

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this 12th day of July, 2007 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, Somerville, New Jersey (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 ("Redeveloper") (Collectively referred to as the "Parties").

WITNESSETH

WHEREAS, on May 27, 2005, the Borough entered into a Redevelopment Agreement (hereinafter referred to as the "Original Agreement") with the Redeveloper; and

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; and

WHEREAS, the Redeveloper is the owner of Block 117, Lot 1, comprising 13.553 acres and currently known as the Landmark Shopping Center (the "JSM Property") and the Borough currently owns Block 118, Lot 21, comprising approximately .46 acres and currently being used as a portion of a municipal parking lot (the "Borough Property"); 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 ("Site Plan Approval"); and

WHEREAS, by way of this MOU, the Borough and Redeveloper desire to renegotiate the terms of the Original Agreement; and

WHEREAS, the terms of this MOU shall supersede the terms of the Original Agreement, only as stated herein with all other terms and conditions of the Original Agreement remaining in full force and effect until such time as the Amended and Restated Agreement is executed, without materially waiving any contractual rights of either party; and

WHEREAS, the Borough and Redeveloper acknowledge that the mutual promises contained in this MOU are good and valuable consideration for the binding execution of this MOU; and

WHEREAS, the Borough and Redeveloper have undertaken this Project and shall continue to undertake this Project in accordance with the requirements of the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.).

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:

SECTION 1. EXCLUSIVE NEGOTIATIONS

From the date of the execution of this MOU until its termination, the parties agree to negotiate diligently and in good faith to complete an Amended and Restated Redevelopment Agreement with respect to the Project.

SECTION 2. THE PROPOSED REDEVELOPMENT

The proposed redevelopment encompasses a mixed use transit oriented development plan as outlined in Redeveloper's Site Plan Approval and the resolution adopted by the Borough Planning Board.

SECTION 3. TERM

This MOU shall be effective upon execution by the Borough and Redeveloper and shall continue in full force and effect until the earlier to occur: (a) execution of an Amended and Restated Redevelopment Agreement for the Project, or (b) the Parties are unable to successfully negotiate an Amended and Restated Redevelopment Agreement by November 30, 2007.

SECTION 4. RETENTION OF PROFESSIONALS/ADMINISTRATIVE COSTS

Redeveloper acknowledges that the Borough has retained the services of professionals to provide advice or support in undertaking its obligations under the Original Agreement and shall continue the use of such professionals (legal, financial, planning and parking) pursuant to this MOU and any actions related thereto. The professionals are identified on Exhibit A attached hereto. The Borough reserves the right to retain additional professionals as necessary and shall advise the Redeveloper of any additional professionals to be retained. Redeveloper shall continue to pay the Borough all costs incurred by the Borough with respect to the Project in accordance with the terms and conditions of the Original Agreement and this MOU. Subject to the obligation of the

parties to negotiate diligently and in good faith under Section 1 hereof, the Redeveloper shall pay all costs even if an Amended and Restated Redevelopment Agreement is not executed.

SECTION 5. REIMBURSEMENT FOR LITIGATION

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 MOU, the Project, the Original Agreement, or any actions taken pursuant to same, including reasonable legal fees and costs of suit, to defend the Borough from such litigation.

SECTION 6. MINIMUM TERMS AND PRINCIPLES IN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

A. Development Plan

- maximum of 350 residential units;
- maximum of 150,000 square feet of retail space;
- maximum of 80,000 square feet of office space.

B. South Street Parking Structure

- Borough shall construct and finance the South Street parking structure, which shall include a minimum of 440 spaces.
- The Borough shall own and manage the parking structure.
- Timing of the construction of the parking structure shall be coordinated with the Redeveloper's construction of Phase I of the Project to ensure the availability of parking for tenants. The Borough and Redeveloper shall agree to a schedule for commencement of construction of the parking structure. In the event the Borough fails to commence construction of the parking structure

in accordance with the schedule, the Redeveloper shall have the right to finance and construct the parking structure ("Self Help") and the Borough shall reimburse the Redeveloper for all reasonable costs and expenses of such Self Help.

- Consistent with the Original Agreement, the Borough shall convey the Borough property (Tax Block 118, Lot 21) to the Redeveloper for the purchase price of \$250,000 and the Redeveloper has already made a \$25,000 deposit payment to the Borough for this property.
- Redeveloper shall ground lease the land it owns (portion of Block 117, Lot 1), as well as the Borough property sold to the Redeveloper to the Borough for construction of the South Street parking structure. The ground lease will be for 99 years at \$1.00 per year (the "Ground Lease"). The terms and conditions of the Ground Lease will be negotiated and reflected in a Ground Lease that shall be an exhibit to the Amended and Restated Redevelopment Agreement. The Borough and Redeveloper shall enter into a parking agreement, which will be an exhibit to the Amended and Restated Redevelopment Agreement that addresses the availability and cost of parking for tenants in the Project, as well as enforcement of parking for surface parking.

C. Davenport Street Extension

- Redeveloper constructs the Davenport Street extension as part of the site improvements, with no Borough contribution. Street is dedicated to Borough at completion.

D. Project Financing

- Borough intends to seek approval of a Revenue Allocation District (“RAD”) to assist in financing of the parking structure and any other improvements allowed by law within the RAD. The approval of the RAD is not a contingency of the commencement of construction of the parking structure, since the Borough may finance the construction through the issuance of general obligation bonds, redevelopment area bond financing, use of the Somerset County Improvement Authority or some other means of public financing. The Borough intends to dedicate any RAD revenues to the payment of debt service on the public financing for the parking structure, otherwise it will dedicate general tax revenues from the Project to pay such debt service.
- The Borough agrees to proceed with the RAD approval process through the submission to the State Local Finance Board of a preliminary application for RAD financing within thirty (30) days of the execution of the Amended and Restated Redevelopment Agreement.

E. PILOT

- The Parties agree to utilize the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.) and the Five-Year Exemption and Abatement Law (N.J.S.A. 40A:21-1 et seq.) to assist in the Project. Either or both laws will be referred to herein as a “PILOT”. The residential component of the Project shall have a ten (10) year PILOT based on 15% of annual gross revenues. The commercial

component (office and retail) shall have a five (5) year PILOT based on 15% of annual gross revenues.

- Within thirty (30) days of the execution of the Amended and Restated Redevelopment Agreement, the Redeveloper shall submit an application for the PILOT(s) to the Borough in accordance with the applicable law. The Borough shall act upon such application in accordance with the applicable law, but no later than sixty (60) days after receipt of complete application from Redeveloper.
- Upon approval of the PILOT(s), the Parties shall enter into a financial agreement(s) in accordance with applicable law.
- Under any PILOT, the Borough shall retain 95% of the annual service charge paid by the Redeveloper and the County of Somerset shall be entitled to 5% of the annual service charge.
- Under the RAD, the Borough is entitled to 100% of the non-PILOT revenue generated. However, since the RAD revenue is based on the incremental tax revenues generated by the new improvements in the Project, the current tax revenues generated by the existing JSM Property continue to be paid and distributed to the Borough, County and schools under current formula.

F. Condemnations

- The Borough's condemnation of Pathmark's leasehold interest is the only remaining action pending and the Borough shall continue to pursue the settlement or receipt of a final judgment of this action (Borough of Somerville v. Pathmark Stores, Inc., et al. – Docket No. L-250-07).

G. Redevelopment Plan Amendments

- Within (30) days of the execution of this MOU, the Parties agree to review the current Redevelopment Plan and agree upon the necessary amendments consistent with the terms and conditions of this MOU and then the Borough shall commence the review and approval process for such amendments in accordance with the Local Redevelopment and Housing Law, which shall be completed no later than September 14, 2007.

H. Amendment to Site Plan Approval

- Within (30) days of the execution of the Amended and Restated Redevelopment Agreement or the effective date of the amendments to the Redevelopment Plan, whichever is later, Redeveloper shall submit an application to the Planning Board to amend its Site Plan Approval in accordance with the terms and conditions of the Amended and Restated Redevelopment Agreement and the amendments to the Redevelopment Plan.
- Upon adoption by the Planning Board of a resolution approving the amendment to the Redeveloper's Site Plan Approval, Redeveloper shall proceed to obtain all Governmental Approvals for the Project. The Parties shall identify and agree upon all necessary Governmental Approvals, which shall be included in the Amended and Restated Redevelopment Agreement. The Parties shall also agree upon a reasonable and realistic timeframe for the Redeveloper to obtain such Governmental Approvals.

I. Tax Appeal

- Redeveloper shall withdraw tax appeal on JSM Property upon execution of Amended and Restated Redevelopment Agreement.

J. Development Fees

- In the Original Agreement the Redeveloper agreed to make a one time payment of \$100,000 as a development fee. The Redeveloper has agreed to make an additional \$100,000 payment, increasing the development fee to a total of \$200,000. The development fee shall be payable in \$100,000 increments, the first payable upon the issuance of the first building permit for the Project and the second payable upon the issuance of the first certificate of occupancy for the Project.

K. Project Schedule

- The Parties shall agree to a new phasing schedule and plan for the Project, which new phasing plan shall be subject to Planning Board review and approval.
- Redeveloper shall commence demolition of the structures on the JSM Property within thirty (30) days of (a) the lifting of the permanent injunction entered by the Court in its May 2, 2007 decision in the matter of Pathmark Stores, Inc. v. JSM at Somerville, LLC – Docket No. SOM-C-12034-05; (b) vacation of all tenants; and (c) receipt of all permits and approvals for the demolition.

L. Redeveloper Financing

- The terms and conditions of this MOU and the Amended and Restated Redevelopment Agreement shall be contingent on and subject to the Redeveloper's ability to obtain financing for the Project.

M. Additional Terms

- As long as the Redeveloper has a supermarket as a tenant in the Project, the Borough agrees to prohibit a supermarket of more than 15,000 square feet from being located in the Landfill Redevelopment Area.

SECTION 7. NO MODIFICATION

The MOU may only be changed, modified or amended by a written instrument signed by the Borough and Redeveloper.

SECTION 8. NOTICE

A notice, demand or other communication under this MOU by any party to the other shall be in writing and shall be hand delivered by messenger (with receipt acknowledged in writing) delivered by overnight delivery service (guaranteeing overnight delivery, with receipt acknowledged in writing) or delivered by electronic transmittal or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number) to the parties at their respective addresses (or facsimile numbers, as the case may be) set forth herein. Copies of all notices, demands and communications shall be sent as follows:

If to the Redeveloper:	Edgewood Properties Charlestown Center 1260 Stelton Road Piscataway, NJ 08854
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ATTN: Jack Morris

Cc: Edgewood Properties
Charlestown Center
1260 Stelton Road
Piscataway, NJ 08854
ATTN: John Verlaque, Esq.

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 & Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666

SECTION 9. BINDING EFFECT

This MOU constitutes a binding commitment between the Parties; however, the Parties' respective rights and obligations are subject to and remain to be fully defined in the Amended and Restated Redevelopment Agreement. If the parties, after diligent and good faith negotiations, do not execute the Amended and Restated Redevelopment Agreement or this MOU is terminated, then this agreement shall be void and without recourse, and neither party shall have any further obligation to the other as set forth herein.

SECTION 10. GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the State of New Jersey and any actions arising from this MOU shall be commenced and prosecuted in a Court of the State of New Jersey.

SECTION 11. EXHIBITS

All Exhibits referred to herein shall be considered a part of the MOU as fully and with the same force and effect as if such Exhibits had been included within the text of this MOU.

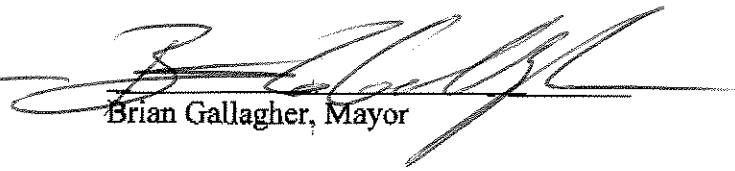
This MOU is executed as of this 12th day of July, 2007.

ATTEST:

BOROUGH OF SOMERVILLE

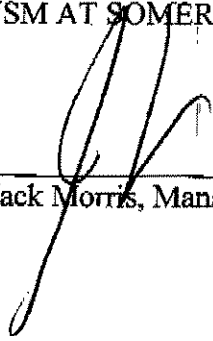


Kevin Sluka, Borough Clerk



Brian Gallagher, Mayor

JSM AT SOMERVILLE, LLC



Jack Morris, Managing Member

EXHIBIT A

Borough Professionals

Special Counsel for Redevelopment: Francis X. Regan
DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666

Financial Consultant: Patrick Henry
The Atlantic Group
1A Brookline Court
Princeton, New Jersey 08540

Redevelopment Consultant: Colin Driver
The Waterford Group, LLC
7 Carroll Drive
Hillsborough, New Jersey 08844

Planning Consultant: Michael Cole, P.P., AICP
M. Cole and Associates
3986 Princeton Pike
Lawrenceville, New Jersey 08648