



# *CITY COUNCIL*

## *Committee of the Whole*

**Monday, March 21, 2022**  
***Immediately following the***  
***Redistricting Public Hearing***  
**Meeting Agenda**

*The City Council Committee of the Whole meetings are filmed and can be viewed LIVE while the meeting is taking place via the attached Zoom link and dial-in phone number, on Facebook and on BCTV MAC Channel 99 or at your convenience at <https://www.readingpa.gov/content/city-council-video>.*

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Passcode: 747276

Or One tap mobile:

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Webinar ID: 884 4572 1204

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### **I. Capital Projects Update – K. Zeiber**

### **II. Pagoda**

### **III. Public Works Monthly**

- Existing Project Updates (different division each month)
- Accomplishments
- Report on staffing levels and needs

### **IV. Community and Economic Development Monthly**

- Update on projects in the CDBG Action Plan

- Amount in Un-programmed Funds (unspent HUD funding)
- Division Update (rotating through divisions)
- Planning and Zoning Updates

**V. Executive Session – contract and potential litigation**

## EXHIBIT A

### AGREEMENT

This Agreement (“**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_, 2022 by and between the City of Reading (the “**City**”), a public body organized and existing under the laws of the Commonwealth of Pennsylvania and having its principal office at 815 Washington Street, Reading, Berks County, Pennsylvania,

AND

J & A Court, LLC (“**J & A Court**”), a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania and having its registered address at 5071 Cherrywood Drive, Mohnton, PA 19540. The City and J & A Court are hereinafter sometimes referred to as a “**Party**” and collectively as the “**Parties**”.

#### Background

J & A Court is the owner in fee simple of certain real property known as 148 North Fourth Street in the City of Reading, Berks County, Pennsylvania, identified as Property ID No. 06530774711278 together with all appurtenances, fixtures, buildings and other improvements thereon (collectively, the “**Property**”). The Property is more fully described in **Exhibit “A”** which is attached hereto and incorporated herein by reference.

The City is mortgagee with respect to that certain Mortgage dated December 21, 1990 recorded on December 24, 1990 in the Office of the Recorder of Deeds of Berks County, Pennsylvania in Book 2184, Page 1187 (“**City Mortgage A**”).

The City is mortgagee with respect to that certain Mortgage dated December 21, 1990 recorded on December 24, 1990 in the Office of the Recorder of Deeds of Berks County, Pennsylvania in Book 2184, Page 1217 (“**City Mortgage B**”).

The City is mortgagee with respect to that certain Mortgage dated December 21, 1990 recorded on December 24, 1990 in the Office of the Recorder of Deeds of Berks County, Pennsylvania in Book 2184, Page 1225 (“**City Mortgage C**”).

City Mortgage A, City Mortgage B and City Mortgage C are hereinafter collectively referred to as the “**City Mortgages**”.

Certain controversies and disputes have arisen between the City and J & A Court with respect to the City Mortgages including the enforceability thereof which in order to avoid costly litigation, the Parties have now resolved and settled in accordance with the provisions of this Agreement.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, and in consideration of the provisions herein contained, the legal sufficiency of which is acknowledged by each of the Parties, the Parties agree as follows:

1. Incorporation. The provisions of the background section set forth above are incorporated herein by reference and constitute an integral part of this Agreement as if set forth herein in their entirety.

2. Settlement/No Admission of Liability. This Agreement is made and entered into by the Parties by way of settlement and solely for the purpose of avoiding the burden and expense of litigation which would otherwise be imposed upon the Parties if the controversies and disputes between them remained unsettled. This Agreement shall not in any way constitute or be construed or deemed to be an admission or concession of liability on the part of either Party with respect to any matter.

3. Settlement Payment. Within five (5) business days following full execution of this Agreement, J & A Court shall pay to the City the settlement amount of Two Hundred Thousand Dollars (\$200,000) ("**Settlement Payment**").

4. Additional Consideration.

a. J & A Court shall directly or indirectly invest the sum of Six Hundred Thousand Dollars (\$600,000) on one (1) or more projects located within the City selected by J & A Court in its sole discretion.

b. Within sixty (60) calendar days following full execution of this Agreement, J & A Court shall donate to the City the sum of Fifty Thousand Dollars (\$50,000) to be used by the City with respect to the improvement project involving the 9<sup>th</sup> & Marion Fire Station.

5. Release /Satisfaction/Termination. In consideration of the Settlement Payment:

a. The City hereby unconditionally and irrevocably remises, releases and forever discharges J & A Court (including all of its affiliates and its subsidiaries) and each of its past, present and future members, managers, officers, agents, servants, employees, attorneys and other representatives of any and every nature, and the respective heirs, representatives, successors and assigns of each of the foregoing (all of the foregoing being hereinafter individually and collectively referred to as "**Releasees**") of and from any and all, and all manner of, actions, causes of action, proceedings, suits, debts, dues, accounts, indebtedness bonds, covenants, agreements (other than this Agreement), contracts, instruments, promissory notes, mortgages (including each of the City Mortgages), judgments, liabilities, claims and demands of any and every nature in law or in equity, known and unknown (individually and collectively, "**Claims**"), which against any of the Releasees, the City ever had, now has or which it or any of its successors or assigns or any of them hereafter can, shall or may have for or by reason of any cause, matter or thing whatsoever from the beginning of the world to the date of this Agreement. The provisions of this

Section are intended to constitute a full, complete and general release without exception by the City of each of the Releasees.

- b. The City hereby unconditionally and irrevocably releases and forever discharges the Property of and from any and all, and all manner of, Claims and hereby terminates all agreements, contracts, instruments and other documents of any nature with or for the benefit of the City which affect the Property or impose any conditions, limitations or restrictions of any nature thereon.
- c. In furtherance of the provisions of this Section, concurrently with the execution of this Agreement, the City shall execute and record in the Office of the Recorder of Deeds of Berks County, Pennsylvania, the following:
  - i. Mortgage Satisfaction Pieces (collectively, the "**Mortgage Satisfaction Pieces**") with respect to the City Mortgages in the form of **Exhibits "B", "C" and "D"** respectively, all of which are attached hereto and incorporated herein by reference, and
  - ii. Such other instruments and documents as are reasonably necessary to effect the intent of this Agreement including Sections 4.a. and 4.b. hereof.

6. Representations.

- a. In order to induce the City to execute this Agreement and perform its duties and obligations under this Agreement, J & A Court hereby represents and warrants to the City that the following are true and correct as of the date of this Agreement and shall continue to be true and correct thereafter:
  - i. J & A Court has all requisite power and lawful authority to execute this Agreement and to perform its duties and obligations hereunder.
  - ii. No consent, approval, ratification or authorization of any nature other than that already obtained by J & A Court prior to the date of this Agreement is necessary to make this Agreement legally binding upon J & A Court.
  - iii. The person executing this Agreement on behalf of J & A Court is authorized to do so.
  - iv. When executed, this Agreement shall constitute the legal, valid and binding obligation of J & A Court enforceable against J & A Court in accordance with the terms and conditions set forth herein.
- b. In order to induce J & A Court to execute this Agreement and perform its duties and obligations under this Agreement, the City hereby represents and warrants to J & A Court that the following are true and correct as of the date of this Agreement and shall continue to be true and correct thereafter:

- i. The City is the sole legal, equitable and beneficial owner of the City Mortgages and no other person or entity of any nature, including any governmental agency or authority, has any right, title or interest of any nature in or to any of the City Mortgages or any rights to enforce the same.
- ii. The City has all requisite power and lawful authority to execute this Agreement and to perform its duties and obligations hereunder.
- iii. No consent, approval, ratification or authorization of any nature other than that already obtained by the City prior to the date of this Agreement is necessary to make this Agreement legally binding upon the City.
- iv. The persons executing this Agreement on behalf of the City are authorized to do so.
- v. When executed, this Agreement shall constitute the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms and conditions set forth herein.
- vi. Upon recordation of the Mortgage Satisfaction Pieces in the Office of the Recorder of Deeds of Berks County, the City shall have no lien or encumbrance of any nature upon the Property.

7. Opinions of Counsel.

- a. Concurrently with the execution of this Agreement, J & A Court shall cause its counsel to issue an opinion letter addressed to the City that to the best knowledge of such counsel, the representations set forth in Section 5.a. of this Agreement are true and correct.
- b. Concurrently with the execution of this Agreement, the City shall cause the City Solicitor to issue an opinion letter addressed to J & A Court that to the best knowledge of such counsel, the representations set forth in Section 5.b. of this Agreement are true and correct.

8. Additional Document. Upon request of either Party, the other Party shall execute and deliver to the requesting Party such additional documents in recordable form as may be necessary or desirable to effectuate the intent of this Agreement.

9. Interpretation. The word "including" shall be a word of enlargement rather than a word of limitation and shall be deemed to mean "including but not limited to" rather than "including only". Each Party has been represented by counsel who has participated in the drafting and negotiation of this Agreement and the language hereof shall not be construed for or against either Party.

10. Waiver. No failure on the part of either Party to exercise and no delay in exercising any right or remedy under this Agreement or permitted or provided by statute, at law or in equity shall operate as a waiver thereof nor an estoppel thereto, nor shall any single or partial exercise by

either Party to this Agreement of any such right or remedy preclude any other or future exercise thereof, or the exercise of any other right or remedy.

11. Captions. The caption or heading of each section of this Agreement does not constitute a part of this Agreement but is for informational purposes only.

12. Severability. If any provision of this Agreement be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end, the provisions of this Agreement are declared severable.

13. Integration. This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof, supersedes all prior conversations, discussions and negotiations with respect to the subject matter hereof and may not be amended, modified or terminated except in writing and duly executed by the Parties hereto.

14. Time. Time shall be of the essence of this Agreement.

15. Assignment. Neither of the Parties may assign this Agreement or any rights hereunder without the prior written consent of the other Party.

16. Parties Bound. This Agreement shall be binding upon each of the Parties and their respective successors and assigns.

17. Counterpart/Facsimile. This Agreement may be executed in counterparts, each of which counterpart shall be an original and all of which taken together shall constitute one and the same Agreement. The signatures of the Parties hereto may be delivered by facsimile.

18. Jurisdiction. This Agreement shall be deemed to be made under and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law. Each of the Parties irrevocably and unconditionally:

- a. agrees that any suit, action or other legal proceeding (collectively "**Suit**") arising out of or related to this Agreement or otherwise between the Parties shall be brought and adjudicated in any court of the Commonwealth of Pennsylvania,
- b. submits to the exclusive jurisdiction of such court for the purpose of any such Suit, and
- c. waives and agrees not to assert by way of motion, as a defense or otherwise in any such Suit, any claim that such Party is not subject to the jurisdiction of any of the above courts, that such Suit is brought in an inconvenient forum or that the venue of such Suit is improper.

19. Law. This Agreement and all controversies hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law.

**IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND HEREBY**, the Parties have caused this Agreement to be executed as of the day and year first above written.

CITY OF READING

By: \_\_\_\_\_

Attest: \_\_\_\_\_

J & A COURT, LLC

By: \_\_\_\_\_

James P. Radwanski, Manager