

AGREEMENT

This Agreement (“**Agreement**”) is made as of this 11th day of August, 2016 by and between **Edison University Properties, LLC** (“**EUP**”) and **PLANewark** (“**PLANewark**”), an unincorporated member organization, which is a project of **NJ Appleseed Public Interest Law Center, Inc.**, a New Jersey not-for-profit 510(c)(3) corporation. EUP and PLANewark are sometimes referred to herein together as the “**Parties**”.

Recitals

WHEREAS, EUP has submitted an application to the Board of Adjustment of the City of Newark (the “**Board**”) for property located at 92-94 Washington Street, Newark, New Jersey 07102, and designated on the tax maps of the City of Newark as Block 20, Lot 19 (the “**Property**”) for: (i) a variance pursuant to *N.J.S.A. 40:55D-70.d(2)* for the expansion of the adjacent preexisting, legal non-conforming surface parking lot by the addition of Lot 19; and (ii) preliminary and final site plan approval (collectively, the “**Application**”); and

WHEREAS, in 2014 EUP demolished a building that previously existed on the Property pursuant to a demolition permit issued by the City of Newark because of the unsafe condition of the structure; and

WHEREAS, the Property is located within the James Street Commons Historic District; and

WHEREAS, the Landmarks and Historic Preservation Commission (“**LHPC**”) was not notified of the issuance of the permit prior to the demolition of the building; and

WHEREAS, on February 3, 2016, EUP appeared before the LHPC in connection with the Application, and the LHPC approved the design elements of the Application – *i.e.*, proposed decorative fence to replace existing chain link fence, landscaped buffers including both shrubbery and trees, and the planting of two new street trees along the Bleeker Street frontage; and

WHEREAS, as conditions to approving the design elements of the Application, the LHPC required certain conditions as set forth in its Resolution; and

WHEREAS, as a result of the required staff review EUP agreed to extend the proposed landscaped buffers along Bleeker and Central, which buffers were proposed to be provided outside of the proposed decorative fence along the Bleeker Street and Central Avenue frontages, rather than inside the fence, requiring a deviation from the landscaping requirements of the *Living Downtown Plan* in the nature of a c(2) variance, and has modified its plans and the Application accordingly; and

WHEREAS, the Application is scheduled to be heard by the Board on August 11, 2016; and

WHEREAS, PLANewark has previously noted its appearance in opposition to the Application; and

WHEREAS, PLANewark has requested that EUP engage in a process with PLANewark’s appointed committee (which may include various community stakeholders, as hereinafter defined), to consider the possibility of redeveloping the Property and the parking lot adjacent to the Property for a use other than as a legal nonconforming surface parking lot; and

WHEREAS, Edison Properties, of which EUP is an affiliate, has articulated its philosophy regarding redevelopment of its properties on its website as follows: “Assembling properties into development sites and planning buildings for the completed sites is a driving focus of Edison Properties’ principles and its professional team.”; and

WHEREAS, EUP and PLANewark have resolved their issues regarding the Application and have agreed to the terms of this Agreement to memorialize their agreement with respect thereto.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, for good and valuable consideration, the sufficiency of which is acknowledged, and intending to be legally bound, EUP and PLANewark hereby agree as follows:

1. Abandonment of Opposition and Covenant Not to Sue. In consideration for EUP agreeing to the terms and conditions of this agreement, PLANewark, for itself and its members, agrees not to oppose the Application, and covenants and agrees not to file any appeals challenging the Board’s decision in the event the Board approves the Application and grants the requested use variance.
2. Design Elements. In consideration for PLANewark’s agreement not to oppose the application and agreement not to further contest the approvals, EUP agrees as follows:
 - a) Lighting. EUP shall shield the existing lighting and utilize LED light bulbs at the Property.
 - b) Buffering and Screening.
 - i) The planting buffer along the Washington Street frontage shall remain three (3’) feet wide as proposed in the Application. The shrubbery in the three-foot buffer shall be allowed to grow to the height of the tubular metal decorative fence to be installed along the Washington Street frontage as proposed in the Application and as approved by the LHPC.
 - ii) EUP shall increase the height of the decorative fence along the Washington Street frontage from four (4’) feet to five (5’) feet. The Parties believe that such change can be accomplished administratively – *i.e.*, without the requirement for further application to or approval by the LHPC. The applicable provisions of the *Living Downtown Plan* permit the fence to be “a minimum of 4’ tall and a maximum of 6’ tall”, so no variance would be required to increase the height from 4’ to 5’. EUP shall inquire of the zoning officer, municipal planner and municipal engineer as to whether such change can be accomplished administratively, and, if so, will modify its plans to provide for a 5’ fence. PLANewark agrees to support EUP’s efforts to get such change accomplished administratively.

iii) EUP agrees to seek permission from the City to install a “green fence” along the Bleeker Street and Central Avenue frontages of the Property, in lieu of the proposed 3’ buffer outside of the decorative fence, and not to exceed five (5’) feet in height. The Parties believe that such change can be accomplished administratively. EUP shall inquire of the zoning officer, municipal planner and municipal engineer as to whether such change can be accomplished administratively, and, if so, will modify its plans to provide for the “green fence”, and once installed shall maintain the “green fence”. PLANewark agrees to support EUP’s efforts to get such change accomplished administratively. EUP shall coordinate regarding the location of the planter boxes or other infrastructure needed to support the “green fence”, to keep to a minimum any intrusion onto the public right of way while at the same time not resulting in a reduction in parking area for the parking lot of which the Property is now a part as a result of the Approvals.

iv) If any of the foregoing cannot be accomplished without further application to or approval of the LHPC and the Board of Adjustment approves EUP’s Application as submitted, then after the approval of EUP’s Application EUP will request by separate application filed within 45 days after the approval of the Application that the Board grant an amended site plan approval incorporating the proposed design elements, and condition or coordinate its approval of such new application on making a subsequent and separate application to the LHPC for approval of the design elements only. The intention of the Parties is that, if granted, the use variance shall not be subject to reconsideration or further challenges. The Release and Covenant Not to Sue contained herein expressly extend to any such applications, use variances, approvals or amendments of the existing Approvals provided they are consistent with the terms of this Agreement.

c) Air Pump. EUP shall provide an air pump at the parking lot of which the Property is now a part as a result of the Approvals.

d) Electric Vehicle Charging Station. EUP shall provide an electric vehicle charging station at the parking lot of which the Property is now a part as a result of the Approvals.

e) Battery Charger. EUP shall provide a battery charger at the parking lot of which the Property is now a part as a result of the Approvals.

f) Bike Stalls. EUP shall consider adding bicycle stalls along the Bleeker Street frontage, if space is available and if the City is amenable to the bicycle stalls. If approvals are required for the installation of bicycle stalls from the Newark Planning Board, Board of Adjustment, or Landmarks & Historic Preservation Commission, then PLANewark shall support any required application. EUP shall not be required to pursue the application if the City is not amenable to the installation or the application is opposed, or to install the bicycle stalls if changes are required or conditions imposed that are unacceptable to EUP. The preferred bicycle rack is the Newark Bike Rack, designed by Damon Rich and manufactured in Newark by Mainsource MetalFab LLC at 59-61 Poinier Street.

g) Signage. Signage is not a part of the pending application. PLANewark has requested that EUP consider removing its existing sign at the corner of Washington Street and Central Avenue, and replacing it with a sign that is approximately mid-block on Washington

Street between Bleeker Street and Central Avenue. PLANewark also desires EUP to consider lowering the sign and making it somewhat smaller, all in accordance with EUP's reasonable business judgment and applicable legal requirements, including Newark's current signage ordinance. EUP agrees to apply, as a separate application and not as an amendment to the existing Approvals, to move the sign to approximately mid-block between Bleeker Street and Central, with the application reflecting the height and size acceptable to EUP after discussions with PLANewark. This includes all approvals required to relocate and, as applicable, reconfigure, the signage from the Newark Planning Board, the Board, or LHPC. However, EUP shall be entitled, if it so desires, to withdraw (or not file) any application if PLANewark does not support the application, or if the application faces other opposition, or if changes are required or conditions imposed by any of the approving bodies that are not acceptable to EUP.

3. Compliance With Laws and Regulations. EUP will abide by all historic preservation laws and regulations applicable to the future development of the Property (including the parking lot of which the Property is now a part as a result of the Approvals).
4. Community Liaison. EUP will designate a person to act as its liaison to the Historic James Street Commons Neighborhood Association (the "**Association**") on an ongoing basis, and provide the name and contact information of the liaison to the Association. The liaison shall be the Association's initial point of contact with EUP and Edison Properties regarding all matters arising out of or relating to the Property or EUP's operations at the Property.
5. Weekend Availability. When EUP is not operating the parking lot for its business purposes on weekends, it has, from time to time, entered into license agreements with neighborhood non-profit organizations. Those license agreements allow the neighborhood nonprofit organizations, without payment of a license fee to EUP, to allow their guests to park in the parking lot, free of charge. Pursuant to such licenses no fee is charged by or payment made to either EUP or the non-profit organization for such parking. EUP has no plans to change this practice at this time, though EUP expressly reserves the right to do so at any time, in its business judgment and sole discretion. For so long as EUP continues such practice, on any weekend when EUP is not operating the parking lot, if a neighborhood non-profit organization requests such a license, EUP will continue to consider entering into such license agreements, (i) with neighborhood nonprofit organizations, (ii) only at such times and for such purposes as EUP in its sole discretion determines to be acceptable, and (iii) utilizing EUP's then-standard form of license agreement, and subject to all other requirements of EUP's risk management program and applicable law.
6. Future Redevelopment Options. PLANewark has requested that EUP consider redeveloping the Washington Street site for a use or uses other than surface parking (which may include, but shall not be limited to, structured parking), within a specific time frame. EUP agrees to commit to a process, whereby over a period of up to one (1) year from the date that the Board of Adjustment's approval of EUP's request to expand its parking lot is memorialized and becomes final PLANewark and EUP will work together to identify possible redevelopment options for the Washington Street site (each a "**Redevelopment Option**" and, if more than one, the "**Redevelopment Options**").

The first phase of the process will consist of several meetings between the Parties and their appointed representatives arriving at a set of working assumptions on which the consideration of Redevelopment Options will be based, and will include identifying stakeholders who may be invited to participate as PLANewark's representatives in the process (which may include members of community groups and neighborhood businesses and residents, but shall not include business competitors or developers), potential uses for the Property, and potential sources of financing (both private and public) for redevelopment of the site, over a period of up to six (6) months. No part of the process will be open to the general public, but each Party will have the right to appoint representatives to attend on its behalf. Each Party will be responsible to ensure that its representatives comport themselves in a civil and businesslike manner.

The second phase will proceed over the ensuing six (6) months, if as a result of the first phase one or more Redevelopment Options have been identified. It will be focused on potential concept plans for the identified Redevelopment Option(s) and satisfaction of criteria (i) through (iii) below, and will continue to be between the Parties and their appointed representatives, unless the Parties mutually agree otherwise. EUP may utilize its own staff and personnel to prepare such concept plans, and nothing herein shall be interpreted as obligating EUP to engage architects or other professionals to do so. In order for a Redevelopment Option to be considered it must be (i) legally permissible, (ii) supported by market analyses demonstrating a current demand for the use(s), (iii) financeable (which may include local or State governmental financial incentives, if applicable), and (iv) acceptable to EUP's members and their governing Boards as consistent with their investment and development strategies and requirements.

The decision as to whether and how to redevelop the site, and when to do so, shall at all times remain solely EUP's as the property owner. At the end of the second phase EUP, together with PLANewark, will present to EUP's governing Boards the Redevelopment Option or Options developed, so that the governing Boards can consider them.

If at the end of the first phase of the process described above no Redevelopment Option is adopted by the governing Boards, and thereafter there is a material change in the underlying market conditions that results in a new Redevelopment Option meeting the above criteria (i) through (iii), PLANewark shall have the right to contact EUP and present to EUP's management the information that leads PLANewark to believe there has been a material change. If EUP's management agrees that PLANewark has presented a new Redevelopment Option based on such a material change, EUP shall permit PLANewark to present the new Redevelopment Option to the governing Boards for consideration in light of criteria (i) through (iii) above, and to request commencement of the second phase. As always, the decision as to whether and how to redevelop the site, and when to do so, shall at all times remain solely EUP's as the property owner.

7. No Construction Against Draftsperson. This Agreement shall be deemed to have been drafted jointly by counsel for the respective Parties, and there shall be no inference drawn against any Party as a result of their participation in the drafting of this Agreement.

8. Successors and Assigns. This Agreement is binding on the Parties hereto and their respective successors and/or assigns.
9. Confidentiality. The Parties agree that during the negotiation process, their discussions and the proposed terms of this Agreement were and remain confidential. However, the agreement itself is a public document and its terms will be shared with City officials, as specifically provided for and as necessary to carry out the intent of this Agreement.
10. General. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of New Jersey applicable to contracts to be performed wholly within the State of New Jersey. The headings used herein are for reference only and shall not affect the construction of this Agreement. This Agreement represents the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations and discussions between the Parties hereto, and their respective counsel. Any amendment to this Agreement must be in writing signed by duly authorized representatives of the Parties hereto and stating the intent of the Parties to amend the Agreement. This Agreement may be executed by each Party in separate counterparts, each of which shall be deemed an original and constitute one document
11. Enforcement. In the event either Party (the “**Noticing Party**”) believes in good faith that the other Party (the “**Other Party**”) is in default in the performance of its obligations in accordance with the terms of this Agreement, then such Party shall provide a written notice to the Other Party detailing the alleged failure to perform and providing an opportunity of not less than thirty (30) days from receipt of the notice to effectuate the cure; provided, that if such cure cannot be effectuated within thirty (30) days then, so long as the Other Party is diligently proceeding to cure, the Other Party will have such time as is reasonably required to effectuate the cure. If the cure is not effectuated within the cure period, then the Noticing Party shall have all rights and remedies available to it at law or in equity to enforce the terms of this Agreement.
12. Severability. If any term or condition of this Agreement or any application of this Agreement shall be determined to be contrary to the laws of the State of New Jersey or the United States, then such term or condition or application shall not be deemed valid except to the extent permitted by law, but all other terms or conditions or applications shall continue in full force or effect.
13. Informed and Voluntary. The Parties acknowledge that each of them has consulted with legal counsel of their own selection about this Agreement. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

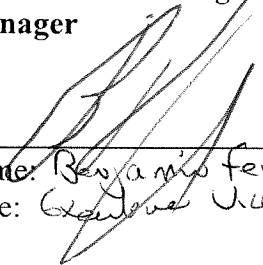
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SIGNATURE PAGE FOLLOWS

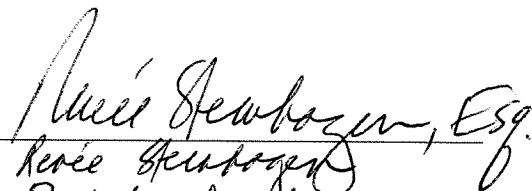
IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and have caused these presents to be signed by their proper corporate officers and members the day and year first above written.

Edison University Properties, LLC

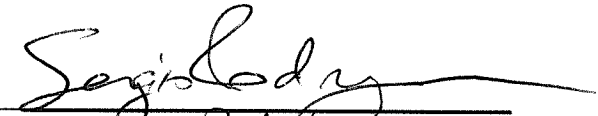
By: Edison Parking Corporation,
Manager

By: 
Name: Benjamin Feuerbaum
Title: General Vice President

**NJ Appleseed Public Interest Law Center,
Inc.,**

By: 
Name: Renee Steinbogen
Title: Executive Director

PLANewark

By: 
Name: Sergio Rodriguez
Title: Vice Chair