the Seller's cost. If the Seller refuses to correct the defects, the Purchaser may terminate the agreement and, notwithstanding any provisions herein to the contrary, receive a full refund of any Earnest Money Deposit, any Additional Deposit and any Extension Fees.

v. **Utilities.** Purchaser shall have obtained, at its expense, any necessary utility easements from adjoining property owners on terms and conditions acceptable to Purchaser.

vi. **Development Plan Approval.** Purchaser shall have obtained, at its expense, from all appropriate governmental authorities and public utilities, all necessary zoning approvals and other approvals for its proposed development.

b. The Parties hereby acknowledge that the timing of Purchaser's financing in Paragraph 5(a)(i) is uncertain, and the Parties attach hereto and incorporate herein as Exhibit "B" (Florida Housing Timeline) as a guideline of the timeframe for satisfying the financing contingency in Paragraph 5(a)(i) (the "Financing Contingency"). The Parties by this reference incorporate the FHFC schedule for allocation of tax-exempt volume cap that is attached hereto as Exhibit "C", subject to any modifications or changes hereafter made by FHFC. The Purchaser shall have until such time as Protests to FHFC are required to satisfy the Financing Contingency. The Purchaser shall have until July 31, 2002, to satisfy or waive the contingencies set forth in Paragraphs 5(a)(ii) through 5(a)(v) above (the "Due Diligence Period"). Upon expiration of the Due Diligence Period, the Purchaser shall deposit the additional amount of Five Thousand Dollars \$5,000.00 (the "Additional Deposit"). The Purchaser shall pay the Additional Deposit directly to the Seller, and the Additional Deposit shall be non-refundable and applicable to the Purchase Price at Closing. On December 31, 2002, regardless of whether the Purchaser has satisfied or waived the contingencies set forth in Paragraphs 5(a)(i) and 5(a)(vi) above, the Purchaser shall cause the

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Escrow Agent to release the Twenty-Five Thousand Dollars (\$25,000) Earnest Money Deposit set forth in Paragraph 2(a) above directly to the Seller, and the Earnest Money Deposit shall thereupon become non-refundable but still applicable to the Purchase Price at Closing. The Purchaser shall have five (5) business days to cure any failure by the Purchaser to meet its obligations under this Agreement. Purchaser in its sole discretion shall determine whether or not a contingency has been satisfied. Upon the failure of any of the above contingencies to be satisfied within such time period, Purchaser may elect either to waive such contingencies or to terminate this Agreement. If Purchaser fails to deliver notice to Seller that Purchaser is satisfied with or is waiving all of the contingencies set forth in this Paragraph 5 within the time frame set forth above, this Agreement shall automatically terminate. Upon notice of such termination or automatic termination, the Escrow Agent shall return in full to the Purchaser any deposit made (with the exception of the "Additional Deposit" described hereinabove, and, after December 31, 2002, the \$25,000 Earnest Money Deposit set forth in Paragraph 2(a) above), and the Parties shall have no further obligation hereunder. Upon satisfaction of the foregoing conditions, Purchaser shall immediately notify Seller, and a land closing shall be held at a mutually agreed upon time and location on or before March 10, 2003 (the "Closing"). The Parties hereby acknowledge that the Purchaser's development of the Real Estate shall remain contingent upon receipt by the Purchaser of unappealed and unappealable development plan approval pursuant to Paragraph 5(a)(vi) above. Wherefore, the Parties hereby agree that the Purchaser may extend the Closing until it receives full development plan approvals from all necessary governmental authorities. The Purchaser may extend the Closing for up to thirty (30) days at a time (the "Extension Periods") for the payment of Ten Thousand Dollars (\$10,000) (the "Extension Fees") directly to the Seller. The Extension Fees shall be payable to the Seller, shall be non-refundable, and shall apply to Purchase Price. The Extension Periods shall extend all other applicable dates and deadlines. Seller shall cooperate with Purchaser in obtaining the approvals required pursuant to this Paragraph 5, such cooperation to include, but not be limited to, the execution by Seller of any and all documents needed by Purchaser to obtain permits and approvals. Seller hereby grants to Purchaser authority to apply for site plan approval, development plan approval, and clearing and building permits prior to the Closing, and Seller shall execute or cause the necessary parties to execute any and all documents as may be required by the appropriate governmental agency to evidence such authority. Seller hereby represents and warrants that it has full authority and legal capacity to grant said authorities to the Purchaser.

6. SITE INVESTIGATION AND CONDITION OF REAL ESTATE.

a. Seller hereby grants to Purchaser a temporary license to enter onto the Real Estate to conduct such engineering and soil testing, as it deems appropriate. Purchaser shall conduct such

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site investigation in such a manner so as to minimize any damage to the Real Estate and, to the extent practicable, Purchaser shall promptly restore any damaged areas of the Real Estate to its condition prior to Purchaser's entry on the Real Estate. Purchaser agrees to indemnify Seller from and against any loss or damage incurred or suffered by Seller relating to any activities of Purchaser, its employees or independent contractors, on or about the Real Estate prior to the date of Closing hereunder. Prior to the Closing, Seller shall not make any material alterations to the Real Estate without the prior written consent of Purchaser.

b. Within ten (10) days after the Effective Agreement, Seller shall deliver to Purchaser copies of all engineering reports, environmental (plant and animal) reports or environmental site assessments, topographical maps, soil tests, feasibility studies, easement agreements, subdivision approvals, title insurance policies and surveys in Seller's possession pertaining to the Real Estate.

c. Seller represents and warrants to Purchaser that to the best of its current knowledge and as of the Closing, the Real Estate is and shall be free from any and all city, county, state and federal orders affecting the Real Estate. Seller further represents and warrants to Purchaser that Seller has not received notice of any violation of any applicable federal, state or local statute, law, ordinance, order, rule or regulation or of any covenant, condition, restriction or easement affecting the Real Estate. Seller further represents and warrants to Purchaser that, to the best of Seller's knowledge, the Real Estate is free from any and all hazardous substances and wastes, asbestos, underground storage tanks, PCB's and wet lands. Within Forty-Five (45) days of the Effective Date, the Purchaser, at its expense, shall perform an environmental audit and wet lands assessment on the Real Estate. In the event such audit discloses the presence of hazardous substances, wastes, asbestos, underground storage tanks or PCB's, then, unless Seller agrees, within ten (10) days after Seller's receipt of notice of the results of such audit, to remove and clean up any such hazardous substances, wastes, asbestos or underground storage tanks and to pay the costs of such removal and clean up prior to the Closing date, Purchaser, at its election, may either acquire the Real Estate without requiring the removal of such hazardous substances, wastes, asbestos, underground storage tanks or PCB's, or may terminate this Agreement by written notice thereof to Seller, in which case any deposit made by Purchaser shall be returned by the Escrow Agent in full and neither party shall be under any further obligation hereunder. Additionally, in the event such wetlands assessment discloses the presence of wetlands in an area or areas and of such size or configuration as to prevent the Purchaser from developing 272 multifamily units, then Purchaser shall have the absolute right to terminate this Agreement by written notice to Seller, and the Escrow Agent shall return to the Purchaser in full the Earnest Money Deposit, and neither party shall be under any further obligation hereunder.

d. The Purchaser's primary access to the Real Estate may be from Collier Boulevard. The Seller has advised Purchaser that a permanent easement benefiting the Real Estate and the remaining property in the Larger Parcel affording primary access to the Real Estate from Collier Boulevard and allowing monument signage in the easement area along Collier Boulevard may exist (the "Collier Boulevard Easement"). The Purchaser shall satisfy itself as to the existence and sufficiency of the Collier Boulevard Easement during the Due Diligence Period. If the Purchaser elects to construct the private access road in the Collier Boulevard Easement area, Purchaser shall be solely responsible for the costs thereof. Provided at or before Closing, the Purchaser and Seller shall enter into an agreement whereby the Parties, their successors and assigns, agree to share equitably in the maintenance costs of the Collier Boulevard Easement area at such time as Seller, its successors and assigns, utilize the Collier Boulevard Easement area for access to any portion of the remaining property in the Larger Parcel. If Seller, its successors and assigns, does not permanently interconnect the roadways on the remaining property in the Larger Parcel with the Collier Boulevard Easement or connects to the Collier Boulevard Easement only for emergency traffic purposes, then the Seller, its successors and assigns, shall have no maintenance obligations for the Collier Boulevard Easement area or the private road on the Real Estate. The Parties hereby agree to fully cooperate one with the other in the design of the site plans for the Real Estate and the remaining property in the Larger Parcel.

e. At Closing, at Purchaser's option, the Seller shall convey to Purchaser a permanent easement benefiting the Real Estate and the remaining property in the Larger Parcel that affords secondary access or primary access (if the Collier Boulevard Easement is unusable for Purchaser's purposes) to the Real Estate from Manatee Drive and signage in the easement area along Manatee Drive (the "Manatee Drive Easement"). The Manatee Drive Easement shall be a permanent easement first in priority, fully insurable and not subject to reversion or any liens or encumbrances. The location of the Manatee Drive Easement shall be subject to Seller's reasonable approval. If Purchaser interconnects to the Manatee Drive Easement only for emergency traffic purposes, then the Purchaser shall have no construction or maintenance obligations for the Manatee Drive Easement area or the private road on the Real Estate. If the Purchaser elects to construct a private access road over the Manatee Drive Easement, the costs thereof shall be equally shared 50/50 between Seller and Purchaser, with Seller's 50% share to be placed in escrow at Closing and released to Purchaser upon final approval of the roadway by the proper local authority. The Parties hereby agree that if the Purchaser elects to construct private access over the Manatee Drive Easement, the Seller shall escrow from the Purchase Price at the Closing an amount equal to 110% of the engineer's estimate of the cost to complete the Seller's Share (the "Completion Escrow"). The Completion Escrow shall be held by a title company acceptable to the Parties and shall be released to the Purchaser upon final approval of the roadway. Seller and Purchaser

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shall reasonably agree on the design of the private access road over the Manatee Drive Easement, and shall also reasonably agree on the design team and contractor therefore. The Seller shall grant to Purchaser a signage easement in the Manatee Drive Easement Area and adjacent to Manatee Drive. If the Manatee Drive Easement is Purchaser's only access point, then the Purchaser shall be permitted to erect a monument sign equal to not more than fifty percent (50%) of the permitted sign square footage. If the Manatee Drive Easement is Purchaser's secondary access, then the Purchaser shall be permitted to erect a directional sign equal to not more than twenty-five percent (25%) of the permitted sign square footage. At Closing, at Seller's option, the Purchaser shall convey to Seller over the northerly most portion of the Real Estate a permanent easement benefiting the remaining property in the Larger Parcel and that affords secondary access to the Larger Parcel from Collier Boulevard and directional signage in the easement area along Collier Boulevard (the "Purchaser Easement"). The Purchaser Easement shall permit the Seller to erect a directional sign equal to not more than twenty-five percent (25%) of the permitted sign square footage. All costs for directional or monument signage shall be borne by the party benefiting from said signage at the time such signage is used. The Parties hereby agree to reach an agreement during the Due Diligence Period regarding the cross access and signage easements for the Collier Boulevard Easement, the Manatee Drive Easement and the Purchaser Easement. The Purchaser Easement and Manatee Drive Easement shall be recorded contemporaneously with the deed from Seller to Purchaser.

7 Deleted.

8 COOPERATION AGREEMENT.

a. The Purchaser hereby agrees to provide to the Seller copies of the Surveys, the wetlands assessment, the Phase I, the market study and any other report, study or analysis of the Real Estate as soon as practicable after receipt of a final copy. Purchaser will need a variety of exclusive and non-exclusive public and private, permanent and temporary utility, drainage, right-of-way, grading, access, ingress/egress and roadway easement(s) in order to develop the Real Estate as the Purchaser intends. Seller hereby agrees to fully cooperate with Purchaser in granting and signing said easements, as needed, and/or assisting Purchaser in obtaining the same from third parties, as required. The cost of design, designation, and recording of those easements shall be borne by Purchaser. In addition, Seller hereby agrees to execute or cause the necessary parties to execute applications for site plan approval, development plan approval, and clearing and building permits prior to Closing. Seller hereby agrees to execute or cause the necessary parties to execute any and all other documents as may be required by the appropriate governmental authority to effect the intent of this Paragraph 8, which execution shall not be unreasonably withheld by Seller. Any delay by the Seller in performing the Seller's Work, as applicable,

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or in fulfilling its obligations pursuant to this Agreement shall likewise extend the time for Purchaser's performance of its obligations. Provided, however, the Seller shall not be obligated to execute any document that would bind the Real Estate or the seller to any obligation or liability, which in Seller's reasonable judgment would adversely affect the Real Estate.

b. The Seller hereby agrees to make all reasonable efforts to cooperate with the Purchaser to obtain an ingress/egress easement, utility easements and all other easements necessary for Purchaser to develop its proposed 272 residential multifamily development. If the Purchaser is required to build a private road from the Real Estate to gain access to Collier Boulevard, the Purchaser shall construct the road at its own costs.

9. **SELLER'S REPRESENTATIONS AND WARRANTIES.**

a. Seller represents, warrants, and covenants to Purchaser as to the following matters, and shall be deemed to remake all of the following representations, warranties, and covenants as of the date of Closing.

b. **No Consents Necessary.** Seller has the legal right, power, capacity and authority to enter into and perform its obligations under this Agreement, and no approval or consent of any other person or entity is necessary to authorize the execution of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby, other than Seller's performance hereunder is specifically conditioned on the performance of Seller's seller. The execution and delivery of this Agreement and every other document delivered pursuant to this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement have been duly authorized and validly executed and delivered by Seller.

c. **No Violations.** Seller has not received any written notice (i) of any violations by Seller or the Real Estate or any part thereof, of any law, rule, regulation, order or ordinance or (ii) from any insurance company of the existence of any material and adverse condition which requires work to be done to cure such condition with respect to the Real Estate, and Seller has no knowledge that any such notices are forthcoming or that any such conditions or violations exist.

d. **No Pending Proceedings.** The Seller represents that there is no pending or threatened, condemnation action, litigation, arbitration, administrative action or examination, claim, demand, attachment, execution or similar proceeding whatsoever, relating to the Real Estate or Seller

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which would adversely affect the Real Estate. Seller shall immediately notify Purchaser of any such claim or proceeding which is made, filed, threatened or instituted by or against Seller or the Real Estate after the date of this Agreement.

e. **No Third Party Rights.** The Seller represents that no tenant or other third party has any agreement, option, or other right of first refusal, to purchase the Real Estate or any part thereof nor does any party have any occupancy rights with respect to the Real Estate. The Seller has not entered into, nor is aware of, any contract, lease, lien, encumbrance, agreement or right of possession, which cannot be canceled/terminated by Purchaser within a 30-day notice or less, and, to best of Seller's knowledge, no Third Party has any right(s) of occupancy, unrecorded or prescriptive easement(s) or usage with respect to the subject property, at law or in equity. The Seller represents that to the best of Seller's knowledge there exist no costs associated with or arising from any community area maintenance agreements, homeowner association agreements or other third party agreements, whether recorded or not, unless said agreements and fees are disclosed in Exhibit C attached hereto and incorporated by reference. The Seller further represents and warrants that it will not enter into any agreement whatsoever affecting the Real Estate or any part thereof, and the Seller shall not in any manner disturb, alter or modify the Real Estate or its current state without providing written notice to the Purchaser with confirmation.

f. **Zoning.** The Seller makes no representations as to the current zoning of the Real Estate.

g. **Access.** The Seller represents to the Purchaser that Purchaser will need to investigate the availability access to Collier Boulevard. The Seller will reasonably assist The Purchaser in obtaining easements across the adjacent property in order to access Collier Boulevard. The Seller makes no representations as to the availability of utilities, including sewage, sanitation, plumbing, water retention, refuse disposal, and similar facilities servicing the Real Estate.

h. **Utilities.** To the best of Seller's knowledge, all utilities, including but not limited to, storm sewer, sanitary sewer, water, gas, electric and cable, are available at either Collier Boulevard or Manatee Road. To Seller's knowledge, there is no fact or condition, which would impair Purchaser's ability to tap-in and use, said utilities for the development of the Real Estate.

i. **Assessments.** To the best of Seller's knowledge, there are no public improvements, which have been ordered to be made, and/or which have not heretofore been assessed, and there are no special, general, or other assessments pending, or to Seller's knowledge, threatened against or

Naples Collier Cnty FL Final Ver 4-11-02.doc Naples Collier Cnty FL res 3 redl doc, 11-Apr-02

affecting the Real Estate.

j. **Contract Vendee.** The Seller herein is a Contract Vendee of the Real Estate. The Seller hereby covenants that its contract with the Owner is in full force and effect as of the Effective Date. Seller further covenants that it has absolute legal control of the Real Estate through March 10, 2003, and Seller covenants to maintain said contract in full force and effect throughout the term of this Agreement. The Purchaser requires for its financing application and the Seller has attached hereto an affidavit as Exhibit "D" executed by its legal counsel to the effect that the Seller has legal site control of the Real Estate at a minimum, through March 10, 2003, and the right to assign the Seller's contract with the owner.

k. **Survival of Warranties.** The Seller shall be deemed to remake each of the foregoing representations and warranties as of the Closing. The foregoing representations and warranties shall not survive Closing except as a fraudulent representation.

10. **EMINENT DOMAIN.** If, prior to the Closing, any proceeding shall be threatened, commenced or consummated for the taking of any part of the Real Estate for public or quasi-public use pursuant to the power of eminent domain, then Seller shall forthwith give notice thereof (the "Condemnation Notice") to Purchaser. The Condemnation Notice shall, if possible, be accompanied by a sketch of the portion of the Real Estate which will be affected by such taking, and a metes and bounds description delineating the area to be affected. If any such taking, contemplated taking or threatened taking, shall occur or be commenced, then Purchaser shall have the option to terminate this Agreement upon written notice to Seller given not later than ten (10) days after receipt of the Condemnation Notice or go forward and take an assignment of Seller's condemnation award. In the event Purchaser elects to terminate this Agreement, the Escrow Agent shall return in full to the Purchaser any deposit made, and neither party shall be under any further obligation hereunder.

11. **DEFAULT**

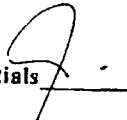
SELLER AND PURCHASER EACH CONFIRM THEIR AGREEMENT TO THE FOREGOING BY INITIALING IN THE SPACE PROVIDED BELOW.

i. **BY PURCHASER.** IF THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A DEFAULT OR BREACH BY PURCHASER OF ANY MATERIAL OBLIGATION HEREUNDER, SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE EARNEST MONEY DEPOSIT AS WELL AS ADDITIONAL FEES PAID TO SELLER AS FULL AND COMPLETE LIQUIDATED DAMAGES AND NEITHER PARTY SHALL BE UNDER ANY

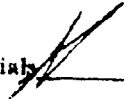
FURTHER OBLIGATION HEREUNDER. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES TO SELLER IN THE EVENT OF PURCHASER'S DEFAULT OR BREACH WOULD BE IMPOSSIBLE TO ACCURATELY DETERMINE, THAT PROOF OF THE AMOUNT OF SUCH DAMAGES WOULD BE COSTLY AND INCONVENIENT AND THAT SAID SUM IS FAIR AND REASONABLE IN LIGHT OF ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE PARTIES' ESTIMATION OF THE POSSIBLE RANGE OF DAMAGES TO SELLER IN THE EVENT OF SUCH A DEFAULT OR BREACH BY PURCHASER. SUCH LIQUIDATED DAMAGES SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR PURCHASER'S DEFAULT OR BREACH. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

ii. BY SELLER. IN THE EVENT THE SELLER SHALL DEFAULT IN THE CONSUMMATION OF THIS AGREEMENT, THE SELLER AGREES THAT THE PURCHASER SHALL BE ENTITLED TO EITHER TERMINATE THE CONTRACT AND RECEIVE A FULL REFUND OF ALL DEPOSITS MADE OR TO SUE FOR SPECIFIC PERFORMANCE, AS PURCHASER'S EXCLUSIVE REMEDIES.

Seller's Initials



Purchaser's Initials



12. ASSIGNMENT. Purchaser may assign this Agreement to an entity affiliated with and controlled by the Brisben Companies, without the consent of Seller, provided that in the event of an assignment of this Agreement by Purchaser, Purchaser shall not be released from any of its obligations under this Agreement. Purchaser agrees that Seller may elect prior to Closing to treat this transaction as a partial assignment to Purchaser of Seller's Contract with Seller's seller, in which event Purchaser shall receive an absolute assignment of the Seller's Contract with regard to the Real Estate and a direct deed from Seller's seller therefor. The Seller has attached hereto a copy of its contract with the Owner. Seller hereby represents and warrants that it has full authority to assign its interest under the contract with the owner of the Real Estate. As consideration for the Purchaser's waiver of damages for breach by the Seller, the Seller hereby assigns its right to purchase the Real Estate, under the conditions of this Agreement, from the Owner to the Purchaser to allow the Purchaser to pursue its remedies under Paragraph 11 hereof.

13. NOTICES. Any notices to be given hereunder shall be given by placing the notice in the United States Mail, certified or registered, properly stamped and addressed to the address shown below or such other addresses as the respective party may direct in writing to the other, by personal delivery to such address, or by facsimile transmission (with receipt of transmission) and such notice shall be deemed effective upon such placing in the mails, on the next business day following delivery to a nationally recognized overnight delivery service, upon such personal delivery, or on the date sent via facsimile (with

receipt of transmission):

To Seller:

Name: John Jassy
Address: 895 Turtle Ct.
City\State: Naples, FL 34108
Phone: 239-592-0192
Fax: 239-566-7708
Email: jjassy1@comcast.net

With copy to:

Name: Vogel Law Office, P.A.
Address: 3936 Tamiami Trail North, Suite B
City\State: Naples, FL 34103
Attn: James D. Vogel, Esq
Phone: 239-262-2211
Fax: 239-262-8330
Email: vogellaw@earthlink.net

To Buyer:

Name: Brisben Advisors, Inc.
Address: 7800 East Kemper Road
City\State: Cincinnati, Ohio 45249
Attn: David Petroni
Phone: 757-464-0699
Fax: 757-464-4876
Email: dpetroni@brisben.com

With copy to:

Name: The Brisben Companies
Address: 7800 East Kemper Road
City\State: Cincinnati, Ohio 45249
Attn: J. Thomas Mellott
Phone: 513-489-1990 ext. 138
Fax: 513-489-2780
Email: tmellott@brisben.com

14. **INVALID PROVISIONS.** In the event that any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

15. **BROKER.** The Parties do mutually represent to each other that no brokerage commission shall be due upon the execution of this Agreement or the transfer of all or any part of the Real Estate other than a Three Percent (3%) broker's commission to be paid by Seller to Coldwell-Banker Realty at the Closing. The Parties agree to hold each other harmless and indemnify each other as a result of a claim for a real estate commission asserted by any other broker as a result of any dealings with either party hereto.

16. **FORCE MAJEURE** Neither party shall be liable for nonperformance or delay in performance due to any act of God; regulation or law of any government; riot; civil commotion; destruction of the subject Real Estate by fire, earthquake or storm; strike; labor disturbances; or the failure of any public utilities or common carriers.

17. **HOLIDAYS**. If any of the deadlines in this Agreement ends on, or if any event is to occur on, a Saturday, Sunday, or legal holiday, the deadline or the date for performance shall automatically be extended to the next day which is not a Saturday, Sunday, or legal holiday.

18. **MISCELLANEOUS PROVISIONS**. The foregoing Agreement contains the entire understanding between Seller and Purchaser relative to the subject matter hereof and no oral representations heretofore made by either party to the other shall be binding upon either of them. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, successors and permitted assigns. Each party shall pay for its own legal fees, costs and incidental expenses, incurred in connection with this Agreement. The Parties do not intend to confer any benefit hereunder on any broker or other person, firm, corporation or association other than the Parties hereto. Time is of the essence in this Agreement. This Agreement shall be governed by and construed in accordance with the law and regulations of the state in which the Real Estate is located.

20. **ACCEPTANCE/EFFECTIVE DATE**. This Agreement is presented to Seller for acceptance in duplicate originals, both executed by Purchaser, and shall be of no force or effect unless on or before 5:00 p.m. on April 3, 2002, Purchaser has received two copies duly executed by Seller evidencing Seller's acceptance hereof. If Purchaser does not receive such duly executed copies within that time, this Agreement shall be of no force or effect.

Signatures appear on the following page.

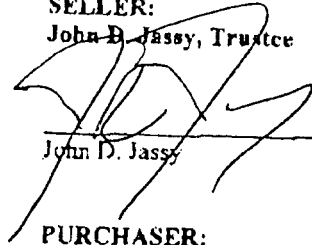
IN WITNESS WHEREOF, the Parties have hereunto set their hands on the day and year below indicated.

Dated:

4/11/02

SELLER:

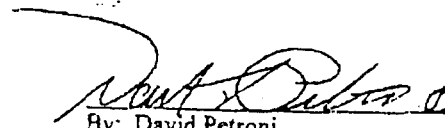
John D. Jassy, Trustee



John D. Jassy

PURCHASER:

Brisben Advisors, Inc.



By: David Petroni

Its: Vice President and Authorized Signatory

Dated:

4.11.02

EXHIBIT "A1"

LEGAL DESCRIPTION OF "LARGER PARCEL"

A SURVEY OF THE FOLLOWING DESCRIBED PROPERTY

STRAP # 512610-102.000 FURTHER DESCRIBED AS ALL THAT PART OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE PRESENT EASTERLY RIGHT-OF-WAY OF S.R. 951 WITH THE NORTHERLY LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 0°24'33" WEST 30.01 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF C.R. 31, THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE AND 30 FEET SOUTH OF AND PARALLEL WITH THE NORTHERLY LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 10, NORTH 88°42'20" EAST 500.00 FEET TO THE NORTHWEST CORNER OF GULF WINDS EAST UNIT 1, A CONDOMINIUM AS RECORDED IN CONDOMINIUM PLAT BOOK 4, PAGES 153 AND 154, COLLIER COUNTY PUBLIC RECORDS, COLLIER COUNTY, FLORIDA, THENCE ALONG THE WEST LINE OF GULF WINDS EAST, SOUTH 0°24'33" WEST, 706.32 FEET TO THE SOUTHWEST CORNER OF SAID GULF WINDS EAST, THENCE ALONG THE SOUTH LINE OF SAID GULF WINDS EAST NORTH 88°42'20" EAST 849.37 FEET; THENCE ALONG THE EAST LINE OF SAID GULF WINDS EAST NORTH 1°17'40" WEST 706.05 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID C.R. 31, THENCE RUN NORTH 88°40'46" EAST 170.93 FEET TO THE POINT OF BEGINNING; CONTINUE EASTERLY 1091.84 FEET, THENCE RUN SOUTH 0°05'07" EAST 1339.16 FEET; THENCE ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 10, SOUTH 0°03'33" EAST 684.81 FEET; THENCE ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 10, SOUTH 88°45'40" WEST 1369.16 FEET; THENCE ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 10, SOUTH 88°45'54" WEST 739.18 FEET; THENCE RUN NORTH 0°24'51" EAST 671.07 FEET; THENCE RUN NORTH 88°42'20" EAST 1039.52 FEET; THENCE RUN NORTH 1°17'40" WEST 1350.18 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, DRAINAGE AND UTILITIES OVER, UNDER AND ACROSS ALL THAT PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 951 WITH THE NORTHERLY LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 26 EAST, THENCE SOUTH 0°24'33" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE 1295.47 FEET TO THE POINT OF BEGINNING OF THE EASEMENT HEREIN BEING DESCRIBED; SAID POINT BEING THE BEGINNING OF A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00", THENCE SOUTHERLY, SOUTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AN ARC DISTANCE OF 39.27 FEET; THENCE SOUTH 89°35'27" EAST 474.73 FEET; THENCE SOUTH 0°24'51" WEST 60.00 FEET; THENCE NORTH 89°35'27" WEST 474.72 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE WESTERLY, SOUTHWESTERLY, AND SOUTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE AN ARC DISTANCE OF 39.27 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 951; THENCE NORTH 0°24'33" EAST 110.00 FEET TO THE POINT OF BEGINNING OF THE EASEMENT HEREIN DESCRIBED.

EXHIBIT "A2"

SURVEY

ATTACHED TO CONTRACT

Collier County Tax Collector
 3301 Tamiami Trail East,
 Naples, FL 34112-4997
 2001 Tax Roll Inquiry System

OWNER INFORMATION		PROPERTY INFORMATION	
Name:	GOODMAN TR, KENNETH D	Parcel:	00736200103
Address:	TAD 5-9-88 #10-F005-00-2	Loc:	1216 MANATEE RD
Address:	3838 TAMAMIAMI TRL N STE 300	Legal:	10 51 26 COMM AT THE INTERSEC-
Address:		Legal:	TION OF THE ELY RAY LINE OF SR
Address:		Legal:	051 & NLY LINE OF THE SE 1/4
Address:	NAPLES, FL 34103-3586	Legal:	OF NW 1/4, S 30.01 FT, N 88
Acre:			65.01

VALUE/EXEMPTIONS	TAX INFORMATION	PAY TERMS	PAYMENT INFO
Taxble Value:	County:	Nov:	Paid Dt:
1950300	7,643.61	26,339.16	11/16/01
Millage Code:	School St:	Dec:	Recpt:
021	8,914.82	26,613.53	21122
Homestd Ex:	School loc:	Jan:	Mach:
0	5,004.47	26,887.90	09
Agricltr Ex:	City Tax:	Feb:	Paymt:
0	0.00	27,162.26	26,339.16
Widow Ex:	Water:	Mar:	Mort:
0	1,573.70	27,436.63	0
Blind Ex:	Depend:	Apr:	
0	1,026.84	0.00	
Disabled:	Independ:	May:	
0	3,211.17	0.00	
Veteran Ex:	Voter Appr:		
0	62.02		
Wholly Ex:	Gross Tax:		
0	27,436.63		
Civilian Ex:	Appr fee:		
0	0.00		
	Advertising:		
	0.00		

STATUS INFO.
Non Ad Va:
N
Installment:
N
Deferred:
N
Bankrupt:
N
TDA:
0

EXTRA LEGAL INFORMATION
DEG 42' 20" E 500 FT, S 706.32 FT, N 88 DEG 42' 20" E 849.37 FT, N 1 DEG 17' 40" W 706.05 FT, N 88 DEG 40' 46" E 170.93 FT TO POB, CONT ELY 1091.84 FTS 1339.16 FT, S 684.81 FT, S 88 DEG 45' 40" W 1369.16 FT, S 88 DEG 45' 54" W 739.18 FT, N 684.81 FT, ELY 1039.52 FT, N 1350.18 FT TO POB, LESS OR 2039 PG 949

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Last Updated: 4/10/2002 5:00pm



Collier County Tax Collector

3301 Tamiami Trail East,
Naples, FL 34112-4997
2001 Tax Roll Inquiry System

OWNER INFORMATION		PROPERTY INFORMATION	
Name:	GOODMAN TR, KENNETH	Parcel:	00736200404
Address:	117 MANATEE ROAD LAND TRUST	Acrc:	1.00
Address:	TRUST NO 10-P005-00-2	Loc:	512610 512610 TRS-
Address:	3838 TAMAMIAMI TRL N STE 300	Legal:	10 51 26 COM AT + E RW LI 951
Address:		Legal:	& NLY LI OF SE1/4 OF NW1/4, S
Address:	NAPLES, FL 34103-3586	Legal:	30.01FT TO S LI MANATEE RD, E
		Legal:	500FT, S 706.32FT, E 849.37FT,

VALUE/EXEMPTIONS	TAX INFORMATION	PAY TERMS	PAYMENT INFO
Taxble Valuc:	County:	Nov:	Paid Dt:
30000	117.58	405.17	11/16/01
Millage Code:	School St:	Dec:	Receipt:
021	137.13	409.39	21123
Homestd Ex:	School loc:	Jan:	Mach:
0	76.98	413.61	09
Agricultr Ex:	City Tax:	Feb:	Paymt:
0	0.00	417.83	405.17
Widow Ex:	Water:	Mar:	Mort:
0	24.21	422.05	0
Blind Ex:	Depend:	Apr:	
0	15.80	0.00	
Disabled:	Independ:	May:	
0	49.40	0.00	
Veteran Ex:	Voter Appr:		
0	0.95		
Wholly Ex:	Gross Tax:		
0	422.05		
Civilian Ex:	Appr fee:		
0	0.00		
	Advertising:		
	0.00		

STATUS INFO.
Non Ad Va:
N
Installment:
N
Deferred:
N
Bankrupt:
N
TDA:
0

EXTRA LEGAL INFORMATION
N1DEG W 706.05FT, N 88DEG E 170.93FT TO POB N 88DEG E 199FT, S01DEG E 219FT, S88DEG W 199FT, N01DEG W 219FT TO POB

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Last Updated: 4/10/2002 5:00pm



EXHIBIT "C"

FLORIDA HOUSING TIMELINE

Proposed 2002 Rule Time Line

Rental Programs

MMRB, SAIL, HC and HOME Rental

Rules 67-21 and 67-48, F.A.C.

Tentative Dates - Subject to Change

Early to Mid-March	Universal Application and HOME Rental Application available (on the web and hard-copy)
3/8/02	Application Workshop in Tallahassee
Early to Mid-March	Cycle opens
April 15, 2002	Cycle closes
5/13/02	Issue Preliminary Scores
5/24/02	NOPSEs due
6/10/02	Issue NOPSE scores
6/26/02	Cures due
7/8/02	NOADs due
7/22/02	Issue Final scores; Issue Notice of Appeal Rights
8/13/02	Petitions due
8/14/02	Issue Notice of Hearings
8/29/02 - 9/20/02	Hold informal Appeal Hearings
10/2/02	Recommended Orders issued
10/7/02	Written arguments due
10/10/02	Board action on the Recommended Orders
10/14/02	Issue Final Rankings

SENT BY: BRISBEN DEVELOPMENT;

321 253 9665;

APR-11-02 10:25;

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EXHIBIT "D"

AFFIDAVIT

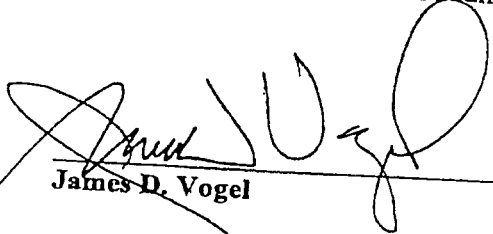
STATE OF FLORIDA
COUNTY OF COLLIER

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared James D. Vogel, who, upon being first duly sworn, deposes and says as follows:

1. I am an attorney licensed to practice in the State of Florida and I am the attorney for John D. Jassy, Trustee.
2. I represented him on his acquisition of the property from Kenneth D. Goodman, Trustee, as set forth in the attached Contract.
3. Pursuant to the Contract, Jassy has legal site control of the Property described therein, at a minimum, through March 10, 2003, and the right to assign his Contract with Goodman.

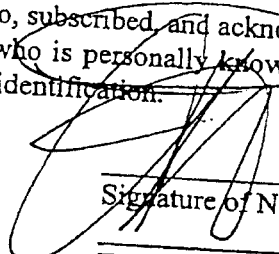
FURTHER AFFIANT SAYETH NOT.



 James D. Vogel

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing Affidavit was sworn to, subscribed, and acknowledged before me this 12th day of April, 2002, by James D. Vogel, who is personally known to me or who has produced _____ as identification.



 Signature of Notary



Chris Wohlbrandt
 MY COMMISSION # DD067928 EXPIRES
 October 28, 2005
 BONDED THRU TROY FAIN INSURANCE, INC.

 Typed or Printed Name of Notary
 Commission No. _____
 My Commission Expires: _____

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made as of the 12th day of April, 2002, between Brisben Advisors, Inc., a(n) Ohio corporation ("Assignor"), and Brisben Tierra Bay Limited Partnership, a Florida Limited Partnership ("Assignee"), under the following circumstances:

A. Assignor, as Purchaser, entered into a Real Estate Purchase Contract with John D. Jassy, Trustee of the Manatee Road Land Trust ("Seller"), dated 04/11/2002 (the "Contract"), for the sale and purchase of the real property described in Exhibit "A" attached to the Contract.

B. Assignor desires to assign the Contract to Assignee, and Assignee desires to accept and assume the Contract.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

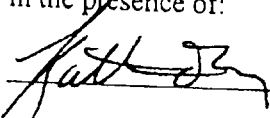
1. Assignor assigns to Assignee all of Assignor's right, title and interest in and to the Contract and the Property.


2. Assignor represents and warrants that (a) the Contract is in full force and effect, (b) the Contract has not been modified or amended, (c) Assignor has paid all sums required by the Contract to be paid by Assignor, and Assignor is not otherwise in default of any obligations under the Contract, (d) Assignor has no setoffs or claims against Seller arising out of the Contract and (e) there are no existing defaults by Seller under the Contract.

3. Assignee assumes and agrees to perform all the terms and conditions of the Contract that are to be observed and performed by Assignor from and after the date of this Assignment, and Assignee agrees to indemnify and hold harmless Assignor from any and all claims, damages, losses and expenses that may arise out of, or in respect of, the Contract, from and after this date.

WITNESS the execution hereof as of the date first written above.

Signed and acknowledged
in the presence of:

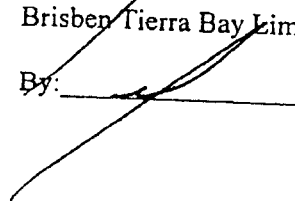




Brisben Advisors, Inc.

By:  _____

Brisben Tierra Bay Limited Partnership

By:  _____

2002 Universal Scoring Summary

As of: 05/13/2002

File # 2002-145B Development Name: Tierra Bay

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
05 - 13 - 2002	71	Y	5.75	\$77,132.35	%
Preliminary	71	Y	5.75	\$77,132.35	%
NOPSE	0	Y	0		0
Final	0	Y	0		0
Post-Appeal	0	Y	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
Optional Features & Amenities:									
2S	III	B	2.a	New Construction	9	9	0	0	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	0	0	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	0	0	0
Demographic or Area Commitment:									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	0	0	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 05/13/2002

File # 2002-145B

Development Name: Tierra Bay

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
6S	III	E	2.	Set-Aside Commitment: Commitment to Serve Lower AMI	5	5	0	0	0
7S	III	E	3.	Total Set-Aside Commitment	3	3	0	0	0
8S	III	E	4.	Affordability Period	5	5	0	0	0
9S	III	F	1.	Resident Programs: Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	0	0	0
11S	IV			Local Government Support					
12S	IV		a.	Contributions	5	5	0	0	0
			b.	Incentives	4	4	0	0	0

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	The Applicant did not request SAIL.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1).	Grocery Store	1.25	1	0	0	0
2P	III	A	11.b.(2).	Public School	1.25	1	0	0	0
2P	III	A	11.b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4).	Bus Stop or Metro-Rail Stop	1.25	0	0	0	0
4P	III	A	11.c.	Address/Location on FHFC Development Proximity List	3.75	3.75	0	0	0

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-145B Development Name: Tierra Bay

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
06 - 10 - 2002	71	N	5.75	\$77,132.35	%
Preliminary	71	Y	5.75	\$77,132.35	%
NOPSE	71	N	5.75	\$77,132.35	%
Final	0	N	0		0
Post-Appeal	0	N	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
Optional Features & Amenities:									
2S	III	B	2.a	New Construction	9	9	9	9	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	12	12	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	9	9	0
Demographic or Area Commitment:									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	0	0	0	0
5S	III	D	8.	HOPE VI	5	5	5	5	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-145B

Development Name: Tierra Bay

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Set-Aside Commitment:									
6S	III	E	2.	Commitment to Serve Lower AMI	5	5	5	0	0
7S	III	E	3.	Total Set-Aside Commitment	3	3	3	0	0
8S	III	E	4.	Affordability Period	5	5	5	0	0
Resident Programs:									
9S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	0	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	8	0	0
Local Government Support									
11S	IV		a.	Contributions	5	5	5	0	0
12S	IV		b.	Incentives	4	4	4	0	0

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	The Applicant did not request SAIL.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	B	Exhibit 41	Construction and Permanent Funding Shortfall	The Application Fee was understated on the proforma. Accounting for the correct fee, paid by the Applicant, increases the total development cost and creates a funding shortfall with both construction and permanent financing.	NOPSE	
2T	III	C	2	Site Control	Applicant does not have a qualified contract for purchase of the site.	NOPSE	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1).	Grocery Store	1.25	1	1	0	0
2P	III	A	11.b.(2).	Public School	1.25	1	1	0	0

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-145B Development Name: Tierra Bay

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
2P	III	A	11.b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4).	Bus Stop or Metro-Rail Stop	1.25	0	0	0	0
4P	III	A	11.c.	Address/Location on FHFC Development Proximity List	3.75	3.75	3.75	0	0

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PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is made as of this 25 day of June 2002, between John D. Jassy, Trustee ("Assignor") and Brisben Advisors, Inc. and Brisben Tierra Bay Limited Partnership, a Florida Limited Partnership (collectively "Assignee"), as follows:

RECITALS

WHEREAS, Assignor, as Buyer, entered into a Vacant Land Contract by and between Kenneth D. Goodman, Trustee of the Manatee Road Land Trust and John D. Jassy, Trustee dated December 10, 2001, and an Addendum of the same date for the sale and purchase of 66.01 ± acres located in Section 10, T518, R26E, Collier County, Florida (the "Contract"); and

WHEREAS, Assignor is the Contract Vendee of approximately 66 acres ± of real estate located near Collier Boulevard in Collier County, Florida, (the "Larger Parcel"); and

WHEREAS, Assignor and Assignee entered into a Real Estate Purchase Agreement (the "Agreement") dated April 11, 2002, for the sale and purchase of approximately 34 acres ± as necessary to construct its proposed 272 residential multifamily development (the "Real Estate"); and

WHEREAS, Assignor desires to partially assign to Assignee its rights under the Contract, and Assignee desires to accept and assume said partial rights under the Contract.

AGREEMENT

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Contract to purchase the Real Estate.
2. Provided that this Assignment shall be null and void and have no binding legal effect if the Assignee fails to meet its contractual obligations pursuant to the Agreement by and between Assignor and Assignee, as Seller

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and Purchaser respectively.

3. Assignor represents and warrants that (a) the Contract is in full force and effect, (b) the Contract has not been modified or amended, (c) Assignor has paid all sums required by the Contract to be paid by Assignor, and Assignor is not otherwise in default of any obligations under the Contract, (d) Assignor has no setoffs or claims against Seller arising out of the Contract and (e) there are no existing defaults by Seller under the Contract.

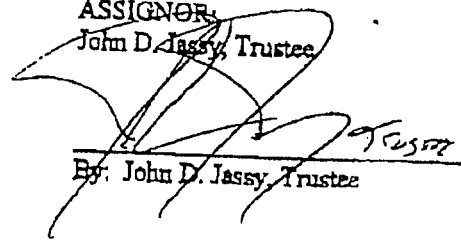
4. Assignee assumes and agrees to perform all the terms and conditions of the Contract that are to be observed and performed by Assignor from and after the date of this Assignment, and Assignee agrees to indemnify and hold harmless Assignor from any and all claims, damages, losses and expenses that may arise out of, or in respect of, the Contract, from and after this date.

WITNESS the execution hereof as of the date first written above.

Signed and acknowledged
in the presence of:


June 25, 2002
Date

ASSIGNOR:
John D. Jassy, Trustee


By: John D. Jassy, Trustee

ASSIGNEE:

Brisben Advisors, Inc.

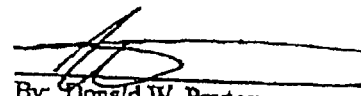

By: Donald W. Paxton
Its: Executive Vice President

Dated: June 25, 2002

Brisben Tierra Bay Limited Partnership,
a Florida Limited Partnership

By: Brisben Tierra, Inc.
an Ohio corporation, its General Partner

JUNE 25, 2002
Date


By: Donald W. Paxton
Its: Authorized Agent

BRISBEN COMPANIES

REAL ESTATE DEVELOPMENT, CONSTRUCTION AND MANAGEMENT SINCE 1975

7800 EAST KEMPER ROAD • CINCINNATI, OHIO 45249 • (513) 489-1990 • FAX (513) 489-2780

June 18, 2002

REVISED

John D. Jassy, Trustee
895 Turtle Court
Naples, FL 34108

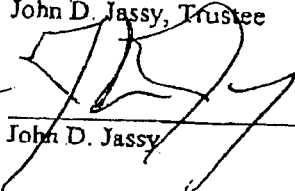
Subject: Letter of Affirmation regarding contractual obligations pursuant to the Real Estate Purchase Agreement dated April 11, 2002, (the "Agreement") by and between contract John D. Jassy, Trustee, ("Seller") and Brisben Advisors, Inc. ("Purchaser") for approximately 34 acres ± located in the Collier County, Florida

By this Letter of Affirmation, the Parties each ratify their obligations pursuant to the Agreement and affirmatively waive any claims related to the failure by either the Seller or the Purchaser to execute the Agreement on or before April 3, 2002, pursuant to Paragraph 20 of the Agreement.

SELLER:
John D. Jassy, Trustee

Dated: _____

June 19, 2002




John D. Jassy

PURCHASER:
Brisben Advisors, Inc.

Dated: _____

June 18, 2002



By: Donald W. Paxton
Its: Executive Vice President

REGIONAL OFFICES:

FREDERICKSBURG, VA • CHARLOTTE, NC • DALLAS, TX • DENVER, CO • ATLANTA, GA • LENEXIA, KS • NASHVILLE, TN • NORFOLK, VA

2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-145B Development Name: Tierra Bay

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
07 - 22 - 2002	71	N	5.75	\$77,132.35	%
Preliminary	71	Y	5.75	\$77,132.35	%
NOPSE	71	N	5.75	\$77,132.35	%
Final	71	N	5.75	\$77,132.35	%
Post-Appeal	0	N	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
Optional Features & Amenities:									
2S	III	B	2.a	New Construction	9	9	9	9	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	12	12	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	9	9	0
Demographic or Area Commitment:									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	5	5	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 07/22/2002

Development Name: Tierra Bay

File # 2002-145B

Scores:

Item #	Part Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Set-Aside Commitment:								
6S	III	E	2. Commitment to Serve Lower AMI	5	5	5	5	0
7S	III	E	3. Total Set-Aside Commitment	3	3	3	3	0
8S	III	E	4. Affordability Period	5	5	5	5	0
Resident Programs:								
9S	III	F	1. Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
9S	III	F	2. Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3. Programs for Elderly	6	0	0	0	0
10S	III	F	4. Programs for All Developments	8	8	8	8	0
Local Government Support								
11S	IV	a.	Contributions	5	5	5	5	0
12S	IV	b.	Incentives	4	4	4	4	0

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	The Applicant did not request SAIL.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

Threshold(s) Failed:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	B	Exhibit 41 Construction and Permanent Funding Shortfall	The Application Fee was understated on the proforma. Accounting for the correct fee, paid by the Applicant, increases the total development cost and creates a funding shortfall with both construction and permanent financing.	NOPSE	Final
2T	III	C	2. Site Control	Applicant does not have a qualified contract for purchase of the site.	NOPSE	

Proximity Tie-Breaker Points:

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1). Grocery Store	1.25	1	1	1	0
2P	III	A	11.b.(2). Public School	1.25	1	1	1	0

2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-145B

Development Name: Tierra Bay

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
2P	III	A	11.b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4).	Bus Stop or Metro-Rail Stop	1.25	0	0	0	0
4P	III	A	11.c.	Address/Location on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	C	2	Site Control	The cure for 2I still does not provide a qualified contract for purchase of the site. The assignment fails to assign all of the buyer's rights, title and interests in a qualified contract to the Applicant. In addition, the Applicant did not submit a qualified contract that contains a term which does not expire before the last expected closing date of December 31, 2002.	Final	

Composite of Reasons Cited By FHFC for Site Control Failure
Excerpted from FHFC 2002 Universal Scoring Summaries
(05/13/2002) and (06/10/2002)*

*Note - Excerpts from 05/13/2002 Summaries are Denoted as “P” for Preliminary Scoring. Excerpts from 06/10/2002 Summaries are Denoted as “N” for NOPSE Scoring.

006C Tuscany Village

P - Contract is not in the name of the Applicant. Contract contains conditions that Purchaser may not assign contract without Seller's consent. Assignment does not have Seller's consent.

2002-010CS Merritt Place Estates - P

P - Applicant provided two contracts. The first contract fails to reference a city, county or state, in either the body of the contract or the legal description. The only reference is to the township.

022CS – Fifth Avenue Estates

N - Unable to determine the term of the contract because copy provided is illegible.

028S - Mystic Cove Apartments

P - Contract for sale and purchase dated 2/20/02 has amendment with Seller & Purchaser reversed; This Amendment contains the required extension provision, however since the document is erred, the extension is not in place.

035S – Tuscany Place

P - Amendment with extension provision was between Cornerstone (Purchaser) and H. Morales (Seller), but contract was assigned from Cornerstone to Applicant; Amendment was after assignment.

036B - Portofino Apartments

P - Second Amendment showing extension provision is not signed.

N - Exhibit A, site description, referenced in the purchase and sale agreement was not provided.

2002-038S Laguna Pointe Apartments

P - Amendment and contract do not have provision to extend the contract to 12/31/02 (closing date is 4/30/02).

040S San Marco Apartments

N - The Amended and Restated Purchase and Sale Agreement references an Exhibit A at Section 1 of the agreement. Exhibit A was not provided in the Application.

042S Indian Trace Apartments

P - Applicant failed to establish site control in the Applicant's name due to discrepancy between the 11/16/00 purchase and sale agreement and the 09/12/01 assignment which references an 11/16/01 purchase and sale agreement.

044B Renaissance Apartments

N - Exhibit A is labeled "page 1 of 3". Pages 2 and 3 were not provided in the Application.

065B Garfield Place Apartments

P - Applicant failed to demonstrate site control. Exhibit A to the Purchase and Sale Agreement was not provided. The Purchase and Sale Agreement does not show the Applicant as the buyer and no assignment was provided.

066B The Village at Colonial Park

P - Purchase agreement and related documents do not reflect a term which does not expire before 12/31/02.

076S The Landings on Millenia Blvd. Apartments

P - Ground Lease was not executed.

091B Southampton Apartments

P - Applicant failed to provide evidence of site control because the Contract for Purchase & Sale was not executed.

093B Sandpiper Cove Apartments - Withdrawn

P - Applicant failed to provide evidence of site control because the Contract for Purchase & Sale and the Assignment were not executed.

094B Audubon Cove Apartments - Withdrawn

P - Applicant failed to provide evidence of site control because the Contract for Purchase & Sale and the Assignment were not executed.

110S – The Meridian

P - Purchase and Sale Agreement, including amendment, expired on April 19, 2002.

N - Item 18 of the purchase and sale contract allows the purchaser to assign the contract to an entity controlled by purchaser or its principals, provided, however,

that the assignment shall only be made and be effective simultaneously with the closing. The contract was assigned to the Applicant on 2/20/02. No evidence is provided in the Application that the closing has occurred.

111S - Colonial Park

P - Contract appears to be expired and Assignment references the expired contract. Also, the contract appears to expire prior to December 31, 2002.

124BS - Madison Cay Apartments

P - Original contract is not in the name of the Applicant and does not include the provision of having a term that does not expire before 12/31/02 or have an extension period. No assignment was provided. It does not appear from the subsequent contract provided that the seller owned the property.

136C Highland Lakes Apartments

P - The Purchase and Sale Agreement has "Draft" stamped at the top of every page.

138B Sawgrass Pines Apartments

P - Purchase and Sale Agreement does not include a term that does not expire before December 31, 2002.

139BS Sumerset Housing

P - Applicant failed to provide a completed and executed Sale and Purchase Agreement.

148C Cypress Shores Apartments

P - Scorer is unable to determine if the Purchase and Sale Contract contains a term which does not expire before the expected closing date of December 31, 2002. The second amendment to the Purchase and Sale Contract, which provides for extension of closing date to 12/31/02 has an incomplete amendment date.

151BS Avalon Reserve

P - Contract is not in Applicant's name, does not provide an assignment and the county is not stated.

153CS Whispering Pines

N - Evidence submitted with a NOPSE indicates that the Applicant did not exist as of the date indicated on the contract for purchase and sale.

161C New Singeltary

P - Applicant did not provide evidence of site control for all scattered sites.

166BS Meadow Pointe

P - The contract does not have a term which does not expire before the last expected closing date of December 31, 2002.

168C Blitchton Station - Withdrawn

N - Applicant did not provide an assignment of the contract to demonstrate site control in the Applicant's name.

169C Temple Court

P - Applicant did not provide a qualified contract that shows the Applicant as the buyer. The contract provided shows the Applicant as the Seller.

173C Carrell Village

P - Scorer unable to determine if the final handwritten date is a term that does not expire before December 31, 2002.

175B Morse Landing

P - Applicant failed to provide a contract demonstrating a term which does not expire before December 31, 2002.

IMPORTANT! CHECKING ITEMS IN SECTIONS A, B, AND C OF QUALITY OF DESIGN COMMITS THE APPLICANT TO PROVIDE THEM. ALL CHECKED ITEMS WILL BE INCLUDED IN THE EXTENDED USE AGREEMENT AND/OR THE LAND USE RESTRICTION AGREEMENT AS APPLICABLE, WITH THE EXCEPTION OF THE CHILD CARE OR ADULT DAY CARE FACILITY AND PUBLIC TRANSPORTATION. HOWEVER, IF THE CHILD CARE OR ADULT DAY CARE FACILITY AND/OR PUBLIC TRANSPORTATION IS/ARE SELECTED AND CANNOT BE VERIFIED IN CREDIT UNDERWRITING, THEN AN ALTERNATE ITEM OR ITEMS FROM THE APPROPRIATE LIST MUST BE PROVIDED.

II. SITE CONTROL--THIS IS A THRESHOLD ITEM. SEE THRESHOLD REQUIREMENTS PAGE.
(Points Awarded = 0):

To achieve threshold, Site Control must be demonstrated by the APPLICANT.

Site Control Requirements for ALL Developments:

- Recorded Deed or Recorded Certificate of Title AND Title Insurance Policy or Commitment for Title Insurance Policy Showing Marketable Title in Applicant's Name: **NOTE:** Deed and Certificate of Title must be recorded in the county in which the property is located.
- Qualified Contract for Purchase & Sale AND Commitment for Title Insurance Policy Showing Marketable Title in the Name of the Seller of the subject property: A "Qualified Contract" is one that has a term which does not expire before December 31, 2001 or which contains extensions exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to December 31, 2001; provides that the remedy for default on the part of the seller must include or be specific performance; and the buyer **MUST** be the Applicant. **NOTE:** If the Buyer is **NOT** the Applicant, a fully executed assignment of the Qualified Contract must be provided which assigns all of the Buyer's right, title and interest in the Qualified Contract to the Applicant.
- Qualified Long-Term Lease AND Leasehold Policy of Title Insurance Showing Marketable Title in the name of the lessor and proposed lessee of the subject property: If site control is demonstrated by a long-term lease, a copy of the executed lease must be provided. The lease must have an unexpired term of 50 years from the date of this Application and the Lessee **MUST** be the Applicant. The lease may be contingent only upon the receipt of SAIL or HOME and/or HC.

FOR PURPOSES OF THRESHOLD AND THIS FORM, THERE ARE NO OTHER OPTIONS FOR ACHIEVING SITE CONTROL. NOTE: Scattered Site Developments must have site control for ALL sites in order to achieve threshold.

Evidence of Site Control, including an assignment, a commitment for a title insurance policy, a title insurance policy, or a leasehold policy of title insurance can be found directly behind tab labeled "Form 7, Exhibit _____".

III. ZONING AND LAND USE REGULATIONS (0 Points)--THIS IS A THRESHOLD ITEM. SEE THRESHOLD REQUIREMENTS PAGE. IMPORTANT: In order to meet threshold, Zoning and Land Use verification forms (Zoning and Land Use Verification form or Verification that Permits Are Not Required form) must have an **ORIGINAL** signature from one of the designated signatories indicated on the appropriate verification form. Threshold **WILL NOT BE MET** and the Application will be **REJECTED** if Applicant uses the incorrect form or if the form is not signed by one of the designated signatories. The **ORIGINAL** Application must contain a verification form with an **ORIGINAL** signature or the Application will be **REJECTED**. Verification forms with corrected information or 'white-out' will fail to meet threshold and **WILL BE REJECTED**.