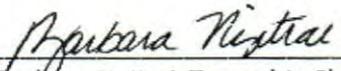


account at the time of certification of availability of funds on each home purchase as sites are selected and prior to liability being incurred.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Chris Killmurray, Councilman
<b>SECONDER:</b>	Mahesh Shah, Councilman
<b>AYES:</b>	Camarota, Carley, Killmurray, Shah, Gambatase

This is to certify that the foregoing is a true copy of a resolution adopted at the South Brunswick Township Council meeting held on October 27, 2009.

  
\_\_\_\_\_  
Barbara Nyitrai, Township Clerk

**AGREEMENT BETWEEN ECLIPSE INVESTMENTS, LLC AND TOWNSHIP OF  
SOUTH BRUNSWICK FOR DEVELOPMENT AND ADMINISTRATION OF  
AFFORDABLE HOUSING GROUP HOMES**

This Agreement made this 23<sup>RD</sup> day of October, 2009 between

**Eclipse Investments, LLC, a Minnesota limited liability company**, 690 South Cleveland Avenue, St. Paul, Minnesota 55116 (hereinafter designated as "Eclipse"), and the **Township of South Brunswick**, a municipal corporation of the State of New Jersey, 540 Ridge Road, Monmouth Junction, New Jersey 08852 (hereinafter designated as the "Municipality").

WITNESSETH:

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

**Authority; Obligation**

1. This Agreement is made pursuant to the authority contained in N.J.A.C. 5:94-6.10, et seq. whereby a municipality may elect to provide low-income housing for those with developmental disabilities through a municipally-sponsored group home program.
2. Eclipse recognizes that the Municipality has an obligation to provide a minimum of three (3) three-bedroom group homes, up to a maximum of four (4) bedrooms in each group home, within South Brunswick Township and that the Municipality has chosen to satisfy that obligation, in part, by entering into the within Agreement with Eclipse.
3. Eclipse represents that it shall enter into an agreement with Dungarvin New Jersey, LLC, a Minnesota limited liability company, or such other entity, (hereinafter designated as its "Operator") that has the ability and the authority, and shall agree, to develop and administer a group home program for the developmentally disabled, as licensed and/or regulated by the New Jersey

Department of Human Services, for and on behalf of the Municipality in satisfaction of a portion of the Municipality's obligation to provide low-income housing consistent with the terms and conditions set out in this Agreement (hereinafter designated as the "Project").

#### **Site Selection**

4. The sites included in the Project shall be at various locations in South Brunswick Township, and shall meet at a minimum the site suitability criteria set forth in N.J.A.C. 5:94-3.13.
5. The Municipality shall participate in the selection of sites to be included in the Project by way of review and approval of sites chosen by Eclipse. Existing single-family homes or units within a multi-family project on any of the selected sites shall first be subject to examination and approval by the Municipality's Engineering, Code Enforcement, Affordable Housing, Health and Fire Safety divisions to ensure that they are acceptable for use as group homes for the developmentally disabled. No such existing single-family homes or units within a multi-family project may be purchased by Eclipse and/or utilized by its Operator as a group home for the developmentally disabled pursuant to the terms of this Agreement until the Municipality approves of said site and/or home.
6. Each of the three (3) three-bedroom single-family homes or units within a multi-family project shall have up to a maximum of four (4) bedrooms each, intended to accommodate developmentally disabled persons aged 18 and over up to the maximum permitted by the State of New Jersey Council on Affordable Housing (hereinafter designated as "COAH") in N.J.A.C. 5:94-6.10(c)(3).  
Once the Municipality has approved in writing the site location, existing single-family home and/or unit within a multi-family project, Eclipse shall thereafter

perform, or arrange to be performed, all reasonable, ordinary and necessary testing done in connection with the purchase of a single-family home or other such residence, including, but not limited to, engineering home inspection, termite and pest inspection, radon test, lead paint test, well water test, asbestos or other environmental testing as necessary. Eclipse shall also perform, or arrange to be performed, all necessary title, survey by a licensed surveyor, tax, water and sewer and assessment searches on the property.

8. Eclipse shall ensure that all structures on the site selected are adaptable/accessible pursuant to the provisions of N.J.S.A. 52:27D-123.15 and N.J.A.C. 5:94-3.14, where applicable.
9. Eclipse's Operator shall comply in all respects with the requirements promulgated by COAH for the development and administration of a group home program for those with developmental disabilities including, but not limited to, full compliance with N.J.A.C. 5:94-6.10, et seq. as well as all rules and regulations promulgated by COAH that effect the Project.

**Pre-closing Review; Closing**

10. Prior to closing, the results of all testing, title and inspection/investigations performed shall be forwarded to the Municipality in sufficient time for the Municipality to review and approve of the condition of the site.
11. All proposed closing documents, including, but not limited to, deed, affidavit of consideration, seller's residency certification, affidavits of title, mortgage documents and executed certification of closing agent (the latter on a form provided by the Municipality) shall be submitted to the Municipality for review and approval.

12. Eclipse shall execute, or cause to be executed, a Second Repayment Note and Second Repayment Mortgage and a Deed Restriction (to which this Agreement shall be attached as an exhibit), acceptable to the Municipality as to form and substance, in favor of the Municipality at the time of closing, which instruments shall be subsequently recorded pursuant to the direction of the Municipality with the other closing instruments executed at the time of closing.
13. Eclipse shall ensure that clear title, free of all liens and encumbrances, is conveyed at the time of closing.

**Financing; Restrictions**

14. The Municipality shall aid Eclipse financially in the acquisition of the sites necessary for the group homes in the amount of \$35,000 per bedroom for each site up to a maximum total of \$420,000 for three (3) four-bedroom group homes. The Municipality shall also make available to Eclipse the Municipality's employees and full-time professional staff to assist as needed, including, but not limited to, staff in the South Brunswick Affordable Housing Office.
15. The financial assistance provided by the Municipality herein shall only be used to assist in the acquisition of properties, and shall not be used for other related costs (such as operational expenses, etc.). Eclipse acknowledges that its Operator is responsible for obtaining and/or providing funds for such other costs.
16. The Deed Restriction executed at the time of closing shall impose a restriction on the use of the property to maintain it as a group home for the developmentally disabled, as licensed and/or regulated by the New Jersey Department of Human Services, for and on behalf of the Municipality in satisfaction of a portion of the Municipality's obligation to provide low-income housing for a period of forty-five (45) years from the date of closing.

17. Upon expiration of the period of restriction imposed by the Deed Restriction, including any extensions thereto, Eclipse, or the then present owner, shall retain all equity in the home/unit and shall have no further obligation to the Municipality.

**Post-closing**

18. Eclipse shall forward, or cause to be forwarded, the original Second Repayment Note, the recorded Second Repayment Mortgage, the recorded original Deed Restriction, and copies of the recorded deed and recorded first mortgage (if any), to the Municipality promptly after closing/recording. All instruments that are to be recorded shall be recorded in the office of the Middlesex County Clerk, New Brunswick, New Jersey.
19. Eclipse shall be responsible for all other necessary post-closing procedures and shall be responsible for payment of all costs and fees associated with closing of title.
20. The Operator shall be responsible for and comply with all requirements for an affirmative marketing plan as required by N.J.A.C. 5:94-6.10(c)(1).
21. Any Lease or Rental Agreement shall include the following clause in a conspicuous place:  
  
“The Owner’s right, title and interest in this property and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in an agreement between Eclipse Investments, LLC and the Township of South Brunswick dated \_\_\_\_\_, 2009, which has been recorded as part of a Deed Restriction in the Office of the Middlesex County Clerk and which is also on file with the Township of South Brunswick.”
22. Eclipse, its successors and assigns, and its Operator, under its agreement with Eclipse, or its successors and assigns, shall, upon request, permit inspection of the sites, property, equipment, buildings and other facilities of the Project and also permit examination of their books, contracts, records, documents and papers