

AMENDED AND RESTATED  
REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE BOROUGH OF SOMERVILLE  
As Redevelopment Entity

AND

JSM AT SOMERVILLE, LLC,  
As Redeveloper

Date: November 15, 2010

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This Amended and Restated Redevelopment Agreement ("**Agreement**"), dated as of 15<sup>th</sup> November, 2010 by and between the **Borough of Somerville**, New Jersey, a body corporate and politic of the State of New Jersey whose address is 25 West End Avenue, Somerville, New Jersey 08876, (the "**Borough**") and **JSM at Somerville, L.L.C.**, a New Jersey Limited Liability Company with offices located at 1260 Stelton Road, Piscataway, New Jersey 08854 ("**JSM**" or "**Redeveloper**").

WITNESSETH

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*, as amended and supplemented (the "**Act**"), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, on August 4, 2003, the Somerville Borough Council (the "**Council**") adopted a Resolution authorizing the Planning Board of the Borough of Somerville (the "**Planning Board**") to undertake a preliminary investigation to determine whether the area known as the Main Street Study Area (the "**Study Area**") consisting of Block 117, Lot 1 and Block 118, Lot 21 is an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, on October 22, 2003, the Planning Board adopted a resolution recommending to the Council that an area located at the Study Area be designated as an Area in Need of Redevelopment, according to the Act ; and

WHEREAS, on November 3, 2003, the Council adopted a Resolution designating the "West Main Street Redevelopment Area" (the "**Redevelopment Area**" or "**Area**") an area in need of redevelopment and requested the Planning Board to prepare a Redevelopment Plan for the Area, in accordance with the Act;

WHEREAS, on February 17, 2004, the Council by Ordinance No. 2155, adopted the Redevelopment Plan for the West Main Street Area, dated February 12, 2004 (the "**Redevelopment Plan**"), which Redevelopment Plan was amended on December 20, 2004 by adoption of Ordinance No. 2182 by the Council and amended again in September 2007; and as may have been further amended;

WHEREAS, JSM is the owner of Block 117, Lot 1, comprising 13.553 +/- acres and currently known as the Landmark Shopping Center (the "**JSM Property**"); and

WHEREAS, JSM submitted a proposal to the Council for the redevelopment of the JSM Property (the "**Project Site**") and the Borough Property as a mixed use development, including the demolition of existing structures, new construction or rehabilitation of retail and commercial structures, the construction of residential units and various other elements of the proposed project (the "**Original Proposal**") as described further herein; and

WHEREAS, the Borough determined that the Original Proposal was consistent with and met the goals of the Redevelopment Plan and was in the best interest of the community; and

WHEREAS, on November 3, 2003, the Borough Council adopted a Resolution designating JSM as the redeveloper for the Redevelopment Area, for a mixed use, transit oriented project for a period of one hundred and eighty (180) days, during which time the Borough was authorized to negotiate a redevelopment agreement with JSM, which designation was extended for additional periods; and

WHEREAS, the Act authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in a redevelopment area; and

WHEREAS, the Borough and JSM engaged in negotiations and the Borough determined that in furtherance of the Borough's goals and objectives to implement the Redevelopment Plan, it is in the Borough's best interest to enter into an agreement with JSM to redevelop the Project Site in accordance with the requirements of the Redevelopment Plan and the Act; and

WHEREAS, on December 6, 2004, the Borough Council adopted a Resolution authorizing the execution by and between the Borough and JSM of a redevelopment agreement for the Project Site, which authorization was re-affirmed on March 21, 2005 by adoption of a Resolution by the Borough Council; and

WHEREAS, on May 2, 2005, the Borough Council adopted a Resolution authorizing amendments to the proposed redevelopment agreement and authorized the Mayor and Borough Clerk to execute the proposed Agreement; and

WHEREAS, on April 13, 2005, the Redeveloper was granted Preliminary and Final Major Site Plan Approval by the Borough Planning Board to construct a mixed use, transit oriented development; and

WHEREAS, on May 27, 2005, the Borough executed a Redevelopment Agreement (the "Original Agreement") with the Redeveloper; and

WHEREAS, the Redeveloper applied to the Borough Planning Board for amendment to the Site Plan Approval ("Amended Site Plan") consistent with the amended Redevelopment Plan and this Agreement, which Amended Site Plan was approved by the Borough Planning Board on August 25, 2010; and

WHEREAS, the Redeveloper has successfully negotiated the voluntary termination of tenants in the Redeveloper Property; and

WHEREAS, at Redeveloper's request pursuant to the Original Agreement, the Borough assisted in the acquisition of certain remaining leaseholds in the Redeveloper Property and completed all such actions; and

WHEREAS, since entering into the Original Agreement, the national economy has entered into a severe recession, the financial and lending environment has collapsed, adverse Market Conditions exist and the Original Proposal is no longer economically feasible or possible to implement; and

WHEREAS, the Redeveloper intends to re-design the proposed Project, as per the Amended Site Plan approved by the Borough Planning Board on August 25, 2010; and

WHEREAS, the Redeveloper has completed the demolition and clearance of the buildings on the JSM Property except for the building formerly occupied by Pathmark; and

WHEREAS, the Redeveloper has entered into a lease with a supermarket operator for a retail grocery store; and

WHEREAS, by way of this Agreement, the Borough and Redeveloper desire to amend the terms of the Original Agreement to reflect these changes; and

WHEREAS, the terms of this Agreement shall supersede the terms of the Original Agreement and all other prior agreements between the parties.

NOW, THEREFORE, for and in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, the parties hereto, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATIONS

SECTION 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

"Act" means the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented.

"Affiliate(s)" means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" shall mean this Amended and Restated Redevelopment Agreement.

"Borough" means the Borough of Somerville, New Jersey, a municipal corporation of the State of New Jersey.

"Borough Property" means Block 118, Lot 21, comprising approximately .46 acres and currently being used as a portion of a Municipal Parking Lot 4.

"Certificate of Completion" means a written certificate issued by the Borough acknowledging that the Redeveloper has performed all of its duties and obligations under this Agreement or particular phase and issued in accordance the requirements of Article V of this Agreement.

"Certificate of Occupancy" shall mean the certificate provided for at N.J.S.A. 52:27D-133 indicating the construction has been completed in accordance with the construction permit, the State of New Jersey Uniform Construction Code and any other applicable ordinance or regulation implementing the New Jersey Uniform Construction Code

"Commence Construction" or "Commencement of Construction" means to substantially undertake the actual physical construction of any Project Improvement, including construction of structures or construction or upgrading of utilities or infrastructure.

"Completion of Construction" means the completion of all Project Improvements on the Project Site as evidenced by the issuance of a final Certificate of Occupancy by the Borough.

"Construction Plans" means all plans, drawings, specifications and related documents, including a construction progress schedule, in sufficient completeness and detail to obtain construction permits and to satisfy any conditions of site plan and subdivision approval, and to show that the Improvements to be constructed by Redeveloper upon the Project Site and the construction thereof will be in accordance with this Agreement, the Redevelopment Plan and any amendments thereto and any site plan and subdivision approval.

"Effective Date" means the date this Agreement is last executed by either the authorized officer of the Borough or the authorized representative of the Redeveloper.

"Eminent Domain" means the "Eminent Domain Law", N.J.S.A. 20:3-1 et seq.

"Governmental Approvals" means all final and unappealable applicable reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity having jurisdiction over the Project or the financing thereof.

"Market Conditions" means conditions of the real estate market and financing market as they affect the Project and individual Phases, as demonstrated by an independent market study reasonably acceptable to the Borough.

"Off-Site Improvements" means all improvements not within the Project Site, and any incidental work associated therewith, necessary for construction and operation of the Project.

"Original Agreement" means the Redevelopment Agreement between the Borough and JSM, dated May 27, 2005.

"Parties" means collectively, the Redeveloper and the Borough.

"Payment In Lieu of Taxes" or "PILOT" means an annual payment in lieu of taxes to the Borough in accordance with a financial agreement authorized pursuant to the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.).

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or governmental body, or any other entity.

"Phases" means the sequence in which the Project will be developed, as set forth in more detail on the site plan, which may be modified by Redeveloper subject to site plan approval.

"Planning Board" means the Planning Board of the Borough of Somerville.

"Project" means the redevelopment of the Project Site consisting of: (i) the obtaining of applicable Governmental Approvals for all Project Elements and Project Improvements and (ii) the financing and construction of all Project Elements and Project Improvements.

"Project Elements" means the individual components of the Project designated on site plan(s) to be filed and to be considered for approval by the Planning Board, generally described as follows:

1. Building "1" Reconstruction and expansion of the existing retail grocery store and the demolition and clearance of the existing stand alone 586 +/- square foot pad site;
2. Building "2" demolition and reconstruction to create a multi-story retail/residential/restaurant building;
3. Building "3" demolition and reconstruction to create a multi-story retail/residential/restaurant building;
4. Building "4" Proposed retail/bank/pharmacy/restaurant building;
5. Davenport Street Extension, which means the extension of Davenport Street from West Main Street through Block 117, Lot 1 to Veteran's Memorial Drive, including right-of-way for sidewalks and utilities.

"Project Site" means the JSM Property, more specifically described in Exhibit A.

"Project Improvements" means any or all buildings, structures and improvements set forth in the Amended Site Plan consistent with the amended Redevelopment Plan, as the same shall be approved by the Planning Board, which shall consist of:

1. a maximum of 350 residential units; and
2. a maximum of 175,000 square feet of retail space.

"Redeveloper" or "JSM" means JSM at Somerville, LLC, a New Jersey limited liability company organized and existing under the laws of the State of New Jersey.

"Redevelopment Agreement" means this Agreement between the Borough and JSM and any written amendments hereto.

"Redevelopment Area" or "Area" means the property designated by the Borough as an area in need of redevelopment, also known as the West Main Street Redevelopment Area.

"Redevelopment Plan" means the West Main Street Area Redevelopment Plan and any written amendments thereto, which is incorporated by reference herein.

"Uncontrollable Circumstance" means acts, events or conditions or any combination thereof (other than a labor strike by the Redeveloper or its employees, except as provided in subparagraph (e) hereof) that have had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Agreement; provided however that such act, event or condition shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Agreement, limited to:

- (a) an act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence; but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above;
- (b) a landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either party hereto;
- (c) the action or inaction, order, judgment and/or determination of any federal, state or local court, administrative agency or governmental body with jurisdiction over the Project, adversely affecting the construction of the Project; provided however, that such order, judgment, action and/or determination shall not be the result of the illegal or unlawful actions or inactions of the party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party;
- (d) the suspension, termination, interruption, revocation, denial or failure of or delay in renewal or issuance of any Governmental Approval which is necessary to implement the Project, provided however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the party relying thereon and that neither the contesting of any such suspension, termination interruption, denial, revocation or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party.
- (e) strikes or similar labor action by unions, laborers, subcontractors, equipment manufacturers, suppliers of material and/or transporters of same.
- (f) significant change of Market Conditions establishes that a Phase will not be reasonably viable from an economic standpoint.
- (g) acts or omissions of the other party, except in conformance with this Agreement.

The parties hereto acknowledge that the acts, events or conditions set forth in paragraphs (a) through (g) above are intended to be the only acts, events or conditions which may (upon satisfaction of the conditions specified above) constitute an Uncontrollable Circumstance.

Notice by the party claiming such Uncontrollable Circumstance shall be sent to the other party within thirty (30) calendar days of the commencement of the cause, to the extent the commencement date is reasonably determinable. The notice shall include any documentation supporting the claim for such Uncontrollable Circumstance. The other party shall, within thirty (30) calendar days of receipt of said notice, notify the claiming party whether or not it agrees that an Uncontrollable Circumstance exists. The failure to respond to the original notice within such time period shall be construed as an agreement that such Uncontrollable Circumstance exists.

If an Uncontrollable Circumstance is temporary in nature, either party may notify the other at such time that it believes the Uncontrollable Circumstance has ceased. The notice shall include any

documentation supporting the claim that such Uncontrollable Circumstance has ceased. The other party shall, within thirty (30) calendar days of receipt of said notice, notify the claiming party whether or not it agrees that the Uncontrollable Circumstance has ceased. The failure to respond to the original notice within such time period shall be construed as an agreement that such Uncontrollable Circumstance has ceased.

If an Uncontrollable Circumstance is agreed by both parties to exist, the obligations of either or both parties under the terms of this Agreement, as applicable, shall be suspended for the duration of such Uncontrollable Circumstance, but only to the extent that compliance with such obligations is rendered unreasonable by such Uncontrollable Circumstance.

The existence of an Uncontrollable Circumstance shall not prevent a party from declaring the occurrence of an Event of Default provided that the event that is the basis of the Event of Default is not a result of the Uncontrollable Circumstance.

"Urban Renewal Entity" means an entity defined under the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.).

"West Main Street Redevelopment Area" means the Redevelopment Area.

## ARTICLE II IMPLEMENTATION OF PROJECT

SECTION 2.1. Project. Subject to Uncontrollable Circumstances, the Redeveloper agrees to construct the Project Improvements on the Project Site consistent with the site plan and subdivision plan approved by the Planning Board and in accordance with the terms and conditions of this Agreement and the Redevelopment Plan. The Project includes the Project Elements and Project Improvements as defined herein.

SECTION 2.2. Phases of Project. The Project is intended to be constructed in Phases. The Phases shall be more specifically set forth on a phasing plan that shall be included as part of the site plan, submitted to and reviewed by the Planning Board. The Phases may be modified by the Redeveloper and the Planning Board as part of the site plan and subdivision approval process. The Phases as currently proposed are described as follows:

1. Phase I shall consist of:
  - a. the construction of the new buildings fronting on Main Street and Union Street into residential and retail space after the completion of the Davenport Street extension (the "L-Shaped Building");
  - b. the Davenport Street extension (with no Borough contribution and the street being dedicated to the Borough upon completion of the extension);
  - c. refurbishment and expansion (if applicable) of the exterior, and re-tenanting, of the supermarket building;
2. Phase II shall consist of the redevelopment of the western portion of the Site into residential and retail space, per the approved amended site plan. Redeveloper may, in the Redeveloper's sole discretion, commence construction of Phase II while constructing Phase I, or reverse the phasing or any components thereof.

SECTION 2.3. Creation of Separate Lots. The Redeveloper has proposed the creation of six (6) new lots by subdividing the JSM Property. The proposed lots are generally described as follows and are more accurately described on the major subdivision plan prepared by the Redeveloper and approved by the Planning Board on August 25, 2010.

1. West lot (new Block 117.01, Lot 1.01)- area bounded by South Doughty Avenue to the west, West Main Street to the north, Veterans Memorial Drive to the south and the proposed Davenport Street extension to the east.
2. East lot (Block 117, new Lot 1.03) - area bounded by proposed Davenport Street extension to the west, West Main Street to the north, Supermarket building lot to the south and Union Street to the east.
3. Supermarket building lot (Block 117, new Lot 1.02) - area bounded by the East lot to the north, by proposed Davenport Street extension to the west, Veterans Memorial Drive to the south and South Street lot to the east.
4. South Street lot (Block 118, new Lot 21.01) - area bounded by the Supermarket building lot to the west and south and the Borough Property (Block 118, Lot 21) to the east and north.
5. Outparcel for freestanding building (new Block 117.01, Lot 1.02) - area around the proposed one-story building located in the surface parking area west of the proposed Davenport Street extension.
6. Davenport Street lot - area bounded by the West lot, East lot, West Main Street to the north and Veterans Memorial Drive to the south.

SECTION 2.4. Demolition of Existing Improvements. The Redeveloper has completed the demolition and clearance of buildings on the JSM Property except for the building formerly occupied by Pathmark and the building formerly occupied by Rita's Ice.

SECTION 2.5. Commencement and Completion of Construction. The Redeveloper shall Commence Construction of the Phase I Improvements within thirty (30) days of (i) the receipt of all necessary Governmental Approvals, and (ii) closing on all required financing for Phase I. The Redeveloper will proceed in good faith to complete the Project, subject to relief resulting from the occurrence of any Uncontrollable Circumstances as set forth in Section 1.1 of this Agreement, and anticipates completion of Phase I within thirty-six (36) months of Commencement of Construction. The Commencement and Completion of Construction may be modified if the Redeveloper determines that the Project is to be constructed in Phases that are different than those described in Section 2.2 above. Any such phasing modifications shall be subject to the review and approval of the Borough. Subject to Market Conditions, the Redeveloper shall Commence Construction of the Phase II Improvements no later than the completion of construction of the Phase I Improvements. The portion of the JSM Property on which the Phase II Improvements are to be constructed shall be properly maintained pursuant to applicable laws.

SECTION 2.6. Affordable Housing Obligation. The Project shall not have any affordable housing obligation ("COAH Obligation") under any applicable affordable housing laws and regulations. If any COAH Obligation arises, the Borough shall satisfy such COAH Obligation.

### ARTICLE III PROJECT FINANCING

SECTION 3.1. Redeveloper Financing for Phase I. The Redeveloper shall use good faith efforts to obtain financing for Phase I within 90 days of receipt of final, non appealable site plan approval from the Planning Board and all other Governmental Approvals for Phase I. Redeveloper will keep Borough advised of the progress in obtaining financing for project. If Redeveloper is unable to obtain such financing within 90 days, and upon advising the Borough of this inability, the time to obtain such financing shall automatically be extended by 90 additional days. Redeveloper and

Borough may further agree to extend such time period. Redeveloper shall provide Borough with written notice that Redeveloper has obtained such financing within thirty (30) days after Redeveloper's acceptance of the financing commitment.

SECTION 3.2. Payments in Lieu of Taxes ("PILOT") for Project. In accordance with appropriate laws for PILOT, the Redeveloper and Borough shall enter into a financial agreement for a PILOT for the Project (the "PILOT Agreement") that will provide terms that shall be negotiated in good faith between the Borough and the Redeveloper and are subject to Borough approval by ordinance.

#### ARTICLE IV SOUTH STREET PARKING LOT

SECTION 4.1. JSM Parking Lot.

(a) The Borough has been using a portion of the JSM Property (the "JSM Parking Lot") together with the Borough Property, to operate a metered public parking lot of approximately 115 parking spaces and known as the "South Street Parking Lot" (officially known as Parking Lot #4). Approximately sixty-one (61) of a total of one hundred and fifteen (115) of the existing metered spaces are located on the JSM Parking Lot, with the remainder on the Borough Property. Pursuant to an October 5, 1981 agreement (recorded in Deed Book 1450, Page 587), Redeveloper reserved the right to use up to 20 spaces in the South Street Parking Lot. To facilitate the construction of the supermarket and the required loading area, (i) the Borough relinquishes any right to use the JSM Parking Lot and (ii) Redeveloper will discharge the October 5, 1981 agreement and record such discharge within thirty (30) days after the execution of this Agreement.

(b) The JSM Parking Lot has been re-configured under the amended site plan approved by the Board. The remaining spaces in the JSM Parking Lot (approximately 34) as shown on the approved site plan shall be used by JSM for tenant or customer parking as it deems appropriate. The Borough and Redeveloper shall agree by separate agreement upon any logistical and maintenance issues relating to the JSM Parking Lot and Borough Property, including the parking spaces that may lie partially on the Borough Property and the JSM Property .

SECTION 4.2. South Street Parking Lot. The Borough shall continue to operate and maintain as public parking, the portion of the South Street Parking Lot on the Borough Property.

SECTION 4.3. Union Street Parking Spaces. The approved site plan includes sixteen (16) new angled parking spaces along the side of the supermarket building at the foot of Union Street which lie primarily on the JSM Property and partially on the Borough Property. These parking spaces shall be designated for use as Project parking. The Borough and Redeveloper agree to monitor the parking areas and to modify any element if necessary. The Borough shall grant JSM an easement for the portion of the spaces which lies on the Borough Property, which easement shall be properly recorded.

SECTION 4.4 Borough Parking Structure. The Borough and JSM agree to negotiate in good faith regarding the acquisition of any property that may be required for the Borough to construct a parking structure over all or a portion of the JSM Parking Lot. JSM and the Borough agree to negotiate in good faith the terms and conditions for such construction at the appropriate time. The Borough anticipates that the construction of a parking structure would be subject to the Borough undertaking a study to determine the capacity, cost and financing structure for such parking structure.

**ARTICLE V  
PROPERTY TRANSFER**

SECTION 5.1. Deposit Paid by Redeveloper to Borough. The \$25,000 deposit that the Redeveloper previously paid to the Borough towards the purchase price of the Borough portion of the South Street Parking Lot shall not be refunded to the Redeveloper. However, the \$25,000 deposit shall be credited against the purchase price paid by the Redeveloper or any affiliate to the Borough for any future purchase of any Borough property.

SECTION 5.2. Davenport Street Extension. A portion of the JSM Property, more specifically depicted in Exhibit A, will be used for the extension of Davenport Street. Upon the completion of the construction of the Davenport Street Extension and the issuance of the Certificate of Completion with respect to the same, JSM shall convey the Davenport Street Extension to the Borough for one dollar (\$1.00) by good and marketable title that is insurable at regular rates and without special premium by a reputable title insurance company and by Deed of Bargain and Sale with Covenants against Grantor's Acts for dedication as a public street. JSM shall pay for the costs associated with the construction of the Davenport Street Extension.

**ARTICLE VI  
GOVERNMENTAL APPROVALS**

SECTION 6.1. Governmental Approvals. The Redeveloper shall apply for all applicable Governmental Approvals for the Project, as identified in Exhibit D attached hereto, within thirty (30) days of adoption of a resolution of approval of any amended site plan and subdivision application, subject to relief resulting from the occurrence of any Uncontrollable Circumstance and/or extensions granted by the Borough and/or Planning Board, as applicable. If the Redeveloper is using diligent efforts, and is unable to apply for all applicable Government Approvals for the Project within the thirty (30) day period, there shall be one (1) automatic extension period of thirty (30) days to apply for said Approvals. Any additional extensions shall be subject to the approval of the Borough and the Planning Board, as applicable, which approval shall not be unreasonably withheld. The Borough shall assist the Redeveloper in obtaining the Governmental Approvals for the Project, including providing all applicable information in possession of the Borough. The parties shall cooperate to amend the Redevelopment Plan and this Redevelopment Agreement if required to obtain any Governmental Approvals other than Borough approvals for the Project. Upon submission of applications for Governmental Approvals, the Redeveloper shall provide the Borough with a periodic (no less than every four (4) months) status report regarding the receipt of Governmental Approvals, unless the Borough requests same earlier.

SECTION 6.2. Amended Site Plan and Subdivision Approval. On August 25, 2010, the Planning Board approved the Redeveloper's amended preliminary and final site plan and subdivision plan for the entire Project, which approval was memorialized by the adoption of a resolution on September 22, 2010 after which a notice of decision was published to commence the appeal period as required under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and such appeal period shall expire on or about November 15, 2010. does this need updating to reflect changes to the resolution NO the changes to the resolution are for clarification only.

SECTION 6.3. Approval of Construction Plans. The final Construction Plans must be submitted to the Borough's Construction Code Official and must be on file and approved before construction of the Project Improvements by the Redeveloper. The Borough represents that it's

Construction Code Official will review the Construction Plans in a timely fashion and shall notify the Redeveloper as expeditiously as possible if there is a deficiency in the Construction Plans.

SECTION 6.4. Certificate of Completion. Each Phase of the Project shall be deemed complete upon the issuance of a Certificate of Completion for the improvements in the particular Phase. The issuance of the Certificate of Completion for each Phase shall constitute a conclusive and recordable determination of the satisfaction or termination of the Redeveloper Covenants in this Agreement and in the Redevelopment Plan with respect to the applicable Phase of the Project. Upon issuance of the Certificate of Completion for each Phase, the conditions when the Project Site was determined to be an area in need of redevelopment shall be deemed to no longer exist with respect to such Phase, the land and improvements within the Phase shall no longer be subject to this Agreement, or to eminent domain as a result of those determinations and the Certificate shall expressly contain a declaration of the same.

The Borough shall issue a Certificate of Completion within thirty (30) days of the issuance of a final Certificate of Occupancy by the Borough Construction Official for all of the improvements for each Phase. If the Borough determines that the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within 10 days of receipt of the Redeveloper's request for the Certificate of Completion, provide Redeveloper with a written statement of the reason(s) the Borough refused or failed to furnish a Certificate of Completion. If the reason for refusal is confined to specific finish items, the Borough shall issue a Certificate of Completion upon the posting of a bond (or reasonably satisfactory security) by Redeveloper in an amount representing the fair market value of the work yet to be completed. Upon the completion of the Davenport Street extension, it will be dedicated by JSM and accepted by the Borough, and the Borough will assume responsibility for maintenance, repair and security of the roadway, excluding sidewalks.

## ARTICLE VII GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 7.1. Representations and Warranties by the Redeveloper. The Redeveloper represents and warrants the following:

- (a) The Redeveloper is a limited liability company of the State of New Jersey, is qualified to do business and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.
- (b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby and to perform their obligations hereunder and the execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.
- (c) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any other Applicable Laws that are applicable to the Redeveloper has been filed as of the Effective Date.
- (d) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other Applicable Laws that are applicable to the Redeveloper has been filed.

- (e) No indictment has been returned against any member of the Redeveloper with respect to any transaction contemplated by the terms of this Agreement.
- (f) To the best of the Redeveloper's knowledge, there are no suits, other proceedings or investigations pending or threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.
- (g) The Redeveloper is technically capable of developing and designing the Project and, subject to the receipt of satisfactory financing, constructing each Phase of the Project.
- (h) To the best of Redeveloper's knowledge, there is no pending, or to the best of the Redeveloper's knowledge, threatened litigation, action or proceeding, that (i) would prevent or delay the Redeveloper from performing its duties and obligations hereunder and/or (ii) questions the validity of this Agreement or any essential element on which this Agreement depends.

SECTION 7.2. Representations and Warranties by the Borough. The Borough represents and warrants the following:

- (a) The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced to herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform their obligations hereunder.
- (b) This Agreement is duly executed by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a party.
- (c) There is no pending litigation arising out of or with respect to the designation of the West Main Street Redevelopment area or the adoption of the redevelopment plan for West Main Street Area. However, there is pending litigation related to the Borough's condemnation action against Pathmark Stores, Inc. in the matter of Borough of Somerville v. Pathmark Stores, Inc., et al. – Docket No. L-250-07.
- (d) All of the properties in the Project Site have been designated as areas in need of redevelopment in accordance with the Act and a duly adopted resolution of the Borough. The Redevelopment Plan has been approved and amended by duly adopted ordinances of the Borough.
- (e) If a mechanism is available in which the Borough can, at no expense to the Borough, contribute to the financing of the Project (i.e., via Revenue Allocation Districts or Bonds, etc.), the Borough may consider, but is not obligated, to undertake such financing in accordance with applicable law, upon the Redeveloper's written request.

## ARTICLE VIII REDEVELOPER COVENANTS

SECTION 8.1. Redeveloper Covenants. The Redeveloper covenants and agrees to the following:

- (a) The Redeveloper, its successors and assigns shall develop on the Project Site only those uses established in the Redevelopment Plan.
- (b) No covenant, agreement, lease conveyance or other instrument shall be effected or executed by Redeveloper, or its successors, lessees, or assigns, by which land in the Redevelopment Area is restricted as to sale, lease or occupancy upon the basis of race,

color, creed, religion, ancestry, national origin, sex or marital status, and Redeveloper, or its successors, lessees, or assigns shall not discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease or rental or in the use and occupancy of land or improvements erected or to be erected thereon, or any part thereof, in the Redevelopment Area

- (c) Except for Permitted Transfers and any urban renewal entity transfers that may be contemplated by this Agreement, the Redeveloper shall not, without the prior written consent of the Borough (which consent shall not be unreasonably delayed, conditioned or withheld) assign or attempt to assign this Agreement or make any sale or transfer of the Project Site (collectively a "Transfer").

SECTION 8.2. Permitted Transfers. Notwithstanding anything above, the following Transfers are exceptions to the prohibition on Transfers set forth in this Article VIII:

- (a) Transfer of any interest in the Project Site or Project Improvements to any partner or member of JSM or to any family member of any partner or member of JSM or to any entity controlled by JSM's principals or in control of JSM, or for estate planning purposes;
- (b) Agreements with investors pursuant to which such investors may be granted an equity interest in the Project; provided, however, that Redeveloper shall retain responsibility for development and construction of the Project;
- (c) Any mortgage, encumbrance or lien for the purpose of financing or developing the Project;
- (d) Utility and other development easements;
- (e) Any lease with tenants with respect to any portion of the Project Site or Project Improvement with occupancy to occur following completion of the relevant portion of the Project;
- (f) Any assignment and/or transfer of Redeveloper's interest in the Project to an Affiliate; and
- (g) Any contract or agreement with respect to any of the foregoing exceptions.

SECTION 8.3. Effect and Duration of Covenants. The covenants in this Article shall run with the land and be referenced in any deed of conveyance for properties in the Project Site. The Covenants shall be binding on the Redeveloper, each successor in interest to the Project Site and each party in possession or occupancy respectively, but only for such period as Redeveloper, and each party in possession or occupancy shall have title to or interest in the Project Site. The covenants shall automatically expire as to any Phase of the Project upon the issuance of a Certificate of Completion for such Phase as provided in this Agreement.

## ARTICLE IX EVENTS OF DEFAULT

SECTION 9.1. Events of Default. Any one or more of the following shall constitute an Event of Default hereunder, unless such event results from the occurrence of an Uncontrollable Circumstance or Borough Fault (in the case of an alleged Event of Default of the Redeveloper) or Redeveloper Fault (in the case of an alleged Event of Default of the Borough):

- (a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or agreement in this Agreement and the continuance of such failure for a period of one hundred and twenty (120) days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and

requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the one hundred twenty (120) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable and has provided the non-defaulting party with a written response identifying its efforts to remedy the Event of Default and providing an estimated timeframe for when it anticipates such Event of Default to be remedied.

- (b)
  - (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets;
  - (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper;
  - (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law;
  - (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or
  - (v) the Redeveloper shall take any action for the purpose of affecting any of the foregoing;
  - (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of one hundred and twenty (120) consecutive days;
  - (vii) an Order for Relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code;
  - (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days; or
  - (ix) the Redeveloper shall have suspended the transaction of its usual business.
- (c) The Redeveloper or its successor in interest shall fail to pay when due (or within any grace period) any real estate taxes or assessments on the JSM Property or any part thereof owned by it within one hundred and twenty (120) days after written demand by the Borough to do so.

SECTION 9.2. Remedies in the Event of Default. Except as otherwise provided in this Agreement, upon an Event of Default by any party and upon ninety (90) days prior written notice, the non-defaulting party may terminate this Agreement unless the Event of Default is cured prior to the expiration of such ninety (90) period. If the Borough is the defaulting party, JSM may take whatever action in law or in equity JSM deems desirable, including the seeking of actual, out of pocket damages, or instituting such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by Borough. If JSM is the defaulting party, the Borough may take whatever action in law or in equity the Borough deems desirable, including the seeking of actual, out of pocket damages, or instituting such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach; however, the Borough shall not have the right to pursue proceedings to compel specific performance

by JSM to construct the Project. Any damages alleged by the Borough or JSM shall be limited to the out of pocket expenses incurred from the Effective Date and prior the termination of this Agreement.

SECTION 9.3. Failure or Delay. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 9.4. Remedies Cumulative. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and, except as limited by Section 9.2, shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

SECTION 9.5. No Obligation of Holder. A Holder shall not be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project (or portion to which its mortgage relates), or to guarantee such construction or completion, nor shall any covenant or any other provisions be construed so to obligate the Holder.

## ARTICLE X RESPONSIBILITIES OF REDEVELOPER

SECTION 10.1. Compliance with Laws. The Redeveloper shall implement the Project in conformity with all applicable federal, state, county and local laws and any and all laws, rules, regulations, permits and codes of all governmental and quasi-governmental, local, county, state and federal authorities and any other requirements made applicable solely by reason of the source or manner of financing of all or a portion of the Project.

SECTION 10.2. Compliance with Agreement. Redeveloper shall ensure that all consultants, professionals, employees, agents, contractors engaged by Redeveloper or any of Redeveloper's subcontractors shall have the skill and judgment necessary to implement the Project in compliance with the terms and conditions of this Agreement.

SECTION 10.3. Neighborhood Impacts. Redeveloper acknowledges that although most of the Project Site is owned by Redeveloper, the construction of the Project Site may have impacts on properties in the immediate vicinity of the Project Site. Although it is anticipated that the Project will provide many positive effects for the community, it is also recognized that the development of the Project may cause temporary inconveniences during the time of construction. Therefore, Redeveloper shall take steps reasonably necessary to minimize any inconveniences that the construction may cause.

SECTION 10.4. Off-Site Improvements. The Redeveloper shall construct and install, at its expense, all Off-Site Improvements that are to be constructed as part of the Project by virtue of any Governmental Approvals. Any improvements related to the re-grading of Veteran's Memorial Highway and the lowering of the tunnel is specifically excluded from the terms of this Agreement.

SECTION 10.5. Special Improvement District. The parties acknowledge that the Project Site is located within the Special Improvement District (SID) established by the Borough pursuant to Section 148-1 *et seq.*, of the Somerville Municipal Code.

SECTION 10.6. Insurance. At all times during construction of the Project, the Redeveloper shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, (i) Builder's Risk Insurance, (ii) Comprehensive General Liability Insurance, (iii) Worker's compensation insurance, and such other insurance, in such amounts and against such risks as the Redeveloper may determine.

SECTION 10.7. Indemnification. The Redeveloper agrees to indemnify and hold harmless the Borough against, and Redeveloper shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, that the Borough may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, resulting from Redeveloper's activities in constructing the Project or Redeveloper's actual breach of contracts entered into by the Redeveloper that relate to construction of the Project, or resulting solely from Redeveloper's ownership of portions of the Project Site, or resulting from the construction or installation of the Project, including but not limited to any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims result from the construction of the Project, the maintenance and functioning of the Project Improvements, or any other activities of Redeveloper within the Project Site during the construction of the Project. The Redeveloper and the Borough agree that neither the Borough nor its elected and appointed officials, volunteers, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that Redeveloper shall save the Borough and its elected and appointed officials, volunteers, officers, agents and employees harmless from any claim or suit in connection with the Redeveloper's obligations under this Agreement, except for any claim or suit arising from the intentional, willful or negligent acts of the Borough.

The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section 10.7, that may be brought or asserted against the Borough or its elected and appointed officials, volunteers, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company that has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Redeveloper, the Borough and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy. Any cost for reasonable attorneys' fees in situations where it is necessary for the Borough to engage its own attorneys, reasonable experts' testimony costs and all costs to defend the Borough or any of its elected and appointed officials, volunteers, officers, agents, servants, or employees shall be reimbursed to it by the Redeveloper in connection with such indemnification claim.

10.8. Acquisition and Project Costs. The Redeveloper shall not be required to pay any developer fees. The Redeveloper shall be responsible for all costs incurred by the Redeveloper in implementing the Project and satisfying its obligations under this Agreement. The Redeveloper further agrees to be fully responsible for and obligated to pay the Borough for the Borough's actual costs of services of contract professionals to provide advice and support to the Borough in undertaking its obligations under this Agreement (collectively, the "Project Costs"). The Borough reserves the right to retain additional professionals as necessary and shall advise the Redeveloper of any additional professionals to be retained.

The Redeveloper shall maintain an escrow account with the Borough with a minimum balance amount of \$10,000.00, which escrow shall be replenished by the Redeveloper within thirty (30) days of

a written notice by the Borough. The Borough shall diligently review the Project Costs incurred by its professionals and determine eligibility for payment of such costs from the escrow. The Redeveloper shall receive a copy of all Project Costs from the Borough on a monthly basis. The Redeveloper shall have the right to review and comment on the Project Costs. The Redeveloper's comments on the Project Costs shall be in writing and shall not prevent the Borough from paying Project Costs. However, if the Parties disagree on the Acquisition Costs and Project Costs, the Parties shall work diligently and in good faith to resolve any such disagreement, while maintaining the minimum balance in the escrow account. The Redeveloper further acknowledges and agrees that the obligation to pay the Borough for the Project Costs shall apply to all such costs incurred prior to the termination of this Agreement. The Redeveloper's obligations pursuant to this Section 10.8. shall survive the termination of this Agreement.

The Redeveloper agrees to pay for and reimburse the Borough for any costs and expenses it may incur arising from any litigation, suit or action brought by a person or entity against the Borough arising out of this Amended and Restated Redevelopment Agreement, the Project, the Original Agreement, the Redevelopment Plan Amendment, challenges to development approvals including any site plan and subdivision application or any actions taken pursuant to same, including reasonable legal fees and costs of suit, to defend the Borough from such litigation.

## ARTICLE XI BOROUGH RESPONSIBILITIES

SECTION 11.1. Acquisition of Redevelopment Properties. There are no parcels or interests that that Borough needs to acquire. The Borough has filed and settled all eminent domain actions and completed all acquisitions that are necessary.

SECTION 11.2. Conveyance to JSM of any Borough interest in the Project Site. Subject to the condition that all Acquisition Costs that have been incurred to date of conveyance have been paid by the Redeveloper, within sixty (60) days of the Effective Date, the Borough shall convey to JSM, for no consideration and by Quitclaim Deed, title to any portion or leasehold interest of the Project Site, the condition of said title so conveyed to be in accordance with the requirements of this Agreement. The Deed or form of conveyance shall contain such restrictions, covenants and conditions as may be required under the terms of the Redevelopment Plan and this Agreement. The Borough and JSM acknowledge and agree that none of the provisions of the Agreement are intended to or shall be merged by reason of any Deeds or forms of conveyance transferring title to any portions or leasehold interest of the Project Site from the Borough to the JSM or any successor interest, and any such Deed or form of conveyance shall not be deemed to affect or impair the provisions and covenants of the Agreement.

SECTION 11.3. Supermarket. As long as the Redeveloper has a supermarket space, vacant or operating, in the Project, the Borough shall prohibit any supermarket or retail store that offers a similar assortment of goods and services (meat, fish, dairy, produce, etc.) for off premises consumption to be located in the Landfill Redevelopment Area. The Borough agrees to record a restriction as described herein on all properties it owns within the Landfill Redevelopment Area upon adoption of an ordinance in accordance with applicable law. This restriction shall also be imposed on any properties in the Landfill Redevelopment Area which the Borough may acquire after the initial recording on currently owned Borough properties in the Landfill Redevelopment Area. In addition, within thirty (30) days of the Execution Date, the Borough agrees to amend the Landfill Redevelopment Plan to include this restriction. This restriction shall not prohibit:

- a. a convenience store of not more than 4,000 square feet that offers limited food selection and in which no single food category occupies more than 15% of the sales area square footage;
- b. a full-service retail establishment that sells prepared food for take-out, off-premises consumption as an incidental part of its business (pizzeria, restaurant, bagel store, etc); or
- c. a non-food retail establishment that offers food items as an incidental accessory to its core business (i.e., a tanning salon that offers coffee and nutrition bars, etc.)

SECTION 11.4. Parking Enforcement on Project Site. The Borough and JSM shall agree upon a parking enforcement plan for the Project parking areas. This plan shall include enforcement & enforcement procedure(s) and penalties. Upon completion of any Phase of the Project, N.J.S.A. 39-1 et seq. (Motor Vehicles and Traffic Regulations) shall apply to the surface parking areas on the Project Site. The applicability of N.J.S.A. 39-1 et seq. is subject to the approval of the Commissioner of Transportation.

SECTION 11.5. Amendments to Redevelopment Plan. On June 7, 2010, the Borough adopted an Amended and Restated Redevelopment Plan to permit the Project and Project Elements as described in this Agreement.

SECTION 11.6. Enforcement of Borough Noise Ordinance. The Borough recently amended Chapter 114-1 et seq., of the Borough Code (the "Noise Ordinance") to permit sound levels and hours of operation in the Redevelopment Area to be governed by the terms and conditions of this Agreement. The provisions of the Noise Ordinance applicable to the Redevelopment Area pursuant to this Agreement are as follows:

- a. Construction activities may occur 24 hours a day /7 days a week during construction of the Project in keeping with N.J.S.A. 7:29 et seq.
- b. Upon Completion of Construction of the Supermarket, Supermarket operations shall be permitted 24 hours a day /7 days a week, including, but not limited to:
  - 1. The arrival and departure of various vehicles including tractor/trailer combinations for the purpose of unloading merchandise throughout the 24 hour period;
  - 2. The parking of trailers overnight as overflow storage, these trailers may be refrigerated and if so require the running of powered cooling units to keep merchandise fresh.
- c. Sound levels: it is anticipated that sound levels will not exceed those as detailed in Section 114-5A of the Noise Ordinance for commercial establishments, however the following exceptions are permitted within the Redevelopment Area:
  - 1. Section 114-6A(2) - internal construction activity shall be permitted to occur 24 hours a day /7 days a week within the defined sound levels for similar commercial establishments.
  - 2. Trailer mounted refrigeration units are permitted to operate 24 hours a day.

## ARTICLE XII MISCELLANEOUS

SECTION 12.1. Notices. Formal notices and demands between the Borough and JSM shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notices may also be sent by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case, such notice is deemed effective upon delivery. Such written notices and demands may be sent in the same manner to such other addresses as either party may from time to time designate by written notice. Routine or informal communications between the

Borough and JSM shall be deemed sufficiently dispatched if sent by regular mail. notices, demands and communications shall be sent as follows:

Copies of all

If to the Redeveloper:

JSM at Somerville, LLC  
Charlestown Center  
1260 Stelton Road  
Piscataway, NJ 08854  
ATTN: Jack Morris

cc: Douglas Wolfson, Esq.  
Schwartz Simon Edelstein & Celso LLC  
44 Whippany Road - Suite 210  
PO Box 2355  
Morristown, NJ 07962

If to the Borough:

Mayor and Borough Council  
Borough of Somerville  
25 West End Avenue  
Somerville, New Jersey 08876

cc: Francis X. Regan, Esq.  
DeCotiis, FitzPatrick, & Cole, LLP  
Glenpointe Centre West  
500 Frank W. Burr Boulevard  
Teaneck, New Jersey 07666

SECTION 12.2. Non-Liability of Officials and Employees of the Borough. No member, official or employee of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount that may become due to JSM or its successor, or on any obligation under the terms of this Agreement.

SECTION 12.3. Non-Liability of Officials and Employees of the Redeveloper. No member, officer, shareholder, director, partner or employee of JSM shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by JSM or for any amount that may become due to the Borough, or its successor, on any obligation under the terms of this Agreement.

SECTION 12.4. Approval by the Borough and the Redeveloper. Wherever this Agreement requires the approval of the Borough or the Redeveloper, or any officers, agents or employees of either Party, such approval shall not be unreasonably withheld or conditioned, and approval or disapproval shall be given within a reasonable time if said time is not specifically set forth herein.

SECTION 12.5. Successors and Assigns. Subject to any contrary provisions herein, this Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

SECTION 12.6. Exhibits. All Exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

SECTION 12.7. Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 12.8. Severability. If any term or provision of this Agreement or the application thereof is held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 12.9. Modification or Waiver of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless it is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought. The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach

SECTION 12.10. Execution of Counterparts. This Agreement may be executed in one or more counterparts and when each party has executed and delivered at least one counterpart, this Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

SECTION 12.11. Prior Agreements Superseded. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties, including the Original Agreement and Memorandum of Understanding with respect to all or any part of the subject matter hereof.

SECTION 12.12. Intentionally omitted.

SECTION 12.13. Relationship of the Parties. Except as otherwise explicitly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by the other party. Nothing in this Agreement shall be deemed to make either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 12.14. Conflict of Interest. No member, official or employee of Borough or the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

SECTION 12.15. Effect and Duration of Agreement. This Agreement shall become effective upon its execution by the parties hereto, and shall remain in full force and effect from such date until (a) the Agreement is terminated in accordance with its terms, or (b) the Project has been

completed, as evidenced by the issuance of the Certificate of Completion for the final Phase of the Project as defined by this Agreement.

SECTION 12.16. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.

SECTION 12.17. Recording and Filing. The Redeveloper shall promptly record a memorandum of this Agreement in the Somerset County Clerk's Office and pay the cost of recording. The Redeveloper shall submit proof of recordation to the Borough as soon as reasonably possible. If required by a construction or permanent mortgage lender, the Borough agrees to consent to and execute any documents required by a construction or permanent mortgage lender to ensure that lender has priority lien status.

SECTION 12.18. Estoppel Certificate. Within thirty (30) days following written request therefor by a party hereto, or of any holder, purchaser, tenant or other party having an interest in the Project, the other party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. If the estoppel certificate discloses a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than one estoppel certificate may be requested per year.

SECTION 12.19. No Brokerage Commissions. Borough and Redeveloper each represent to each other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent, or otherwise acting on behalf of either Borough or Redeveloper. Borough and Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

SECTION 12.20. No Consideration For Redevelopment Agreement. Redeveloper warrants it has not paid or given, and shall not pay or give, any third person any money or other consideration in connection with obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Agreement.

SECTION 12.21. Right of Entry For Utility Service. The Borough reserves for itself and any public utility company, as may be appropriate, the right to enter upon the Project or any portion thereof at any reasonable time for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Project boundary lines, which utilities shall be evidenced by recorded easements. Redeveloper may relocate any public utilities as required for the Project and the Borough shall cooperate with Redeveloper in amending or terminating any existing easements, as necessary.

SECTION 12.22. Redeveloper Not To Construct Over Utility Easements. The Redeveloper shall not construct any buildings or other structures on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 12.21 hereof, unless such construction is permitted in such easement or has been approved by the Borough. If approval for such construction is requested by the Redeveloper, such consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 12.23. Maintenance. The Redeveloper shall be responsible for the maintenance and security of the Project subject to the terms of this Agreement until such time as the Redeveloper no longer owns or leases the Project or portions thereof.


SECTION 12.24. Lender Changes. If the Redeveloper's financial institution(s) requires modifications of the terms of this Agreement, the Borough shall reasonably cooperate with the Redeveloper in approving such modifications, so long as such modification does not, in the opinion of the Borough, jeopardize the completion of the Project.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, all as of the date first above written.

Attest:

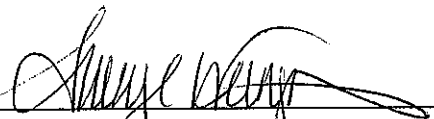
Borough of Somerville

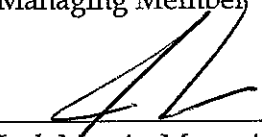
  
\_\_\_\_\_  
Kevin Sluka,  
Borough Clerk

By:   
\_\_\_\_\_  
Brian G. Gallagher  
Mayor

Attest:

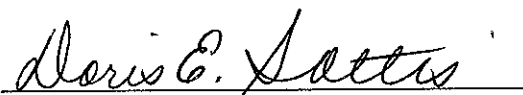
JSM at Somerville, LLC  
BY: Somerville Town Center Manager, LLC  
Managing Member

  
\_\_\_\_\_  
Sheryl A. Weingarten

By:   
\_\_\_\_\_  
Jack Morris, Managing Member

STATE OF NEW JERSEY                      ss:  
COUNTY OF SOMERSET

I CERTIFY that on November 12th, 2010, Jack Morris and Sheryl A. Weingarten personally came before me, and this person acknowledged under oath, to my satisfaction, that this person, if more than one, each person, are the Managing Members of Somerville Town Center Manager, LLC, the managing member of JSM at Somerville, LLC, the company named in this document; and signed and delivered this document as his act and deed on behalf of the said Limited Liability Company.

  
\_\_\_\_\_  
Notary Public - Doris E. Soltis  
My Commission expires: 6/15/15


STATE OF NEW JERSEY

ss:

COUNTY OF SOMERSET

I CERTIFY that on NOVEMBER 15, 2010, Kevin Sluka personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Borough Clerk of the Borough of Somerville named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper Borough official who is Brian G. Gallagher, Mayor of the Borough of Somerville;
- (c) this document was signed and delivered by the Borough as its voluntary act duly authorized by a proper resolution of the Borough; and
- (d) this person signed this proof to attest to the truth of these facts.

  
Kevin Sluka

Signed and sworn to before me  
on NOVEMBER 15, 2010.

KEVIN SLUKA  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires January 9, 2013

Notary Public

**EXHIBIT A**  
**PROJECT SITE**

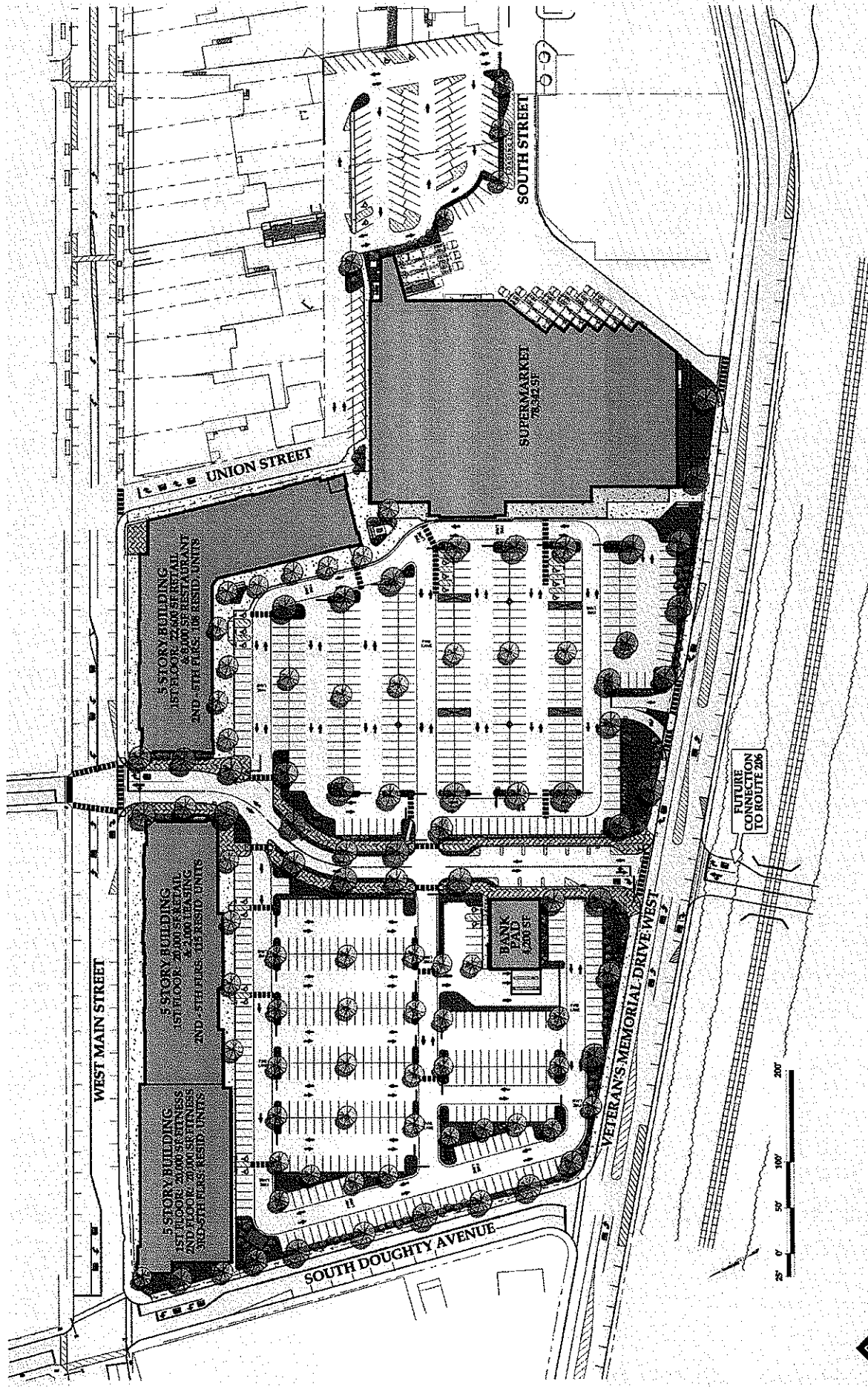
The following properties are included in the Project Site:

BLOCK AND LOT: Block 117, Lot 1 ("JSM Property")

**EXHIBIT B**  
**SITE PLAN**

# SOMERVILLE TOWN CENTER

## PROPOSED SITE PLAN



EDGEWOOD PROPERTIES

AUGUST 2010

**EXHIBIT C**  
**PROJECT SCHEDULE**

<b><u>Party</u></b>	<b><u>Task</u></b>	<b><u>Date</u></b>
Redeveloper	Submission of Application for Governmental Approvals for Project, except as set forth in the Agreement Section 6.1	Within thirty (30) days of the Effective Date.
Redeveloper	Commence Construction of Project Section 2.5	Within thirty (30) days of issuance of all Government Approvals and closing on financing for Phase I.
Redeveloper	Obtain Financing for Phase I	Within ninety (90) days of final, unappealable site plan approval by the Planning Board and all other Governmental Approvals with an automatic ninety (90) day extension.
Redeveloper	Conveyance of Davenport Street extension to Borough Section 3.2	Upon completion of improvements and issuance of certificate of completion for same.

**EXHIBIT D**  
**GOVERNMENTAL APPROVALS**

Borough of Somerville Planning Board - Site Plan and Subdivision Approval

Somerset County Planning Board - Site Plan and Subdivision Approval

Somerset Union Soil Conservation District - Soil Erosion and Sediment Control

New Jersey American Water Company - Water Connection

Raritan Valley Sewerage Authority - Sewer Connection

New Jersey Department of Environmental Protection - Treatment Works Permit

New Jersey Department of Transportation - Access Permit