

**LETTER OF INTENT BETWEEN BOROUGH OF
EMERSON AND ATKINS COMPANIES
August 21, 2007**

This letter expresses the agreement of the Borough of Emerson, a municipal corporation of the State of New Jersey having its offices at Linwood Avenue, Borough of Emerson, Bergen County, New Jersey 07630 and Atkins Realty Group with offices at 101 Old Short Hills Road, West Orange, NJ 07052 to proceed with redevelopment plans and agreements for that portion of the Borough previously designated as being in need of redevelopment.

BACKGROUND

In April 2006, Emerson declared a portion of the Borough along Kinderkamack Road and the New Jersey Transit facility along Kinderkamack Road at Linwood Avenue as being in need of redevelopment pursuant to local Redevelopment and Housing Law, N.J.S.A. 40A:12(a)-1, et seq. The Borough then adopted a Redevelopment Plan for this area and issued a request for proposals to the development community seeking qualified and experienced developers with an interest in committing to a long-term effort for the redevelopment of the area in question. As a result of that process to Borough selected Atkins as its preferred redeveloper.

In conjunction with the Borough of Emerson, Atkins embarked upon a due diligence process as a prerequisite to the execution of a formal redevelopment agreement between Atkins and the Borough. That process included meeting with the planning and development officials of Bergen County concerning the county's plans for the widening and improvement of Kinderkamack Road and any related impacts that county plans

would have upon the redevelopment proposed in Emerson. From those meetings it was established that extensive improvements of Kinderkamack Road, including the potential to relocate its existing crossing of the railroad substantially away from its present location near the New Jersey Transit passenger rail station and stop, are under active consideration by Bergen County. Since a substantial portion of redevelopment area fronts upon Kinderkamack Road, it is also clear that county land use approvals will be required. Coordination of Emerson's redevelopment, therefore, with Bergen County is an important part of the overall redevelopment process.

New Jersey Transit Corporation also has a substantial interest in the redevelopment of Emerson. Its plans call for the expansion of passenger rail service along the existing Pascack Valley Rail Line, including the use of longer trains beginning at the end of 2007. These longer trains are intended to provide additional mass transit capacity but require the relocation of the existing crossing at Kinderkamack Road so they do not to interfere with automobile traffic and/or other aspects of the proposed redevelopment. Providing intermodal connections with the passenger rail service also envisions the expansion and creation of additional bus stops and auto drop-off facilities, at least in the planning stages, all to be located within areas originally envisioned for redevelopment. These plans of New Jersey transit Corporation can have a substantial beneficial impact upon the proposed redevelopment, the Borough of Emerson, and the local region within Bergen County if properly coordinated in the overall planning and redevelopment process among the governmental and private parties involved in the Redevelopment within the Borough of Emerson.

REDEVELOPMENT PLANNING PROCESS.

Recognizing the foregoing County and State interests, the Borough of Emerson and Atkins acknowledge the need for further coordination and planning among themselves, Bergen County and New Jersey transit Corporation. The elements involved in that planning include, but are not necessarily limited to, the following, which were not completely recognized in the Borough of Emerson's initial redevelopment planning:

1. Identify and establish the emerging needs and plans of New Jersey Transit Corporation to accommodate longer and more frequent passenger rail service, including weekend service, within the redevelopment area.
2. Identify and plan for areas sufficient to accommodate present and future intermodal connections, additional patron parking and station facilities within the redevelopment area.
3. With consideration to the foregoing needs of New Jersey Transit Corporation, the means by which the improvement of Kinderkamack Road and the relocation of either the existing Kinderkamack Road railroad crossing or the New Jersey Transit station platform must be identified. These include providing access to the rail station, providing for the free flow of traffic through Emerson, and allowing for the creation of a new downtown environment in conjunction with the redevelopment and the existing and future to-be-expanded or relocated mass transit facility.
4. Identifying those areas previously declared in need of redevelopment that may be further impacted by the development of mass transit facilities and the relocation of Kinderkamack Road or the passenger rail platform, and the formulation of additional

plans to meet the original goals of redevelopment in the Borough of Emerson, as well as responding to the subsequent planning of New Jersey Transit Corporation and Bergen County.

REDEVELOPMENT AGREEMENT

Atkins and the Borough of Emerson jointly agree to implement the redevelopment of public and private properties within the redevelopment area and in conjunction with the foregoing activities of New Jersey Transit Corporation and Bergen County. To accomplish those goals, they hereby agree to pursue, in good faith and as expeditiously as possible, a comprehensive redevelopment program including the following within its basic provisions:

1. The interests of four entities are involved in achieving the goals set forth herein and the cooperation of each is needed for further Redevelopment Agreement and for effective, efficient and complete development. Those entities are the Borough of Emerson, Atkins, Bergen County and New Jersey Transit Corporation.

2. The Redevelopment Agreement will provide for the recognition and acceptance of the respective planning and development interests of each entity by the others. Those interests include the following:

- a. **New Jersey Transit Corporation.** The expansion and improved operation of rail service and supporting intermodal links in the short term, together with longer term planning to expand mass transit opportunities in Emerson in harmony with of the overall redevelopment. This will include agreement on the location, installation and funding of a relocation of the existing Kinderkamack Road railroad crossing, passenger rail platforms

and facilities, the provision of space for possible future station expansion, the location of future intermodal transit connections such as bus stops and auto drop-off points, as well as the provision of parking for commuters to the degree consistent with other development objectives.

- b. **Bergen County.** The improvement of Kinderkamack Road to provide for the remediation and/or elimination of existing congestion at its crossing of the railroad, as well as adequate provisions for regional through traffic on the county road is a primary goal. The parties recognize that the size and location of the existing right of way may be insufficient in size and/or location to accommodate these regional transportation needs, especially when coupled with the expansion of passenger rail service in the redevelopment area in Emerson and the inclusion of new businesses and residences into the area.
- c. Therefore, the Agreement needs to address the acquisition of necessary rights of way, the abandonment of undesirable right of way lands no longer useful for Kinderkamack Road, the planning for connecting existing and possibly new roads and streets and other traffic patterns necessary for an effective redevelopment in Emerson of those areas previously declared as being in need of redevelopment. The Redevelopment Agreement shall specify the roles of the respective parties in the funding, acquisition, implementation of the Redevelopment Plan, including necessary revisions to the Borough of Emerson's Zoning Code. This should be done in conjunction with the new Kinderkamack Road

alignment, such that the goals of the County, Emerson and Atkins are aligned on a single agreed upon Redevelopment and Transportation Plan.

- d. **Borough of Emerson.** The Borough's primary goal is to achieve the redevelopment of the areas it declared in need of redevelopment in 2006 in a manner consistent with the spirit and intent of its redevelopment planning to date and the selection of Atkins as designated redeveloper. That goal must be achieved in the context of increased impacts from the County improvement of Kinderkamack Road and an increased mass transit usage and presence in the Borough, and while complementing adjacent residential development in the Borough and providing for the long term viability of the redevelopment area without conflicts with the legitimate goals of New Jersey Transit Corporation or Bergen County.
- e. **Atkins.** As redeveloper, its goal is to incorporate the plans of New Jersey Transit Corporation, Bergen County and Emerson into its redevelopment activities such that all of these governmental entities with a vital interest in the redevelopment area are willing to join together to implement their plans in a coordinated and timely fashion. Atkins, as well as the other parties, also seeks to coordinate their plans so that the costs, activities and phasing of redevelopment can be adequately assessed in the planning stages and that the overall development is and remains financially feasible. Atkins may act through one or more subsidiary entities created for the specific purpose of accomplishing this agreement, and may also create one or more Urban Renewal Entities pursuant to the Redevelopment and

Housing Law and the Long Term Tax abatement Law to carry out the redevelopment.

3. The Agreement must identify the primary responsibility of each party to include the initial development of their respective plans and the process by which those plans are incorporated into an overall redevelopment and improvement plan within a reasonable time. The Agreement must identify the anticipated contribution of funds or property necessary to accomplish the overall plan and a performance schedule for its activities. For example, New Jersey Transit Corporation has indicated informally that it will begin to expand the scope of commuter rail service by the end of 2007, but must provide a schedule for its portion of work on the relocation of the railroad crossing and/or its passenger platform and facilities once the County, Emerson and Atkins propose an agreed upon location acceptable to it.

4. The responsibility of each party to contribute funding through a source and application of funds proposal must be included. In a case where a party contributes property for redevelopment, for example the bed of an abandoned or relocated road or street, a schedule for that action shall be required in coordination with the phasing of both public improvements and private development.

5. If property is to be acquired through eminent domain, the government party exercising that power, as well as the required funding source by or through Atkins or the County, shall be provided. Where property is to be acquired through eminent domain for redevelopment, as opposed to roadway or transit purposes, provisions for such action, to include funding, will be along the lines of those traditionally included in private/municipal redevelopment agreements. Where the transfer of County lands or

public lands are to be conveyed to the Borough for streets or other purposes, including implementation of the Redevelopment Plan, the Agreement shall provide for a plan of funding by Atkins in developing the agreed upon Redevelopment Plan, including the scheduling and transfer of properties within the redevelopment area.

6. Acknowledging that the coincidence of New Jersey Transit Corporation and Bergen County planning and public development activities have arisen in connection with the redevelopment efforts of the Borough of Emerson and Atkins, the parties hereby fully commit through the actions of their respective entities. This commitment will require that each party supports and if necessary, defends the Redevelopment Plan and Redevelopment Agreement against objections and potential litigation by other parties during the implementation of the Redevelopment Agreement and Plan, and including the exercise of Eminent Domain, if it is necessary to fully develop the Plan.. The cost and burden, including payment of the professional fees and the control of the litigation, shall be addressed in the Redevelopment Agreement.

7. Zoning through further redevelopment plans by the Borough of Emerson shall remain at the discretion of the Borough, subject however to such provisions such as overall density, use and road circulation, that are reasonably necessary to coordinate with the plans and requirements of the other parties. Nothing in this Agreement should prevent the parties from adopting provisions involving development or property that is now presently outside of the designated area in need of redevelopment in the Borough of Emerson.

8. Both the Borough and Atkins recognize the importance of milestones or benchmarks to insure the progress of the planning process. Therefore it is hereby

established that each party must recognize its obligation in order to further the interests of the others, and to mark those points in the process of planning and development that are critical to the interests of the other parties. Preliminary milestones for the initial steps are as follows:

- A. Atkins shall propose a traffic plan for Kinderkamack Road within 45 days of the exercise of the Letter of Intent by both parties.
- B. The parties will negotiate in good faith to finalize agreement on such plan between Emerson and Atkins within 30 days thereafter.
- C. Atkins shall present a preliminary plan for New Jersey Transit Corporation concurrently with its traffic plan and consistent with the traffic plan.
- D. The parties will use their best efforts to secure the conceptual approval of New Jersey Transit Corporation to such transit facility plan as they together agree upon within 60 days of Atkins presenting it to Emerson.
- E. Concurrently, but upon Emerson and Atkins agreement on a traffic and transit plan, they shall within 60 days of such agreement use their best efforts to secure the conceptual approval of the County. And within 30 days thereafter shall participate in an Emerson Town Meeting to present such plan to the public.

- F. Upon conceptual approvals by all parties, Atkins shall advise Emerson of any changes it determines may be needed to adjust the Borough's Redevelopment Plans.
- G. The Borough shall determine if it wishes to make such changes and, if it concurs with Atkins, the parties shall proceed with redevelopment activities. However, if the Borough determines not to make the proposed changes, either Atkins or the Borough may terminate this agreement.

Failure to accomplish the above benchmarks may form the basis for the termination of the obligation between the parties, termination being the sole and exclusive remedy of either party in this matter.

FURTHER ACTIVITIES

Emerson and Atkins agree that Atkins will further investigate alternative locations for the Kinderkamack Road railroad crossing and/or New Jersey Transit Corporation facilities, and alternate plans for the location of the right of way of the improved roadway. In that regard it has received traffic count information from Emerson as generated by Bergen County. With a preliminary alignment analysis and proposals, it will meet with Emerson in an effort to agree upon a workable alignment that provides for the goals above stated for all parties, all as necessary to address the foregoing stated benchmarks.

Atkins will expedite its efforts to obtain the concurrence of Bergen County on the concept of roadway relocation and/or improvement for Kinderkamack Road and the

railroad crossing as consistent with the terms of this letter. At the same time, it will expedite its efforts to advance the concept of both County and New Jersey Transit Corporation agreement to join in agreement as envisioned herein.

Atkins has considered the impact of recent court decisions concerning attacks upon the redevelopment process and, recognizing that the process in the Borough of Emerson had concluded without any challenge to the declaration that the area is in need of redevelopment, and the complex coincidence of the planning activities of New Jersey Transit Corporation and Bergen County, is willing to pursue this redevelopment through the agreement stated herein and such further agreements as may be desirable to implement the terms herein.

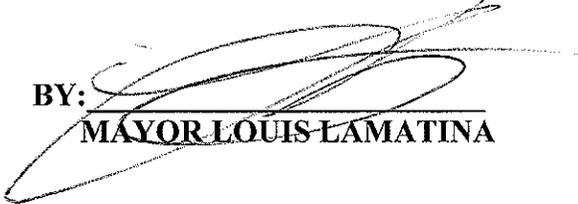
The Borough of Emerson recognizes that the complexity of the redevelopment has increased due to the noted factors and that it will continue to negotiate and participate with Atkins in good faith in order to achieve the purposes and intent of this agreement. The term of such efforts shall continue for a minimum of 6 months from the date hereof, provided that Atkins has made the benchmarks set forth in paragraph 8.

Pursuant to the Borough's request for proposals, Atkins will immediately pay to the Borough the amount of Twenty Five Thousand (\$25,000) Dollars to be held by the Borough solely for the purpose of defraying its costs of professional services with regard to this Agreement. Such amount shall be non-refundable except in the event that it exceeds the total costs to be paid from such escrow.

AGREED AND ACCEPTED:

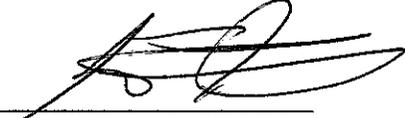
Dated: 9/4/07

BOROUGH OF EMERSON

BY: 
MAYOR LOUIS LAMATINA

Dated: 8/29/07

ATKINS REALTY GROUP

BY: 
ROBERT ATKINS
Managing Member

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