CENTER CITY PARTNERS, LLC, Plaintiff, vs. PATERSON PARKING AUTHORITY, Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-_____ Submitted: April 3, 2024 On Appeal from an Interlocutory Order, dated March 15, 2024, of the: CHANCERY DIVISION – BERGEN COUNTY DOCKET NO. BER-C-103-21 CIVIL ACTION Sat Below: Edward A. Jerejian, P.J.Ch.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO APPEAL MARCH 15, 2024 ORDER AND DECISION PURSUANT TO *R.* 2:5-6(a)

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PRELIMINARY STATEMENT

In this case, sophisticated private and public entities, represented by sophisticated counsel, negotiated a contract reflecting the agreed upon economic realities extant at the time of negotiation. Those negotiations resulted in a Redevelopment Agreement, Operating Agreement and Ground Lease (all as further defined herein) that, among other rights and responsibilities apportioned among the parties pursuant to extensive negotiations, provided the Parking Authority of the City of Paterson (the "Authority") the right to receive the first $1,600,000 in revenue from the operation of a parking garage supporting in part a shopping mall built by Center City Partners, LLC ("Center City"). Center City built the mall on land leased from the Authority (for $1.00 per year for 99 years) that had previously generated $1,200,000 annually for the Authority.

Almost fifteen (15) years after the fact, and after years of failing and failed operations, Center City filed suit to reform these contracts because the real estate deal *it requested and agreed to* did not work out in their favor. The trial court, despite no evidence of any mutual mistake, or fraud on the part of the Authority, reformed the Redevelopment Agreement and Operating Agreement and ordered that Center City participate in revenue sharing beginning at the first dollar received. That erroneously entered order, if not immediately reviewed and reversed by this Court, will cause irreparable damage to the Authority through the expenditure of public

funds to pay the fee award, leaving the Authority with having to recoup $499,007.77 in fees and costs paid, and adversely impacting the Authority's ability to pay its existing bondholders for the operation of its entire parking system.

Accordingly, the Authority seeks leave, pursuant to *R*. 2:5-6(a), for interlocutory review and reversal of the March 15, 2024 Order (the "Order") of the Superior Court of New Jersey, Chancery Division, Bergen Vicinage, which: (i) granted reformation of agreement by and among the Authority, the City of Paterson (the "City") and Center City, dated February 24, 2005, as amended May 11, 2012 (the "Redevelopment Agreement") and the Operating Agreement between the Authority and Center City, dated April 17, 2006 (the "Operating Agreement"), and (ii) awarded Center City $499,007.77 in fees as a result of said reformation.

The Redevelopment Agreement contemplated a phased redevelopment project, which included the construction of a shopping mall (the "Center City Mall"), and an underground parking garage (the "Project Garage"), residential and commercial buildings (the "Residential Component" and the "Office Component," respectively) and parking facilities (the "Authority Garage") to service the customers, residents and occupants of these buildings and the surrounding Central Business District of the City (collectively, the "Project"). The Operating Agreement

sets forth the rights and obligations of the Authority and Center City with regard to the operation of the Project Garage to support the Center City Mall and other phases, if those phases were to be built.

Section 8.6(a) of the Redevelopment Agreement provided for a revenue sharing calculation by which the Authority and Center City would receive shares of certain revenue in excess of $1,600,000.00 as of 2005, which amount would be adjusted in accordance with the Consumer Price Index (CPI) on an annual basis. This revenue threshold was negotiated based on the Authority's losing $1,200,000 in revenue from the operation of the surface parking lots that were to be, and ultimately were, displaced by the Project. Center City would receive 66.66% of revenue, if any, received in excess of $1,600,000.

The Order reformed the Redevelopment Agreement to remove the monetary threshold of $1,600,000 above which the Authority and Center City would share "excess profits" pursuant to the Redevelopment Agreement, thereby allowing Center City to receive 66.66% of the Center City Mall Garage parking revenue generated after expenses, with the Authority receiving a 33.33% share of revenue. The Order also directed the Authority to pay Center City $499,007.77 in fees as a result of said reformation, retroactive to August 2019, the date Center City filed its initial Complaint in this matter. Respectfully, the trial court erred in reforming these agreements and awarding Center City fees as a result. As set forth further herein,

Center City has not met its burden of establishing the legal standard for reformation of contract.

The urgency in this matter for the Authority remains clear. Reformation of the Redevelopment Agreement and Operating Agreement consistent with the terms of the Order will have a substantial negative impact on the Authority's statutory purpose,[1] pursuant to the Parking Authority Law, *N.J.S.A*. 40:11A-1, *et seq*., of maintaining a public parking system, as well as its ability to pay its existing bondholders. Pursuant to the Order, Center City and the Authority are required to meet **within thirty (30) days** "to jointly reform the Redevelopment Agreement and Operating Agreement consistent with the Court's ruling." The interests of justice require that leave to appeal the Order be granted, as the record below contains no allegation of any mutual mistake of the parties with respect to either agreement, and

[1] *See,* specifically, relevant the relevant provisions of *N.J.S.A*. 40:11A-20 ("The provisions of this act shall constitute a part of any and all contracts entered into by an authority created hereunder for the benefit and security of the creditors of such authority, and the State of New Jersey does hereby pledge to and agree with any person, firm or corporation or Federal agency subscribing to or acquiring the bonds issued by the authority for the construction, extension, improvement or enlargement of any project or facilities or part thereof that the State of New Jersey will not limit or alter the rights hereby vested in the authority and in the holders of such bonds until all bonds at any time issued together with the interest thereon and any premiums upon the redemption thereof are fully met and discharged."). *See also*, *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1977), wherein the Court, in the context of the exercise of legislative authority, recognized the significant limitations in attempting to impair existing contracts with bondholders.

no articulation of any instance of fraud or unconscionable conduct on the part of the Authority – elements which are essential in granting the extraordinary remedy of reformation of contract.

The trial court was incorrect in reforming the Redevelopment Agreement and Operating Agreement, and leave to appeal should be granted in the interests of justice, particularly given the public interest involved in the Authority's operation.

STATEMENT OF FACTS

In or around 2003, the parties commenced negotiations of the Redevelopment Agreement and Operating Agreement. Da528. The Authority, Center City and the City were represented by competent counsel throughout the negotiation of these agreements. Da262. The Redevelopment Agreement concerned the redevelopment of specific parcels of land owned by the Authority in the section of the City located adjacent to the Passaic County Courthouse and commonly known as Center City Paterson, and provided for a phased redevelopment project, which anticipated the construction of a shopping mall, residential and commercial buildings and parking facilities to service the customers, residents and occupants of these buildings, if any, when built (the "Project," as defined herein). Da102-Da106.

Through this phased project approach, the pre-existing parking operations conducted upon the three (3) parcels owned by the Authority in the Project area

would be relocated as each of the following three project components was constructed by Center City:

> (i) the Center City Mall, as well as the Project Garage, which Project Garage would be (and is) operated by the Authority pursuant to the Operating Agreement;
> (ii) a building containing retail and office use of approximately 8,200 square feet (the "Office Project"); and
> (iii) a residential building containing 160-220 market rate units (the "Residential Project" and together with the Center City Mall and the Office Project, the "Project," as defined above). Da102-Da106

The Redevelopment Agreement also provided for a revenue sharing calculation by which the Authority and Center City would receive shares of all revenue in excess of $1,600,000.00 as of 2005, which amount would be adjusted in accordance with the Consumer Price Index (CPI) on an annual basis. Da62-Da63.

The Authority and Center City also executed a ground lease, dated April 17, 2006 (the “Ground Lease”), for the land underlying the Center City Mall, pursuant to Section 8.5 of the Redevelopment Agreement. Da59-Da62. Pursuant to the Ground Lease, Center City leased the land underlying the Center City Mall and Project Garage from the Authority for a ninety-nine (99) year term at a total cost of $1.00 per year. Da60.

The Operating Agreement set forth the terms by which Center City would maintain and the Authority would operate and manage the Project Garage. Da190. Specifically, the Authority was required to establish rents, rates, fees and charges to

be collected by customers of the Project Garage pursuant to the terms set forth in the Operating Agreement. Da207-Da208.

The Operating Agreement further provided that Center City was required to pay an Operating Fee to the Authority in the amount of $24,000.00 per year, with a $75.00 annual fee for each space in excess of 300 spaces. Da210-Da211. Center City was also required to maintain the Project Garage and pay direct payroll and benefits of Authority employees assigned to the Project Garage. Da210-Da211. The Authority and Center City were also required to work cooperatively to establish a validation system for the Project Garage. Da214. The Redevelopment Agreement, Ground Lease, and Operating Agreement were therefore contemplated as one cohesive transaction, and therefore each cannot be looked at in a vacuum. The reformation of the revenue sharing calculation in the Redevelopment Agreement, while leaving undisturbed the lease of the land underlying the Center City Mall for nominal consideration is antithetical to the basis of the bargain between the parties.

In or around June 2009, Center City completed construction of the Center City Mall. Pursuant to the project schedule set forth in the Redevelopment Agreement, Center City was required to (i) commence construction of the Residential Project upon completion of the Center City Mall, and (ii) commence construction of the Office Project upon completion of the Project Garage. Da118-Da120. Center City never moved forward with construction of the Office Project or Residential Project.

In addition to the three Project components to be constructed by Center City, the Redevelopment Agreement further provided for the construction and operation by the Authority of an above-ground parking facility to address additional parking demand that would be generated by the Center City Mall, the Office Project and the Residential Project (the "Authority Garage"). Da104. Pursuant to the project schedule set forth in the Redevelopment Agreement, the Authority was required to commence construction of the Authority Garage upon completion of the Project Garage. Da118-Da120.

Existing economic conditions in 2007 and 2008 impacted the viability of the Residential Project, Office Project and Authority Garage. Da263-Da264. Pursuant to Section 8.7 of the Redevelopment Agreement, the Authority and Center City acknowledged that the consent of Financial Security Assurance, Inc. ("FSA," now known as Assured Guaranty and referred to herein as "Assured"), the third-party insurer of the Authority's outstanding parking revenue bonds, was required as an express condition precedent prior to undertaking any action or issuing any additional obligations to finance the construction of the Authority Garage. Da63-Da64.

On May 11, 2012, the Authority, the City and Center City amended the Redevelopment Agreement to permit a supermarket use as part of the Center City Mall and to develop the terms and conditions of the parking validation system for

the Project Garage. Da240. Center City then waited more than seven (7) years to initiate the present action.

PROCEDURAL HISTORY

This action was initiated by Center City by way of Complaint filed in August 2019, as amended May 4, 2021, which set forth various allegations with respect to the Redevelopment Agreement and the Operating Agreement. Through the Amended Complaint, Center City sought relief as follows:

> (i) specific performance compelling the Authority to construct the Authority Garage and release the surface lot parcel to Center City for construction of the Office Project and Residential Project, and enjoining the Authority from expending resources on any parking facility "in the vicinity" of the Project Garage;
> (ii) a demand to compel accounting of the Authority's operations and finances of the Project Garage;
> (iii) reformation of the Redevelopment Agreement and Operating Agreement to create new parking rate standards for the Project Garage;
> (iv) reformation of the Redevelopment Agreement to account for the Office Project, Residential Project and Authority Garage not being constructed, directing all capital and operating expenses of the Project Garage be paid from general revenue of the Project Garage and directing that Center City retain all net revenue of the Project Garage;
> (v) rescission of the Operating Agreement; and
> (vi) demand for alleged damages related to breach of contract, breach of the obligation of good faith and fair dealing, unjust enrichment and breach of fiduciary duty with respect to the Redevelopment Agreement and Operating Agreement.

The Authority, on February 18, 2022, filed a motion for summary judgment as to all counts of the Amended Complaint, which motion was denied on March 22, 2022. This matter went to trial in March and April of 2022. On June 29, 2022, the

Court rendered an opinion in the present matter (the "Trial Opinion"), Da626, which was memorialized by an order, dated June 30, 2022 (the "Trial Order"). Da669-Da674. Pursuant to the Trial Order, on November 8, 2022, the Authority prepared and submitted a request to Assured requesting consent for the construction and financing of the Authority Garage (the "Consent Request"). Da675-Da703. On December 28, 2022, Assured responded to the Consent Request by indicating that it would not consent to the financing and construction of the Authority Garage. Da704.

On January 24, 2023, based upon Assured's denial of consent and in accordance with the Order, the Parties met and conferred to discuss potential revisions to the finance and operation provisions of the Redevelopment Agreement. The Parties did not reach an agreement on that date, and thereafter exchanged proposals through electronic mail between January 25, 2023 and February 15, 2023. On February 27, 2023, the Parties determined that negotiations were at an impasse, and advised the Court that post-judgment applications would be necessary to resolve this matter.

Post-judgment applications were submitted by the parties on May 12, 2023. On March 15, 2024, the Court issued the order which, relevant to the present application, (i) granted reformation of a Redevelopment Agreement and the Operating Agreement to remove the $1,600,000 threshold in Section 8.6 of the

Redevelopment Agreement to allow Center City to receive 66.66% of all revenue of the Project Garage after expenses, and (ii) awarded Center City $499,007.77 in fees as a result of said reformation, which was made retroactive to August 2019 when the initial Complaint was filed.

Pursuant to the Order, the trial court retained jurisdiction to oversee the parties' actions in effectuating the terms set forth therein. For this reason, the matter is properly before this Court on there this application for leave to appeal the Order pursuant to *R.* 2:5-6(a).

LEGAL ARGUMENT

THE STANDARD FOR LEAVE TO APPEAL

Pursuant to *R.* 2:2-4, the Appellate Division may grant leave to appeal, in the *interests of justice*, from an interlocutory order of a trial court. *See*, *Caggiano v. Fontoura*, 354 N.J. Super. 111, 124 (App. Div. 2002); *Golden Estates v. Continental Cas.*, 317 N.J. Super. 82, 88 (App. Div. 1998). The authority to grant interlocutory appellate review is discretionary, and usually runs counter to judicial policy that favors an "'uninterrupted proceeding at the trial level with a single and complete [appellate] review.'" *State v. Roland* 100 N.J. 187, 205 (1985) (citations omitted). Interlocutory appellate review, however, is clearly appropriate *where a matter of public interest is implicated* – such as the case here, where any reformation of the Redevelopment Agreement, as set forth in the Order, significantly impacts the

Authority's revenue and its ability to carry out its statutory functions. Reforming the Redevelopment Agreement in a way that alters the statutory rights vested in the Authority and its bondholders by decreasing the Authority's share of revenue will impact on the Authority's entire parking system, including Assured's interests therein, and the ability of the Authority to pay those existing bondholders.

Because implementation of the terms of the Order must begin within thirty (30) days of March 15, 2024, the implications for the public interest require that the Authority seeks leave to appeal the Order at this juncture.

POINT ONE

THE INTERESTS OF JUSTICE REQUIRE A GRANT OF LEAVE TO APPEAL THE MARCH 15, 2024 ORDER OF THE TRIAL COURT (Da1)

R. 1:1-2 provides that the Rules of Court "shall be construed to secure a just determination, simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay."

As the record below demonstrates, the Authority has not acted in bad faith, nor has it engaged in any fraudulent conduct, there was no evidence of mistake by either party, and the Redevelopment Agreement and Operating Agreement should therefore not be reformed as required by the Order. Case law provides that the reformation of a contract is an equitable remedy, but only available when there exists "either mutual mistake or unilateral mistake by one party and fraud or

unconscionable conduct by the other." *Dugan Constr. Co. v. N.J. Tpk. Auth*., 398 N.J. Super. 229, 242-43 (App. Div. 2008), *certif. denied*, 196 N.J. 346 (2008) (quoting *St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden*, 88 N.J. 571, 577 (1982)).

It is required "for reformation for mutual mistake that the minds of the parties have met and reached a prior existing agreement, which the written document fails to express." *Bonnco Petrol, Inc. v. Epstein*, 115 N.J. 599, 608 (1989) (internal citations omitted). Where no mutual mistake exists, reformation of a contract may be granted only when the facts of the case give rise to equitable fraud. *Id*. at 609. Where reformation is appropriate, the purpose "is to restore the parties to the status quo ante and prevent the party who is responsible for the misrepresentations from gaining a benefit." *Id*. at 612. Courts have properly viewed reformation as an "extraordinary remedy." *Martinez v. John Hancock Mutual Life Ins. Co*., 145 N.J. Super. 301, 312 (App. Div. 1976), certif. denied, 74 N.J. 253 (1977) (internal citations omitted).

With regard to the present matter, the Authority, Center City and the City exhaustively negotiated the terms of the Redevelopment Agreement and Operating Agreement, and all parties were represented by competent counsel and financial professionals during said negotiations. There are no allegations in the record of any "mutual mistake" of the parties as to either of the agreements at issue, and Center

City has failed to demonstrate any instance of fraud or unconscionable conduct by the Authority.

The trial court has also made note of this fact ("I don't believe that the Parking Authority was dealing in bad faith or defrauding Center City or somehow entered into this massive reconstruction project, which is extremely beneficial to the City of Paterson and its citizens and the public, where they duped them into this and we're never going to build this."). Da651. To be clear, the terms of the Redevelopment Agreement and Operating Agreement accurately reflect the terms agreed upon by the Authority, the City and Center City. The negotiation and execution of a series of agreements that one party now seeks to avoid does not support any charge of fraud or unconscionable conduct on the part of the Authority. In the interests of justice, the Authority should be permitted the opportunity to appeal the determination of the trial court at this time based on the trial court's improper application of the standard for reformation of contract.

CONCLUSION

The Authority respectfully requests that the Court grant this motion, and grant leave to appeal the March 15, 2024 Order of the trial court.

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Dated: April 3, 2024

CENTER CITY PARTNERS, LLC, Plaintiff/Appellee, vs. PATERSON PARKING AUTHORITY, Defendant/Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002593-23 Submitted: June 24, 2024 On Appeal from an Interlocutory Order, dated March 15, 2024, of the: CHANCERY DIVISION – BERGEN COUNTY DOCKET NO. BER-C-103-21 CIVIL ACTION Sat Below: Edward A. Jerejian, P.J.Ch.

BRIEF ON BEHALF OF APPELLANT PARKING AUTHORITY OF THE CITY OF PATERSON

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PRELIMINARY STATEMENT

In the present matter, sophisticated parties with respect to real estate and development projects, represented by competent counsel and financial professionals, negotiated and committed to writing contracts that reflected the agreed upon terms at the time of negotiation. The parties executed a Redevelopment Agreement, an Operating Agreement and a Ground Lease (all as further defined herein) that, *inter alia*, provided the Parking Authority of the City of Paterson (the "Authority") the right to receive the first $1,600,000 in revenue from the operation of a parking garage supporting in part a shopping mall built by Center City Partners, LLC ("Center City"). In exchange, Center City constructed a mall on land it leased from the Authority (for $1.00 per year for 99 years) that had previously generated approximately $1,200,000 annually for the Authority. After nearly fifteen (15) years of performance under the Redevelopment Agreement and Operating Agreement, Center City initiated this action requesting the trial court to rewrite both agreements to change the agreed upon standards for the imposition, collection and sharing of parking rates and fees in a manner favorable to Center City and detrimental to the Authority.

Despite no evidence of any mutual mistake, equitable fraud, or unconscionable conduct on the part of the Authority, the trial court reformed the Redevelopment Agreement and Operating Agreement to require that Center City

participate in revenue sharing beginning at the first dollar received. The trial court's error, if not reversed by this Court, will impact the Authority's ability to pay its existing bondholders and fulfill its statutory purpose of operating a public parking system.

The clause of the Redevelopment Agreement at issue on this appeal is Section 8.6(a), which provides for a revenue sharing calculation by which the Authority and Center City would receive shares of Project Garage revenue in excess of $1,600,000 as of 2005, which amount would be adjusted annually in accordance with the Consumer Price Index (CPI). This threshold amount was negotiated and agreed upon by the Authority and Center City as a result of the Authority losing $1,200,000 in revenue from the operation of the surface parking lots that were displaced by the Project. Center City agreed to receive 66.66% of revenue, if any, received in excess of $1,600,000. Center City never sought nor received any assurances that revenue would reach or exceed $1,600.000; it merely had a right to share **if** that threshold were exceeded.

The March 15, 2024 order of the trial court (the "Order") reformed the Redevelopment Agreement to remove the $1,600,000 threshold and instead provided that Center City would receive 66.66% of the Project Garage parking revenue generated after expenses, with the Authority receiving a 33.33% share of that revenue. This order also directed the Authority to pay Center City

$499,007.77 in fees because of said reformation, retroactive to August 2019, the date Center City filed its initial Complaint in this matter. Respectfully, the trial court erred in reforming these agreements and awarding Center City retroactive fees as a result.

As set forth herein, Center City has not met its burden of establishing the legal standard for reformation of contract. There is no allegation of any mutual mistake of the parties with respect to either agreement, and no demonstrated instance of fraud or unconscionable conduct on the part of the Authority, which elements are essential in granting the extraordinary remedy of reformation of contract. The trial court was incorrect in reforming the Redevelopment Agreement and Operating Agreement, and its decision therefore must be reversed.

For these reasons, the Authority seeks reversal of the trial court's order that (a) granted reformation of agreement by and among the Authority, the City of Paterson (the "City") and Center City, dated February 24, 2005, as amended May 11, 2012 (the "Redevelopment Agreement") and the Operating Agreement between the Authority and Center City, dated April 17, 2006 (the "Operating Agreement"), and (b) awarded Center City $499,007.77 in fees as a result of said reformation.

STATEMENT OF FACTS

In or around 2003, the parties commenced negotiations of the Redevelopment Agreement and Operating Agreement. 4T:84:23-25. The Authority, Center City and the City were represented by sophisticated counsel throughout the negotiations. 3T:6:14-20. The Redevelopment Agreement contemplated a phased redevelopment project that included the construction of a shopping mall (the "Center City Mall"), and an underground parking garage (the "Project Garage"), residential and commercial buildings (the "Residential Component" and the "Office/Retail Component," respectively) and parking facilities (the "Authority Garage") to service the customers, residents and occupants of these buildings and the surrounding Central Business District of the City (collectively, the "Project"). Da54-Da237. The Operating Agreement sets forth the rights and obligations of the Authority and Center City with regard to the operation of the Project Garage to support the Center City Mall and other phases, if those phases were to be built. Da238-Da287.

The Redevelopment Agreement concerned the redevelopment of specific parcels of land owned by the Authority in the section of the City located adjacent to the Passaic County Courthouse and commonly known as Center City Paterson, and provided for a phased redevelopment project, which anticipated the construction of the Center City Mall, the Project Garage, the Residential

Component, the Office/Retail Component, as well as the Authority Garage to service the customers, residents and occupants of these buildings, if any, when built. Da150-Da154.

Through this phased project approach, the pre-existing parking operations on the three (3) parcels owned by the Authority in the Project area would be relocated as each of the following three project components was constructed by Center City:

> (i) the Center City Mall, as well as the Project Garage, which Project Garage would be (and is) operated by the Authority pursuant to the Operating Agreement;
> (ii) the Residential Component; and
> (iii) the Office/Retail Component. Da150-Da154.

The Redevelopment Agreement also provided for a revenue sharing calculation by which the Authority and Center City would receive shares of all revenue in excess of $1,600,000.00 as of 2005, which amount would be adjusted in accordance with the Consumer Price Index (CPI) on an annual basis. Da67; Da110-Da111.

The Authority and Center City also executed a ground lease, dated April 17, 2006 (the "Ground Lease"), for the land underlying the Center City Mall, pursuant to Section 8.5 of the Redevelopment Agreement. Da288-Da351. Pursuant to the Ground Lease, Center City leased the land underlying the Center

City Mall and Project Garage from the Authority for a ninety-nine (99) year term at a total cost of $1.00 per year. Da108; Da300.

The Operating Agreement set forth the terms by which Center City would maintain and the Authority would operate and manage the Project Garage. Da238-Da287. Specifically, the Authority was required to establish rents, rates, fees and charges to be collected by customers of the Project Garage pursuant to the terms set forth in the Operating Agreement. Da255-Da256.

The Operating Agreement further provided that Center City was required to pay an Operating Fee to the Authority in the amount of $24,000.00 per year, with a $75.00 annual fee for each space in excess of 300 spaces. Da108; Da258-Da262. Center City was also required to maintain the Project Garage and pay direct payroll and benefits of Authority employees assigned to the Project Garage. Da258-Da262. The Authority and Center City were also required to work cooperatively to establish a validation system for the Project Garage. Da262. The Redevelopment Agreement, Ground Lease, and Operating Agreement were contemplated (and must be read) as one cohesive transaction. The reformation of the revenue sharing calculation in the Redevelopment Agreement (almost twenty (20) years after its inception), while leaving $1 per year, ninety-nine (99) year lease of the land underlying the Center City Mall in

place is antithetical to the basis of the bargain between the parties and provides Center City with a much better deal than they themselves negotiated.

In or around June 2009, Center City completed construction of the Center City Mall. Pursuant to the project schedule set forth in the Redevelopment Agreement, Center City was required to (i) commence construction of the Residential Project upon completion of the Center City Mall, and (ii) commence construction of the Office/Retail Component upon completion of the Project Garage. Da152-Da153. Center City never moved forward with construction of the Office/Retail Component or Residential Component.

In addition to the three Project components to be constructed by Center City, the Redevelopment Agreement further provided for the construction and operation by the Authority of an above-ground parking facility to address additional parking demand that would be generated by the Center City Mall, the Office/Retail Component and the Residential Component (the "Authority Garage"). Da165. Pursuant to the project schedule set forth in the Redevelopment Agreement, the Authority was required to commence construction of the Authority Garage upon completion of the Project Garage. Da152.

Existing economic conditions in 2007 and 2008 impacted the viability of the Residential and Office/Retail Components and Authority Garage. 3T:7:11-

8:3. Pursuant to Section 8.7 of the Redevelopment Agreement, the Authority and Center City acknowledged that the consent of Financial Security Assurance, Inc. ("FSA," now known as Assured Guaranty and referred to herein as "Assured"), the third-party insurer of the Authority's outstanding parking revenue bonds, was required as an express condition precedent prior to undertaking any action or issuing any additional obligations to finance the construction of the Authority Garage. Da111-Da112.

On May 11, 2012, the Authority, the City and Center City amended the Redevelopment Agreement to permit a supermarket use as part of the Center City Mall and to develop the terms and conditions of the parking validation system for the Project Garage (the "Amended RDA"). Da352-Da360. Alternate proposals for the Residential Component, the Office/Retail Component and the Authority Garage were not referenced in the Amended RDA. Da353-Da355.

PROCEDURAL HISTORY

This action was initiated by Center City by way of Complaint filed in August 2019, as amended May 4, 2021, which set forth various allegations with respect to the Redevelopment Agreement and the Operating Agreement. Through the Amended Complaint, Center City sought relief as follows:

> (i) specific performance compelling the Authority to construct the Authority Garage and release the surface lot parcel to Center City for construction of the Office Project and Residential Project, and

> enjoining the Authority from expending resources on any parking facility "in the vicinity" of the Project Garage;
> (ii) a demand to compel accounting of the Authority's operations and finances of the Project Garage;
> (iii) reformation of the Redevelopment Agreement and Operating Agreement to create new parking rate standards for the Project Garage;
> (iv) reformation of the Redevelopment Agreement to account for the Office Project, Residential Project and Authority Garage not being constructed, directing all capital and operating expenses of the Project Garage be paid from general revenue of the Project Garage and directing that Center City retain all net revenue of the Project Garage;
> (v) rescission of the Operating Agreement; and
> (vi) demand for alleged damages related to breach of contract, breach of the obligation of good faith and fair dealing, unjust enrichment and breach of fiduciary duty with respect to the Redevelopment Agreement and Operating Agreement.
> Da1-Da27.

On June 8, 2021, the Authority filed an Answer and asserted a Counterclaim for breach of contract against Center City, for breach of Section 6.2(a) of the Operating Agreement. Da28; Da434-Da46. The Authority, on February 18, 2022, filed a motion for summary judgment as to all counts of the Amended Complaint, which motion was denied on March 22, 2022. This matter went to trial in March and April of 2022. On June 29, 2022, the Court rendered an opinion in the present matter (the "Trial Opinion")[1], which was memorialized

[1] The respective transcripts in this matter, which have been provided to the Court, are identified thus: 1T refers to the transcript of the trial proceedings on March 30, 2022; 2T refers to the transcript of the trial proceeding on March 31, 2022; 3T refers to the transcript of the trial proceedings on April 5, 2022; 4T refers to the transcript of the trial proceedings on April 6, 2022; 5T refers to the transcript of the Trial Order

by an order, dated June 30, 2022 (the "Trial Order"). Da361-Da366. The Trial Order directed specific performance of the Redevelopment Agreement by the Authority, requiring the parties recommence the unfinished phases of the Project by obtaining any necessary government approvals, and further requiring that the Authority take necessary steps to satisfy the financing contingency set forth in Section 8.7 of the Redevelopment Agreement, or negotiate a waiver of same. Da361-Da366; Da111-Da112. The trial court also entered judgment in favor of the Authority and against Center City on the Authority's counterclaim for breach of the Operating Agreement. *See*, Da366. Specifically, the trial court found that Center City failed to pay the Authority monthly operating fees, pursuant to Section 6.2(a) of the Operating Agreement, in the amount of $8,168.00 for March 2020 and $21,000.00 from April 2020 to present, which amount aggregates to $1,449,005.74 to date. Da366; Da52. The Authority has established that Center City failed to pay these amounts based on the corresponding invoices issued by the Authority and testimony provided that such payments have not been made, and this lack of payment has financially damaged the Authority.

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and Opinion on June 29, 2022; 6T refers to the trial court decision on the Order that is subject of this appeal on March 12, 2024; and, 7T refers to the transcript of the trial order denying the Authority's motion for stay pending appeal on April 26, 2024.

Pursuant to the requirements set forth in the Trial Order, on November 8, 2022, the Authority prepared and submitted a request to Assured requesting consent for the construction and financing of the Authority Garage (the "Consent Request"). Da367-Da395. On December 28, 2022, Assured responded to the Consent Request by indicating that it would not consent to the financing and construction of the Authority Garage. Da396.

On January 24, 2023, based upon Assured's denial of consent and in accordance with the Order, the Parties met and conferred to discuss potential revisions to the finance and operation provisions of the Redevelopment Agreement. The Parties did not reach an agreement on that date, and thereafter exchanged proposals through electronic mail between January 25, 2023 and February 15, 2023. On February 27, 2023, the Parties determined that negotiations were at an impasse, and advised the Court that post-judgment applications would be necessary to resolve this matter.

Post-judgment applications were submitted by the parties on May 12, 2023. On March 15, 2024, the Court issued the Order which, relevant to the present application, (i) granted reformation of a Redevelopment Agreement and the Operating Agreement to remove the $1,600,000 threshold in Section 8.6 of the Redevelopment Agreement to allow Center City to receive 66.66% of all revenue of the Project Garage after expenses, and (ii) awarded Center City

$499,007.77 in fees as a result of the revised formula created by said reformation, which was made retroactive to August 2019 when the initial Complaint was filed. Da49-Da53. The trial court calculated this amount as being the difference between the amount Center City was allegedly owed under the revised revenue sharing formula ($1,948,013.51), and the amount the Authority was owed by Center City as a result of Center City's breach of Section 6.2(a) of the Operating Agreement ($1,449,0005.74) Da52.

Pursuant to the Order, the trial court retained jurisdiction to oversee the parties' actions in effectuating the terms set forth therein. For this reason, the Authority made application for leave to appeal the Order pursuant to *R.* 2:5-6(a), which motion was granted April 29, 2024. Da397. The Authority also made application to the trial court to stay the Order pending said appeal. The trial court denied that motion on April 26, 2024. Da398. The Authority thereafter renewed the application for stay pending the outcome of its appeal to this Court, which motion was granted on June 14, 2024. Da400.

LEGAL ARGUMENT

THE TRIAL COURT ERRED IN REFORMING THE REDEVELOPMENT AGREEMENT AND OPERATING AGREEMENT (Da49-Da53)

In New Jersey, the reformation of a contract is an equitable remedy. "For a court to grant reformation there must be 'clear and convincing proof' that the

contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be." *Central State Bank v. Hudik-Ross Co., Inc.*, 164 N.J.Super. 317, 323-324 (App. Div. 1978), *citing Brodzinsky v. Pulek*, 75 N.J.Super. 40, 48 (App.Div.1962) Cert. den. 38 N.J. 304 (1962). Courts in this State "have uniformly held that a court of equity will not grant the high and extraordinary remedy of reformation except upon the production of proof, clear, convincing and free from doubt, that the contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be; and as, in fact, it was but for the alleged mistake in its drafting." *Kuller v. Fire Ass'n of Philadelphia*, 124 N.J. Eq. 473, 475 (1938), *citing, inter alia*, *Rowley v. Flannelly*, 30 N.J.Eq. 612; *Hupsch v. Resch*, 45 N.J.Eq. 657, *affirmed* 46 N.J.Eq. 609.

"The traditional grounds justifying reformation of an instrument are either mutual mistake or unilateral mistake by one party and fraud or unconscionable conduct by the other." *Dugan Constr. Co. v. N.J. Tpk. Auth.*, 398 N.J. Super. 229, 242-43 (App. Div. 2008), *certif. denied*, 196 N.J. 346 (2008) (*quoting St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden*, 88 N.J. 571, 577 (1982)). With respect to mutual mistake,

> in order to reform a . . . written contract in the absence of fraud on the part of the defendant, it must appear that the minds of the parties to said contract have met, and that a mutual mistake of the

> contracting parties has been made in writing out the contract, so that the parties appear to have entered into a contract which they have not entered into. **The reformation, therefore, of such a contract must be to make the written contract to conform to that upon which the minds of the parties have met**.

Berkowitz v. Westchester Fire Ins. Co., 106 N.J. Eq. 238, 241, *quoting Sardo v. Fidelity & Deposit Co. of Maryland*, 100 N.J. Eq. 332 (1926) (emphasis added). "Mutual mistake does not encompass a mistake that consists merely of 'an improvident act, including the making of a contract, that is the result of ... an erroneous belief.'" *Tilcon New York, Inc. v. Morris County Co-op. Pricing Council*, 2014 WL 839122 at *16, citing *Restatement (Second) of Contracts*, § 151 comment a (App. Div. March 5, 2014). Da418.

With respect to equitable fraud and unconscionable conduct, courts in New Jersey have defined such conduct as

> A misrepresentation amounting to actual legal fraud consists of a material representation of a presently existing or past fact, made with knowledge of its falsity and with the intention that the other party rely thereon, resulting in reliance by that party to his detriment. The elements of scienter, that is, knowledge of the falsity and an intention to obtain an undue advantage therefrom, are not essential if plaintiff seeks to prove that a misrepresentation constituted only equitable fraud. Thus, '[w]hatever would be fraudulent at law will be so in equity; but the equitable doctrine goes farther and includes instances of fraudulent misrepresentations which do not exist in the law.'

Bonnco Petrol, Inc. v. Epstein, 155 N.J. 599, 609 (1989), *citing Jewish Center of Sussex County v. Whale*, 86 N.J. 619, 624–25 (1981) (*quoting* 3 J. Pomeroy,

A Treatise on Equity Jurisprudence 421 (5th ed.1941). Center City has failed to establish that either mutual mistake or fraudulent conduct on the Authority exists here. As the record below demonstrates, the Authority has not acted in bad faith, nor has it engaged in any fraudulent conduct, there was no evidence of mistake by either party, and the Redevelopment Agreement and Operating Agreement should therefore not be reformed as required by the Order.

The Authority, Center City and the City, represented by sophisticated counsel and financial professionals, exhaustively negotiated the terms of the Redevelopment Agreement and Operating Agreement. There are no allegations in the record of any "mutual mistake" of the parties as to either of the agreements at issue. The agreements reflect "terms upon which the minds of the parties have met." *Berkowitz*, 106 *N.J. Eq*. at 241.

Center City has failed to demonstrate any instance of fraud or unconscionable conduct by the Authority, and that is in fact what the trial court found. "I don't believe that the Parking Authority was dealing in bad faith or defrauding Center City or somehow entered into this massive reconstruction project, which is extremely beneficial to the City of Paterson and its citizens and the public, where they duped them into this and we're never going to build this." 5T:26:12-18. The terms of the Redevelopment Agreement and Operating Agreement accurately reflect the terms agreed upon by the Authority, the City

and Center City. The negotiation and execution of a series of agreements that one party now seeks to avoid does not support any charge of fraud or unconscionable conduct on the part of the Authority.

Center City has asserted in past filings that the Authority acted "unconscionably" but those allegations are wholly unsupported in the record. The trial court's opinion that "anything otherwise [short of reformation] would be unconscionable" is equally unsupported, in both law and fact. 6T:11:1-2. The record is clear that the Authority's conduct in negotiating, executing, and performing under the Redevelopment Agreement and Operating Agreement cannot be described as fraudulent, inequitable or unconscionable. It is undisputed that these were contracts negotiated between sophisticated parties with sophisticated counsel. The fact that Plaintiff now regrets the outcome does not equate to unconscionable conduct by the Authority in drafting or performing under either agreement.

To be clear, a perceived "unconscionable" outcome does not equate to unconscionable conduct on the part of the Authority. Multi-party real estate development projects such as the one at issue in this case involve risk, and one party's disappointment with the resulting project does not mean the other acted in bad faith or contrary to the terms of the governing agreement. Center City seeks to reform these duly negotiated agreements because its project failed, and

it blames the Authority for having the temerity to insist on compliance with terms Center City negotiated for and to which Center City agreed. Center City cannot cite to any portion of the record demonstrating such conduct by the Authority. In fact, Center City was the only party to be found in violation of the terms of either of the operative agreements, as the trial court found them in breach of Section 6.2(a) of the Operating Agreement for failure to pay the required operating fees[2]. Da366.

It also must be noted that reformation of the Redevelopment Agreement and Operating Agreement consistent with the terms of the Order will have a substantial negative impact on the Authority's statutory purpose, pursuant to the Parking Authority Law, *N.J.S.A.* 40:11A-1, *et seq.*, of maintaining a public parking system, as well as its ability to pay its existing bondholders. Specifically, *N.J.S.A.* 40:11A-20 provides as follows:

> The provisions of this act shall constitute a part of any and all contracts entered into by an authority created hereunder for the benefit and security of the creditors of such authority, and the State of New Jersey does hereby pledge to and agree with any person, firm or corporation or Federal agency subscribing to or acquiring the bonds issued by the authority for the construction, extension, improvement or enlargement of any project or facilities or part thereof that the State of New Jersey will not limit or alter the rights hereby vested in the authority and in the holders of such bonds until

[2] As noted herein above, the trial court offset the $1,449,005.74 owed by Center City to the Authority as a result of Center City's breach of the Operating Agreement when calculating the revised revenue sharing formula upon reformation of the Redevelopment Agreement, as set forth in the Order.

> all bonds at any time issued together with the interest thereon and any premiums upon the redemption thereof are fully met and discharged.

See also, U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977) (wherein the Court, in the context of the exercise of legislative authority, recognized the significant limitations in attempting to impair existing contracts with bondholders). Impairment of the Authority's rights, as contemplated by the reformation of the Redevelopment Agreement and Operating as set forth in the Order, would adversely impact the Authority's ability to provide a public parking system for the residents of the City of Paterson. The Authority never could have, and would not have, agreed to such terms during the negotiation of these agreements.

Center City's desire to have the trial court write a more favorable agreement to allow it to avoid its obligations under these agreements does not equate to unconscionable conduct on the part of the Authority. Center City has also cited to the "turn square corners[3]" doctrine in recent filings, which references are not applicable to the present matter. As stated herein, and supported by the record below, Center City was represented by counsel and financial professionals when these agreements were exhaustively negotiated.

[3] *See, Gruber v. Mayor and Tp. Committee of Raritan Tp.*, 73 N.J. Super. 120, 127-128 (App. Div. 1962).

The Authority did not force Center City to accept the terms of the Redevelopment Agreement and Operating Agreement – it did so willingly and of its own accord. There was no coercion, inducement, exercise of, or even threat to exercise, any governmental action that would place the parties on uneven footing with respect to the negotiation, execution and performance of these agreements and Center City cannot point to a single fact in the record to suggest otherwise. Center City is simply grasping at straws.

The Redevelopment Agreement and Operating Agreement, as reformed by the Order, do not reflect the terms that the Authority agreed to, and do not reflect the meeting of the minds in 2005 and 2006 when these agreements were reduced to writing. For these reasons, the trial court erred in reforming the Redevelopment Agreement and Operating Agreement.

CONCLUSION

For all these reasons, the provisions of the March 15, 2024 Order of the trial court granting reformation of the Redevelopment Agreement and Operating Agreement and ordering payment by the Authority to Center City in the amount of $499,007.77 in retroactive fees as a result of said reformation, respectfully, must be reversed.

/s/ William P. Opel

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Dated: June 24, 2024

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-002593-23

CENTER CITY PARTNERS, LLC,

Plaintiff/Respondent,

-vs-

PATERSON PARKING AUTHORITY,

Defendant/Appellant.

On Appeal from:

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
BERGEN COUNTY
GENERAL EQUITY PART
DOCKET NO. BER-C-103-21

Civil Action

Sat Below:
Hon. Edward A. Jerejian, P.J.Ch.

REVISED BRIEF OF PLAINTIFF/RESPONDENT, CENTER CITY PARTNERS, LLC, IN OPPOSITION TO APPEAL OF DEFENDANT/APPELLANT, PATERSON PARKING AUTHORITY

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PRELIMINARY STATEMENT

Plaintiff, Center City Partners, LLC ("Center City"), respectfully requests that this Court deny the appeal of Defendant, Paterson Parking Authority ("Defendant" or "PPA"), from the Trial Court's March 15, 2024 Order and Decision, because the Trial Court acted well within its discretionary authority to impose its reformation remedy.

Center City and Defendant entered into a Redevelopment Agreement which, among other things, required Center City to construct a mall in Paterson's Central Business District, adjacent to the Passaic County Courthouse, as well as a parking garage underneath the mall. Defendant, in turn, was to build an above-ground parking facility to service the retail/office and residential buildings Center City was to construct. The parties agreed to a formula which would allow Center City to recoup its investment once a parking revenue threshold was met.

For reasons which were never fully explained with any credibility at trial, Defendant refused to: (1) construct the above-ground parking facility; and (2) allow Center City to build retail, residential, and office buildings as set forth in the Redevelopment Agreement. As a result, Center City was locked into an agreement pursuant to which it invested $25 million, has yet to receive a single dollar of revenue in return for its efforts, and has lost countless millions by Defendant's refusal to allow Center City to build the retail/residential and office

components.

Center City then brought suit against Defendant, alleging breach of contract and seeking specific performance of the Redevelopment Agreement and other related contracts, as well as reformation of those agreements to ensure a mutually profitable venture going forward. All Center City has asked for since filing this action is to have the PPA abide by its agreement to build the subject garage and to be permitted to proceed with Center City's additional planned components.

Following a four-day bench trial in 2022, the Trial Court ordered, among other things, specific performance of the Redevelopment Agreement, and held that if specific performance could not be accomplished due Defendant's financing contingencies, then the Trial Court would reform the Agreement to make Center City whole. Defendant could not meet the contingencies purportedly required by its surety, and so it refused to perform its end of the bargain. Those contingencies, however, did not stop Defendant from demolishing an existing parking garage and constructing a new one in the area while it purportedly was trying to finance its obligation to Center City, and a host of other projects throughout Paterson.

Accordingly, after considering post-judgment submissions, the Trial Court had no choice but to prevent what it found would be an "unconscionable"

result. Thus, the Trial Court reformed the Redevelopment Agreement to compensate Center City and prevent the unconscionable result of requiring Center City to continue to pay all expenses for the subject garage, without seeing any return on its $25 million investment in the project, which became unattainable because there were only half the number of parking spots created, while Defendant pursued its other parking project nearby.

Defendant now appeals, asking this Court to reverse the reformation remedy. What Defendant does ***not*** do is ask this Court to reverse ***any*** of the Trial Court's fact-finding, or any other remedy which the Trial Court imposed. Accordingly, the only issue on appeal is propriety of the reformation remedy. As set forth within, the Trial Court properly applied a reformation remedy. A Trial Court, especially a Trial Court sitting in equity, has broad discretion to impose a remedy to fit the particular facts and circumstances of any given matter. While its discretion has limits, as applied here, the Trial Court fairly and equitably resolved the matter to avoid what the Trial Court clearly and unequivocally found, based on the facts and circumstances, to be an "unconscionable" result. Defendant asks this Court to impose a rote, paint-by-numbers approach to reformation, arguing that reformation is not appropriate without a finding of mistake or fraud. That argument ignores Defendant's misconduct and the Trial Court's discretion to remedy the result.

Accordingly, and as set forth within, Center City respectfully requests that this Court affirm the Trial Court's reformation of the Redevelopment Agreement, compel Defendant to pay the sums owed to Plaintiff, and allow Center City to begin receiving the benefits of its multi-million-dollar investment in downtown Paterson.

STATEMENT OF FACTS

Center City proved the following facts at trial:

A. The Project

On or around October 10, 2002, intervenor City of Paterson (the "City") issued a Request for Proposals for the redevelopment of certain areas in the Central Business District located at and around 301 Main Street, Paterson, New Jersey 07505 (the "Project Site"). Da60. Center City submitted a proposal for redevelopment, which the City selected and was subsequently adopted by the City Council on or about June 24, 2003. Ibid.

On February 24, 2005, two years after negotiations began, the Authority, the City, and Center City entered into a Redevelopment Agreement to govern Center City's proposed redevelopment of the Project Site (the "Project"). Da59; 5T10:3-13.[1] Under the terms of the Redevelopment Agreement, Center City was

[1] Pursuant to Rule 2:6-11, transcript designations are as follows: (1) 1T; March 30, 2022; (2) 2T; March 31, 2022; (3) 3T; April 5, 2022; (4) 4T; April 6, 2022;

to build, at its own expense, an atrium building (the "Mall"), a subterrain parking facility underneath the Mall (the "Project Garage"), an office/retail building, and a residential project. Da76-80; 5T4:23-5:6. In contrast, the Authority was supposed to build, at its own expense, an aboveground parking facility (the "Authority Garage") to support the proposed retail/office and residential buildings. Ibid. The Authority was also designated to manage the Project Garage on Center City's behalf. Ibid.

On April 17, 2006, Center City and the Authority executed an Operating Agreement that governed the Operations of the Project Garage in conjunction with the Redevelopment Agreement. Da238; 5T10:8-13. The Operating Agreement generally provided that the Authority would manage and operate the Project Garage with Center City paying all expenses. Da238, *et seq.*; 3T123:8-16 (Mr. Perez testifying to that arrangement). Any revenues generated by the Project Garage, pursuant to the Redevelopment Agreement, were to be retained by the Authority unless the joint revenue of the Project Garage and the Authority Garage exceeded a $1.6 million threshold. Pa110 (§ 8.6).

B. Center City Paid The Authority Approximately $300,000 Annually To Manage And Operate The Project Garage

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(5) 5T; June 29, 2022 (Bench Trial Decision); (6) 6T; March 12, 2024 (Bench Trial Decision).

Although Center City did not receive any revenue from the Project Garage, it paid to build the facility and covered all operating expenses. The Redevelopment Agreement required Center City to pay the Authority an Operating Fee of $24,000, in monthly installment payments, plus $75 per parking space in excess of 300 spaces for managing the garage. Da108 (§ 8.5(b)). That Operating Fee escalated each year, benchmarked to the consumer price index. Id. To put this in context, the Project Garage contained 657 spaces and, as such, Center City was required to—and did—pay the Authority an annual Operating Fee of $50,775, which was adjusted for inflation each year. Pa418-419. In addition to the being required to pay the Operating Fee, Center City was also responsible for paying "all direct payroll and benefits of Authority personnel and all other direct costs and expenses associated with the operation and maintenance of the Project Garage, including, but not limited to, insurance and security costs." D108-109 (§ 8.5(b)). On average Center City paid the Authority $300,000 annually relating to the operations of the Project Garage. 1T89:8-15.

C. The Authority Consistently Exceeded The Agreed-Upon Budget, Causing Center City To Have To Pay Excessive Expenses

Because the Redevelopment Agreement required Center City to pay for all expenses relating to the management, maintenance, and operations of the

Project Garage, it paid the Authority a monthly amount toward the operational costs associated with the Project Garage. 1T15:9-12; 57:9-12. At the end of each year, the Authority would submit a Year End Reconciliation Report to Center City, where the Authority would account for all costs and fees incurred for the Project Garage, deduct the amounts Center City had already paid over the course of the year, and seek reimbursement for any remaining amounts. Pa3; Pa42; Pa83; Pa83; Pa121; Pa219; Pa267; Pa320; Pa368; Pa418.

Since the Project Garage opened in or around 2006, the Authority has consistently failed to provide a budget prior to the operating year and has exceeded the annual monthly payments submitted by Center City every year to cover the overage. Pa3; Pa42; Pa83; Pa83; Pa121; Pa219; Pa267; Pa320; Pa368; Pa418. For example, in 2018, the total cost for operations at the Project Garage was $310,650. Pa418. Based on the budget set by the parties, Center City made monthly payments totaling $253,200. Ibid. As a result, Center City paid the Authority an additional $57,450 to the Authority for the 2018 year-end. Ibid.

D. The Authority Never Provided The Contractually Required Monthly Compilation Report Relating To The Operations Of The Authority Garage

To account for the Project Garage's Operations, the Redevelopment Agreement required the Authority "provide to [Center City] on a monthly basis following the first full month following the issuance of a Certificate of

Occupancy for the Authority Garage or the Project Garage, as the case may be, (a) a Compilation Report and (b) following the close of each Fiscal Year, audited financial statements." Pa106 (§ 8.3(c)(iv)). Since the Authority began operating the Project Garage by 2007, the Authority had ***never*** provided this required monthly Compilation Report. 1T65:13-18.

E. The Redevelopment Agreement Required The Authority Garage To Be Completed Before The Mall

The Project was comprised of multiple phases. Da150-164. Though the phases were designated with Roman numerals, they were not numerically sequential. Id. The Redevelopment Agreement required certain phases to proceed in parallel. Id. The phasing schedule was a key component of the Project because the various phases were interdependent. 1T7:19-8:24.

Phase I required the implementation of alternative parking to allow for the Project to move forward, because existing parkers on the surface lots in the project area would be displaced once construction started. Da150-164; Da166-168. After Phase I was complete, the next phase, Phase II, required Center City to construct the Project Garage. Ibid.

The completion of the Project Garage in Phase II triggered obligations to proceed with three other phases simultaneously: "Upon completion of Phase II[,]" Center City was required to begin construction of the Mall (Phase III-A)

and retail/office building (Phase III-C), and the Authority would simultaneously construct the Authority Garage (Phase IV). Da153. After the Mall was built, Center City was to construct the residential building (Phase III-B). Ibid.

The Redevelopment Agreement not only mandated when the Phases would commence construction, but also included a Project Schedule that provided timelines for completion. Da166. For example, the Redevelopment Agreement required the Authority Garage to be completed within fourteen months of commencement and the Mall was required to be built within eighteen months of commencement. Ibid. Because construction of both the Authority Garage and the Mall were to begin once the Project Garage (Phase II) was built, the timeline set forth in the Redevelopment Agreement required the Authority Garage to have been fully built prior to the Mall. Ibid. The Authority does not dispute this requirement. 1T46:10-14; 1T51:4-15; 1T54:12-16; 1T55:15-19.

F. Adequate Parking Was Key To The Overall Success Of The Project

The Project's phases were designed to create a "synergy" between all the uses, and to revitalize downtown Paterson to effectuate the purpose of the original redevelopment plan. 1T7:19-8:24. The residential building (Phase III-B) and retail/office building (Phase III-C) were intended to drive customers to the Mall (Phase III-A). 1T 8:14-24; 1T40:8-20. The Authority Garage (Phase

IV) was to provide parking to support the other phases of the Project, particularly the residential and retail/office buildings. 1T8:14-24. Indeed, the Redevelopment Agreement itself provided that "adequate, effective, and efficient parking [was] a major factor in the successful redevelopment of the Project Site." Da60. While the Project Garage would be utilized by Mall patrons, the Authority Garage was supposed to provide parking for both Mall patrons and parkers visiting the downtown area or patronizing the contemplated retail/office building and residential units. 2T41:2-6.

G. Even Before Entering Into The Redevelopment Agreement, The Authority Never Actually Intended To Build The Authority Garage

As stipulated at trial, the Project Garage was successfully completed, and the Authority was operating the Project Garage on behalf of Center City by 2007. Center City then began building the Mall and completed it "on schedule" sometime in 2009. 2T56:5-7. Center City expended approximately $50 million to build the Project Garage and the Mall. 1T14:18-20.

The Authority, however, never built the Authority Garage. Indeed, and despite the mandatory language of the Redevelopment Agreement requiring that the Authority "shall construct" the Authority Garage, the Executive Director of the Authority, Tony Perez ("Mr. Perez"), admitted at trial that the Authority

never intended to build the Authority Garage. 2T137:25-138:3. Mr. Perez specifically testified on redirect, without objection from counsel:[2]

> Q. Okay. So when you signed the [Redevelopment A]greement, you never thought you would actually have to build the garage, right?
>
> A. Exactly, yes , sir. Because at the time it was all predicated on the mall being successful and generating the kind of foot traffic that we thought we can get.
>
> Q. So when would you have actually known whether or not the mall was going to be successful?
>
> A. Well, it all depends. It all depends. I don't know what to tell you.
>
> But from day one – obviously it took a long time for them to get to – to the level where, where they had the kind of traffic that we were anticipating.
>
> [3T114:14-115:1.]

In fact, Mr. Perez was specifically asked, prior to allegedly speaking with Center City principal Steve Valiotis ("Mr. Valiotis") in 2009 about purported alternative proposals, if "the Authority intend[ed] to construct the Authority [G]arage as it agreed to in the [R]development [A]greement," to which Mr. Perez responded, "No." 2T137:25-138:9; 3T113:24-114:2 (Mr. Perez confirming his deposition testimony that Defendant never believed it would actually have to construct the Authority garage).

[2] Center City called Mr. Perez as a witness in its direct case.

H. The Authority Never Took Any Steps To Prepare For The Construction Of The Authority Garage

The Authority's ***only*** construction obligation was to build the Authority Garage. Da98. According to Mr. Perez, the Authority typically requires two to three years to prepare plans, drawings, and schematics for a parking project and to arrange financing. 3T116:19-23. Based on the phasing sequence and Project schedule, Mr. Perez admitted at trial that the Authority needed to start designing and planning for the Authority Garage by no later than 2006 in order to build it following completion of the Project Garage and at the same time as the Mall. 3T117:2-4.

The Authority never took any elementary steps to prepare for the Authority Garage by drafting plans, conducting studies, or arranging financing. When this was made painfully clear at trial, Mr. Perez was pointedly asked what steps the Authority took to prepare for construction of the Authority Garage, and he replied, "[n]othing." 2T48:22-49:4. The Trial Court took note of this position and Defendant's inability to explain it:

> THE COURT: The project was approved in '05. You have the redevelopment agreement, all the agreements.
>
> So now we are a year later and it went from they were supportive of it, and now all of a sudden you are saying there are conversations that there was possibly issues with it, but nonetheless, there was never any attempt to formalize or get the approval.

> So what was the difference between '05 and '06? Like what happened that caused these issues or concerns?
>
> MR. TUCCI: Thank you, your Honor. Thank you.
>
> THE WITNESS: I don't know, your Honor.
>
> THE COURT: You don't know?
>
> THE WITNESS: No, I really don't know. All I know is that we had to get FSA's approval to move forward with this project.
>
> [3T161:8-25.[3]]

To this day, the Authority has still done "nothing" to move the Authority Garage beyond a mere a concept.

I. The Authority's Alleged Reasons For Not Constructing The Authority Garage Are Not Credible

The Authority failed to provide credible justifications for its failure to build the Authority Garage. When asked directly why the Authority did not build the Authority Garage, Mr. Perez provided only two reasons: (1) in 2009, Mr. Valiotis allegedly told Mr. Perez that there was no reason to build the Authority Garage; and (2) the Authority would not be able to obtain financing from FSA because there was insufficient demand for parking. 2T6:8-21.

[3] Mr. Perez's answer continued, attempting to shift blame to Center City for allegedly never approaching Defendant to ask whether Defendant intended to proceed with FSA. 3T162:1-6. That is beside the point.

i. The Authority Garage Was Supposed To Be Completed Before Time Of The Alleged 2009 Conversation

The Authority cannot rely on an alleged 2009 conversation with Mr. Valiotis to retroactively justify its failure to build the Authority Garage. The timing is impossible because, in order to comply with the phasing sequence and Project schedule, the Authority needed to begin planning its design, construction, and financing for the Authority Garage no later than 2006. 3T116:19-117:4. More specifically, Mr. Perez testified that he had this conversation with Mr. Valiotis at or around the time that the Mall was completed in 2009. 2T46:10-14. Mr. Perez confirmed that, under the Construction Phasing Schedule in the Redevelopment Agreement, the Authority was supposed to commence construction of the Authority Garage at the same time Center City began construction of the Mall. 2T51:4-6. Because that alleged conversation took place when the Mall was almost completed, Mr. Perez admitted that the Authority Garage was already eighteen months behind schedule. 2T51:7-15. Mr. Perez also acknowledged that, under the scheduling plan set forth in the Redevelopment Agreement, the Authority Garage was supposed to be completed four months before the Mall completion and, therefore, by the time of this alleged conversation between Mr. Perez and Mr. Valiotis, the Authority Garage was to have been completed. 2T54:12-16; 2T55:15-19.

ii. This Purported Verbal Agreement Was Never Memorialized In A Signed Written Amendment As Required By The Redevelopment Agreement

The Authority's assertion that it relied on the alleged 2009 conversation with Mr. Valiotis is further belied by its failure to memorialize the supposed agreement in a formal amendment to the Redevelopment Agreement. In 2012, the parties amended the Redevelopment Agreement to allow for a larger supermarket than originally contemplated. Da352-354. It is, therefore, not credible for the Authority to claim that one or more phases required by the Redevelopment Agreement could be delayed, altered, or eliminated entirely, based solely on an oral statement and without a formal written amendment to the Redevelopment Agreement.

Section 16.11 of the Redevelopment Agreement expressly requires all waivers or amendments to the Redevelopment Agreement to "be in writing and signed by the appropriate authorities of the City and the . . . Authority and [Center City]." Da141-142 (§ 16.11). Therefore, the Authority and Center City had no ability to waive the requirement that the Authority Garage be constructed on schedule—regardless of the outcome of the alleged verbal discussion between Mr. Perez and Mr. Valiotis in 2009.

The parties required and executed a formal written amendment to the Redevelopment Agreement when Center City sought to expand the permitted

size of a supermarket in the Mall. Da352. Under the Redevelopment Agreement, a retail food store was a permitted use for the Mall but it could not be larger than 12,500 square feet. Da153 (exception to Non-Permitted Uses). When Center City sought to expand the permitted size to attract a large supermarket tenant to the Mall, the parties executed an Amendment to the Redevelopment Agreement dated May 11, 2012, to allow a supermarket up to 70,000 square feet. Da352.

The elimination of the Authority Garage or indefinite delays to specifically-timed phases were a far more significant revision to the Project than the utilization of existing square footage in the Mall. If a written amendment to the Redevelopment Agreement was required to expand a permitted use, the Authority was not credible in claiming that the Authority Garage could be eliminated or delayed without any formal written amendment.

iii. The Authority Has No Credible Explanation For Its Failure To Seek Financing Approvals

Further, the Authority lacked any reasonable justification for its failure to seek financing approvals needed to build the Authority Garage. The Redevelopment Agreement contemplated that the Authority would finance construction of the Authority Garage by issuing bonds that would be insured by Financial Security Assurance, Inc. ("FSA"), which was and is the insurers of the Authority's revenue bonds. Da111 (§§ 8.7(a), (b)). If FSA refused to insure

bonds for the Authority Garage, the Authority was obligated to seek alternate financing. Ibid. (§ 8.7(d)). Though the Authority was, by its own admission, obligated to begin efforts to secure financing no later than 2006, the evidence and testimony demonstrated that the PPA made no such effort since execution of the Redevelopment Agreement.

Contrary to its representations in the Redevelopment Agreement, the Authority never actually had any substantive communications with FSA seeking approval to finance the Authority Garage. 3T16:2-11. Section 8.7 of the Redevelopment Agreement stated that "the Authority represents that it has approached FSA . . . and FSA has indicated a ***willingness to support*** the Project and to insure additional obligations . . . to finance the Authority Garage[.]" Da111 (§ 8.7(b) (emphasis added)). Mr. Perez confirmed that, when seeking FSA approval for a project, the Authority would be required to provide studies, designs, drawings, and other related documents. 2T89:22-90:14. Here, the Authority admittedly did not provide ***any*** documentation to FSA to request financing approval, because the Authority never planned to build the Authority Garage. 2T90:15-22; see also Sections G-H, supra. Rather, when specifically asked, Mr. Perez could not explain the factual basis for the Authority's representation in Section 8.7(b) beyond a general recollection that FSA had informally advised the Authority that it "would love to take a look at [the

application]," which the Authority falsely equated to a "willingness to support" the Authority Garage. 2T96:12-97-6.

The Authority's suggestion that FSA would have rejected financing because of insufficient parking demand lacks credibility for two reasons. First, the Authority ***never*** conducted any study or analysis of parking demand that would have led it to believe, at any point prior to 2009, that the Project would not generate sufficient parking demand. 2T90:15-22; see also Sections G-H, supra. Second, there is ***no*** evidence in the record to suggest that, after execution of the Redevelopment Agreement in 2005, which included the FSA representation in Section 8.7(b), the projected parking demand for the Project would not justify construction of the Authority Garage by 2009. In his testimony, Mr. Perez ***never*** identified any change in circumstances surrounding the Project, and so the Authority's supposed inability to obtain FSA approval of financing for the Authority Garage, if true, can only be blamed on the Authority itself.

Moreover, even if FSA had actually rejected financial approval for the Authority Garage, the Redevelopment Agreement required the Authority to seek alternative financing. Specifically, Section 8.7(d) of the Redevelopment Agreement provided that "[i]n the event that FSA does not agree to insure the Authority's bonds or other obligations expected to be issued to finance the

Authority Garage, the parties agree to negotiate other financial alternatives in good faith for a period of 90 days after FSA's determination." Da112 (§ 8.7(d)). Thus, had the Authority submitted an application to finance the Authority Garage and FSA denied that application, the Authority was required to negotiate with Center City to attempt alternative financing. Ibid.

Because the Authority never actually sought FSA approval to issue bonds to finance the Authority Garage and never explored alternate financing options, the Authority's assertion that the Authority Garage could not be built due to an inability to obtain financing was not credible.

J. The Authority's Failure To Build The Authority Garage And To Lease The Other Parcels to Center City Prevented The Remaining Phases From Moving Forward

Without the Authority Garage, Center City was unable to proceed with construction of the residential and office/retail buildings, because the Authority Garage was supposed to provide sufficient parking to support those buildings. 1T83:11-14. In addition, the Authority owned the parcels where the residential and retail/office buildings were to be built on and refused to lease those parcels to Center City to develop. 1T108:6-9. Without having parking for those phases of the Project and a lease to develop those parcels, Center City could not and still cannot proceed with the remaining phases of the Project. 1T83:11-14; 1T108:6-9.

K. The Authority's Failure To Build The Authority Garage Eliminated The Parameters For Rates To Be Charged At The Project Garage

The Redevelopment Agreement and the Operating Agreement empowered the Authority to establish the rents, rates, fees or charges to be collected by the Authority at the Project Garage. Da109 (§ 8.5(c)); Da255-256 (§ 5.2(a)). However, Section 8.5(c) of the Redevelopment Agreement provided that the Authority could not charge:

> (i) less than one and one half (1.5) times or more than two (2) times the amount charged in the Authority Garage without the consent of [Center City][;] . . . and (ii) less than one and one half (1.5) times or more than three (3) times the amount charged in the Authority Garage without the consent of [Center City's] consent . . . thereafter.
>
> [Da109]

Because the Authority Garage was never built, the Authority had no parameters by which it could set rates. See 1T24:11-18.

L. The Authority's Failure To Build The Authority Garage Ensured That Center City Never Shared In Any Revenue Generated From Parking At The Project Garage And The Authority Retained All Revenue

The Redevelopment Agreement included a revenue-sharing provision that was predicated on the combined revenues of the Project Garage ***and*** the Authority Garage. Da110 (§ 8.6). As reflected in the Redevelopment Agreement,

"[i]n recognition of each parties' contribution to the success of the Parking Garage Facilities," the Authority and Center City agreed to share revenues generated at the Authority Garage and the Project Garage as follows: the Authority would retain the first $1.6 million in revenue, adjusted for inflation each year, and any revenues exceeding that threshold would be allocated with 66% to Center City and the remainder to the Authority. Da110 (§ 8.6(c)); Da63 (defining "Authority Revenue Share" as "33.34 percent of all Excess Revenues"); Da72 (defining "Redeveloper's Revenue Share" as "66.66 percent of all Excess Revenues"). Because the Authority Garage was never built, Center City could only share in revenues if the Project Garage met the parking revenue threshold each year. 1T76:9-15. That revenue threshold was predicated on operations of both the Project Garage and the Authority Garage (inclusive of an additional $400,000 above parking revenues generated by the Authority's surface lots on those parcels prior to the Project) to defray the Authority's anticipated cost to construct the Authority Garage. 4T83:21-84:3.

From 2007 to the present, Center City has not shared in any revenue generated by the Project Garage, because revenues never exceeded the threshold. 1T76:9-15; J-06 to J-15. Meanwhile, the Authority has retained over $8 million in total revenue from the Project Garage from 2009 to 2019. See Pa3; Pa42; Pa83; Pa83; Pa121; Pa219; Pa267; Pa320; Pa368; Pa418; Pa773. In that

time, Center City paid operating expenses of nearly $3.2 million, ***without any return on its investment***. Ibid. The Authority acknowledged the impossibility of Center City's situation when Mr. Perez and the Authority's financial consultant, Ron Jampel ("Mr. Jampel"), confirmed that revenues from the Project Garage alone could never surpass the $1.6 million revenue threshold. 2T72:7-10; 4T134:10-14.

M. The Authority Failed To Credit Center City With Revenue Generated From All Parking In The Project Area

The Authority currently operates surface parking lots that compete for parkers with the Project Garage on the parcels where the Authority Garage, retail/office building, and residential building were to be built. 1T84:14-24. Mr. Perez confirmed that, for purposes of the parking revenue threshold, all parking revenues from the Project area were to be included in the calculation, including those surface lots adjacent to the Mall that were to be the sites of the residential building, the retail/office building, and the Authority Garage. 2T70:9-71:17.

The Authority, however, never credited Center City for those revenues. For example, the 2018 Year End Reconciliation Report included an analysis of all sources of revenue credited to Center City. Pa418. Mr. Perez was asked directly where the revenues generated from the surface parking lots located in the Project area were reflected in that breakdown, and he testified that he did

not see them reflected in the reconciliation. See 2T70:9-71:17. Instead, the Authority retained all revenue from the Project Garage and all revenue from the surface parking lots.

N. The Authority Offered Free Or Reduced Parking Schemes Without Center City's Consent And To Center City's Detriment

i. The Authority Did Not Seek Center City's Approval for Marketing Plans

The Operating Agreement gave the Authority the ability to offer, market, make, and sell various forms of parking privileges to the public under various schemes and/or time limitations to be determined and set by the Authority. Da256 (§ 5.2 (b)). The Operating Agreement, however, required that "any marketing plan shall be provided to [Center City] for its review and comment." Ibid. The Authority failed to submit such plans to Center City. For example, the Authority entered into a Memorandum of Agreement ("MOA") with the County of Passaic (the "County") to offer jurors reduced parking fees. Pa231. Center City did not know about this arrangement until ***after*** the Authority executed the MOA. 1T68:1-6. The Authority also offered coupon books for discounted parking at any of the Authority's parking facilities, including the Project Garage, but never informed Center City. 1T68:15-70:1.

ii. The Authority Profited From The Marketing Plans To The Detriment Of Center City

The Authority profited from its unapproved marketing plans and Center City bore the costs thereof. For example, the Authority retained all proceeds generated from sale of the coupon books. See 1T69:20-23. The Authority also did not include sales of coupon book in its calculations of total revenue. Ibid. Stated differently, the Authority kept all the profits from the sale of coupon books and did not credit Center City with any portion derived from such sales.

O. The Authority Mismanaged The Project Garage By Failing To Operate It Efficiently

At trial, Center City introduced the expert testimony of Christopher Pecoraro, a parking expert with more than thirty years of experience in the parking industry. His expert report was subsequently introduced into evidence. Pa729-775; 4T156:11-157:4. In his unrebutted expert testimony, Mr. Pecoraro detailed the extent of the Authority's mismanagement and inefficient operation of the Project Garage.

Mr. Pecoraro highlighted obvious wasteful inefficiencies in the Authority's operation of the Project Garage that increased costs paid by Center City. He testified that although the Project Garage has current technology, the Authority does not use it to "its full potential" which would cut the overall cost to Center City for the Project Garage's operations. 4T108:16-20. Mr. Pecoraro

also pointed out that the Authority is over-staffing the Project Garage (which increases Center City's payroll costs) to process parking tickets manually when the parking validation system that Center City purchased can read those tickets without the need for staffing. 4T108:21-109:6. Mr. Pecoraro testified that Center City pays for two insurance policies on the Project Garage, because although Center City maintains a general liability policy for the Project Garage, the Authority inexplicably purchased a duplicative insurance policy for which Center City has been charged. 4T116:1-17.

Mr. Pecoraro also took exception to the revenues generated at the Project Garage. He estimated that, based on pre-Project images, the prior surface lot on the Mall site supported approximately 330 parking spaces. 4T128:16-10. The Project Garage contained 657 spots—almost twice as many. Ibid. Mr. Pecoraro opined that if the number of parking spaces doubled, it would be reasonable to assume that parking revenue would also double. 4T129:2-4. Yet despite twice the number of parking spaces, parking revenue ***decreased*** by over fifty percent. Id.

P. Center City Paid Approximately $800,000 Annually In Property Taxes To The City

Since the Project Garage and the Mall were opened in 2007 and 2009, respectively, Center City has paid property taxes for those parcels. See 1T15:9-

12. For the year 2020, Center City paid approximately $800,000 in property taxes to the City. Pa495.

Q. Instead Of Building The Authority Garage, The Authority Planned to Rebuild A Nearby Parking Garage

i. Plans For The Ward Street Garage

Instead of proceeding with the Authority Garage around the time of trial, the Authority spent its limited resources on an alternate parking garage project. More specifically, the Authority was preparing to demolish and rebuild a larger version of a parking garage located on Ward Street in Paterson (the "Ward Street Garage"), which is a competing parking facility located one block east of the Mall. See 2T108:7-11; 109:25-110:5; 1T86:12-19 (testimony pointing out the "overlap" between users of the Authority Garage and the Ward Street Garage). According to the Authority, the approximate cost of this Ward Street Garage project was $30 million. 2T103:11-13.

ii. The Authority Applied And Received Preliminary Approval For ERG Tax Credits To Defray Cost Of The Ward Street Garage

In order to defray the cost of rebuilding the Ward Street Garage, the Authority applied for and tentatively received approximately $30 million in Economic Redevelopment and Growth ("ERG") tax credits and other financing sources to offset these costs, which bypassed the need for FSA approval.

2T103:2-7. On April 13, 2022, the New Jersey Economic Development Authority ("NJEDA") preliminarily approved the ERG tax credits for the Ward Street Garage. See Pa378; Pa427. Mr. Perez testified that the Authority's financing for the Ward Street Garage depends on those ERG tax credits and estimated that the Authority will begin construction by June 2022. 2T114:14-16.

iii. The ERG Tax Credits Could Have Been Transferred To The Authority Garage

Mr. Jampel testified that the ERG tax credits are not specific to the Ward Street Garage and could have been transferred to the Authority Garage. 4T82:18-24.

iv. There Was No Demand For The Ward Street Garage

One of the Authority's justifications for refusing to build the Authority Garage was that financing could not be obtained due to a lack of parking demand. 2T110:6-12. This did not prevent the Authority from seeking to replace and expand the Ward Street Garage, which is only one block from the Mall.

The Authority's trial testimony confirmed the lack of a demand for parking to support the reconstruction of the Ward Street Garage. Mr. Perez testified that the Ward Street Garage was closed in March 2020 and subsequently demolished. 2T104:18-105:8. The former patrons of the Ward Street Garage

were relocated to other Authority-owned parking garages across the City. 2T105:12-107:3. Mr. Perez confirmed that there has been no shortage of parking in the City as a result of the Ward Street Garage being demolished pending its replacement. 2T106:23-107:3.

v. The Authority Had No Legitimate Reason For Building The Ward Street Garage Instead Of The Authority Garage

Given the proximity of the two garages, the Authority cannot justify its decision to build the Ward Street Garage as opposed to the Authority Garage. The Trial Court directly questioned Mr. Perez on this point: "if you are going to knock [the Ward Street Garage] down, it is gone. So why not build [the Authority Garage] on the other spot?" 2T119:11-21. Mr. Perez testified in response that "[i]f you knock it down, then we have to rebui[ld] it." 1T119:22-23. When asked why the Authority had to rebuild it, Mr. Perez confusingly stated: "[t]he garage that we are rebuilding . . . I don't know if there is anything more I could say." 1T119:24-120:2. The Trial Court properly understood that non-answer to convey that the Authority was "choosing to build [the Ward Street Garage]" and not the Authority Garage. 1T120:3-4.

R. Post-Judgment Proceedings

The June 30, 2022 Order's specific performance remedy contemplated the possibility that Defendant might not have been able to meet certain financing

contingencies and, as a result, required negotiations for alternatives. Da361-362. It also provided alternatively that if the project could not proceed because of the inability to meet contingencies or other mutual agreement, then it would revise the revenue sharing formula in the Redevelopment Agreement and would reconsider Project Garage operations and expenses. Da363.

Defendant's guarantor, Assured Guaranty Municipal Corp. ("Assured"), advised by letter dated December 28, 2022 that it would not consent "to the financing of the construction of the Authority Garage from revenues of the Authority's parking system." Pa501.

Assured's letter did not end the conversation. By email of counsel dated January 25, 2023, Center City memorialized verbal conversations with Defendant's counsel and Defendant, and noted Defendant's inability to meet the contingencies. Pa506-507. Counsel also proposed an alternative resolution, whereby Defendant would lease certain remaining parcels to Center City for ninety-nine years so Center City could construct the remaining properties pursuant to the Redevelopment Agreement, Center City would assume Defendant's obligation to "finance, build, and operate the Authority Garage", and Center City would retain all revenue going forward. Pa507. Defendant rejected the offer out of hand, but suggested some minor alterations to revenue calculations. Pa505-506 (email from counsel dated January 26, 2023).

Curiously, Defendant asked Center City for a proposal "for development that Center City believes could be financially feasible for all parties involved." Pa506.

By email dated February 15, 2023, Center City relayed another proposal which included third-party management of the Center City Garage and a revision of the revenue formula, Center City proceeding with its residential and retail phases, and making Defendant's obligation to build the Authority Garage optional. Pa503-504. Defendant responded on February 22, 2023, indicating that it could not agree because of its "existing bond obligations." Pa502. As a result, post-trial submissions had to be scheduled and submitted. Ibid.

PROCEDURAL HISTORY

Center City filed its initial Complaint in this matter on May 4, 2021. Da1. The Authority filed an Answer and Counterclaim on June 8, 2021. Da28. The case was tried before the Hon. Edward A. Jerejian, P.J.Ch. over four days, on March 30, 2022, March 31, 2022, April 5, 2022, and April 6, 2022.

The Trial Court issued an initial oral decision in this matter on June 29, 2022, and memorialized its findings in an Order dated June 30, 2022. Da361.

Following post-judgment submissions occasioned by the inability to execute the specific performance remedy ordered in the June 30, 2022 Order, the Trial Court issued a second decision by Order dated March 15, 2024, which,

in part, reformed the Redevelopment Agreement. Da49. The Trial Court denied Defendant's motion to stay that Order by Order dated April 26, 2024. Da398. This Court granted Defendant's motion for leave to appeal by Order dated April 29, 2024. Da398. On June 14, 2024, this Court granted Defendant's motion to stay the March 15, 2024. Da400.

On July 3, 2024, Center City filed a Notice of Motion for Leave to Appeal from this Court's June 14, 2024 Order and Decision, imposing a stay. Pa727. As of the date of this filing, that motion remains pending.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD REVIEW THE TRIAL COURT'S MARCH 15, 2024 UNDER THE ABUSE OF DISCRETION STANDARD (STANDARD OF REVIEW NOT ARGUED BELOW)

Defendant asks this Court to reverse a portion of the Trial Court's remedy, applied following a full bench trial. Defendant does not appear to challenge a single finding of fact—rather, Defendant merely takes issue with the Trial Court's two-step remedy, which led to a reformation of the Redevelopment Agreement. This Court, however, should not disturb any of the Trial Court's findings.

In Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474 (1974), the Supreme Court held:

> Considering first the scope of our appellate review of judgment entered in a non-jury case, as here, we note that our courts have held that the findings on which it is based should not be disturbed "unless they are so wholly insupportable as to result in a denial of justice," and that the appellate court should exercise its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter. That the finding reviewed is based on factual determinations in which matters of credibility are involved is not without significance. Findings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence.
>
> [Id. at 483-484 (citations omitted).]

Here, Defendant neither addresses the appropriate standard of review applicable to its appeal, nor cites a single fact in its brief which it contends the Trial Court found in error. Rather, Defendant objects to the imposition of the reformation remedy, based on facts it ***does not challenge***. Accordingly, this Court should not disturb any of the facts found at trial, whether as part of the Trial Court's initial findings in 2022 or following post-judgment proceedings in 2024.

Accordingly, Center City respectfully requests that the Court deny Defendant's appeal.

POINT II

THE TRIAL COURT PROPERLY EXERCISED ITS EQUITABLE DISCRETION TO PROVIDE REDRESS TO CENTER CITY (6T10:7-12:14)

The Trial Court acted soundly within its discretion in imposing what ended up becoming a two-step remedy, first ordering specific performance, and, when two separate sessions of settlement conferences failed, imposing the reformation remedy it first referenced in the June 30, 2022 Order to make Center City whole. In other words, having had the benefit of discovery, a trial, and post-trial submissions, the trial court was best positioned to determine credibility, see the entire picture, and determine an equitable resolution of this dispute. This Court should not disturb the Trial Court's well-reasoned decisions.

In Sears Roebuck & Co. v. Camp., 124 N.J. Eq. 403 (E. & A. 1938), the Court of Errors and Appeals explained the fundamental, bedrock equitable principle that:

> [e]quitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy ***and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties***."
>
> [Id. at 411-412 (quoting Pom. Eq. Jur. § 109 (emphasis added)).]

Moreover:

> A lack of precedent, or mere novelty in incident, is no obstacle to the award of equitable relief, if the case presented is referable to an established head of equity jurisprudence--either of primary right or of remedy merely. And it is an ancient field of equity jurisprudence to relieve against the consequences of accident and mistake of fact . . . where, in the furtherance of justice, that course may be taken without disregard of an equal or superior equity, particularly where one has thereby acquired, at the expense of the complaining party, a legal right which in good conscience he should not retain.
>
> [Id. at 412 (citations omitted).]

Here, following a bench trial, the Trial Court ordered specific performance, and advised that it would reform the subject agreements if specific performance failed, which in fact happened. Defendant's appeal, however, relies on an overly broad, paint-by-numbers assertion that the Trial Court mistakenly ordered reformation of the subject agreements without finding that there was either fraud, mutual mistake, or unilateral mistake by a party coupled with fraud or unconscionable conduct on the part of the other party. That distillation of the case merely assigns and takes issue with a label without exploring the underlying reasons as to what and why the Trial Court ultimately reformed the Redevelopment Agreement. Accordingly, this Court should affirm the Trial Court's proper exercise of discretion.

Appellate courts must defer to the Trial Court's findings of fact. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-484 (1974). Here, the Trial Court held four days of witness testimony, where it judged witness credibility, and reached an initial opinion and subsequent remedy. In its opinion, the Trial Court noted that it was "a court of equity, and in equity there's maxims that are often bandied about such as 'equity will not suffer a wrong without a remedy, . . .'" 5T16:19-21 (citing Crane v. Bielsky, 15 N.J. 342, 249 (1954). Further, the Trial Court noted that its "equitable jurisdiction provides as much flexibility as is warranted by the circumstances." 5T16:22-24 (citing Matejek v. Watson, 449 N.J. Super. 179, 183 (App. Div. 2017)). Further, the Trial Court noted that it had "the power to devise a remedy and shape it to fit the change in circumstances of every case in a complex relationship with the parties. 5T17:1-3 (citing Sears, Roebuck v. Camp, 124 N.J. Eq. 403, 411-412 (E. & A. 1938). Finally, and critically, the Trial Court noted that its equitable jurisdiction "does not depend upon the mere accident, whether the Court has in some previous case or some distant period of time granted relief under similar circumstances, and the fact that no precedent exists is no sound reason for denying relief when the situation demands, and no other principle forbids." 5T17:6-16.[4]

[4] While not memorialized in the transcript, we believe the Trial Court quoted this language from Briscoe v. O'Connor, 115 N.J. Eq. 360, 364-365 (E. & A. 1934)

When the parties could not resolve the specific performance remedy on their own, as directed by the Trail Court, the parties made extensive written post-judgment submissions, Pa497-559 (Center City's initial post-judgment submission); Pa562-Pa668 (Defendant's initial post-judgment submission); Pa669-Pa698 (Center City's reply to Defendant's post-judgment submission); Pa704-Pa726 (Defendant's reply to Center City's post-judgment submission). Following review of those submissions, the Trial Court reached a decision, in light of the alleged impossibility of specific performance, finding that Defendant had continued to take an unreasonable position resulting in an unconscionable position, and imposed an equitable remedy which acknowledged that without equitable relief, Center City would be required to pay millions of dollars in expenses without ever realizing any revenue for its efforts. The Trial Court initially held that "part of what I found was that anything otherwise [other than reformation] would be unconscionable." 6T11:1-2. Further, the Trial Court found Defendant's position to be, essentially, "[w]e just want your money and then we could do what we want and run the garage." 6T11:24-25. Thus, the Trial Court properly found that "that is unconscionable and that is why the formula needs to be revised." 6T12:1-3.

(citations omitted).

Here, the Trial Court properly held that Defendant took the position, regardless of whether it was intentional or otherwise, which resulted in the unconscionable result of a deal in which Center City bore the costs of the parking garage, and Defendant enjoyed all the profits, with no recourse to Center City. As such, reformation was a proper remedy (especially given the fact that the initial specific performance remedy would not be accomplished). Defendant cannot now escape its obligation to "turn square corners" with Plaintiff even if it did not act in "bad faith" or "fraudulently". Its attempt to have its cake and eat it with the subject property demonstrates that it did not turn square corners in the litigation and, as a result, the Trial Court properly reformed the subject agreements to remedy the harm to Center City.

Moreover, Defendant mistakenly argued that the Trial Court improperly reformed the Redevelopment Agreement because it did not find any mistake or duress. That argument falls flat, however, because "[a] Chancery judge has broad discretion 'to adapt equitable remedies to the particular circumstances of a given case.'" Tarta Luna Properties, LLC v. Harvest Restaurants Group LLC, 466 N.J. Super. 137, 153 (App. Div. 2021) (quoting Marioni v. Roxy Garments Delivery Co. Inc., 417 N.J. Super. 269, 275 (App. Div. 2010) (citations omitted)). Additionally, equitable remedies "are distinguished by their flexibility, their unlimited variety," and "their adaptability to circumstances".

Salorio v. Glaser, 93 N.J. 447, 469 (1983).

Having considered the witness trial and post-trial submissions, the Trial Court had ample discretion to impose a remedy to fit the facts and circumstances of the case. See Rova Farms, supra, 65 N.J. at 484. The Trial Court did not need to make a finding of fraud or mistake to reform the Redevelopment Agreement—it was well within its powers to find and impose a just remedy to provide redress to Center City, especially because Defendant caused the preliminary specific performance remedy to fail.

Accordingly, the Trial Court properly reformed the subject agreements, and this Court should affirm the March 15, 2024 Judgment and dismiss Defendant's appeal.

POINT III

THE TRIAL COURT PROPERLY REFORMED THE SUBJECT AGREEMENTS ONCE IT DETERMINED THAT ITS INITIAL REMEDY WAS NOT FEASIBLE (DA1; DA669)

A court of equity has significant discretion and wide latitude in imposing remedies to fit the facts of the case. As noted supra, Point II, this Court has recently reaffirmed that:

> [a] Chancery judge has broad discretion "to adapt equitable remedies to the particular circumstances of a given case." Marioni v. Roxy Garments Delivery Co. Inc., 417 N.J. Super. 269, 275 (App. Div. 2010) (citations omitted); see also Salorio v. Glaser, 93 N.J.

> 447, 469 (1983) (noting that equitable remedies "are distinguished by their flexibility, their unlimited variety," and "their adaptability to circumstances").
>
> [Tarta Luna Properties, supra, 466 N.J. Super. at 153.]

In reviewing the imposition of a Trial Court's equitable remedy, the Appellate Division considers three elements:

> First, the facts the judge adopts in an equity case are entitled to deference "when supported by adequate, substantial[,] and credible evidence." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). Second, in drawing conclusions from those facts, the Chancery judge is required to apply accepted legal and equitable principles; no deference is afforded in this regard. Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995). And third, we will decline to intervene absent an abuse of discretion, or where the judge's conclusions prove inconsistent with her own findings of fact. Marioni [v. Roxy Garments Delivery Co.], 417 N.J. Super. [269,] 275-76 [App. Div. 2010]. A court abuses its discretion "when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (citing Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).
>
> [Id. at 153-154.]

In other words, having heard the testimony of the parties' trial witnesses, along with the post-trial submissions of proposed findings of fact and conclusions of law, as well as having reviewed the post-judgment submissions

leading to the March 15, 2024 Order, a Trial Court sitting in equity has broad discretion to impose a remedy which fits the facts of the case. Thus, as here, the Trial Court did not need to find fraud or mistake to reform the Redevelopment Agreement—the Trial Court acted well within its powers to find and impose a just remedy to provide redress to Plaintiff.

Defendant does not argue that the Trial Court abused its discretion by granting reformation, following the failure of specific performance. Rather, Defendant's ***sole*** argument as to the substance of the Trial Court's March 15, 2024 Order is that reformation was improper because the Trial Court held that Defendant had not acted in bad faith or committed fraud. That argument, however, ignores the fact that the Trial Court did not simply order reformation unexpectedly. Rather, as set forth above, it was the failure of the specific performance remedy that led to the imposition of the reformation of the agreement, which was contemplated when the Trial Court entered its initial June 30, 2022 Order. Da361. In fact, in its initial decision, the Trial Court held that if the parties could not "move forward" because of contingencies not being met, then it would entertain post-judgment applications. 5T32:3-17.

In 2022, the Trial Court held a trial and fashioned a remedy which contained a requirement, with contingencies, that the parties act in good faith to specifically perform the subject Redevelopment Agreement. Da669. That

remedy failed, in part, because, as the Trial Court surmised about Defendants, "I guess they would rather have surface lots and a mall that perhaps is not going to end up being what everybody thought it would because the rest of the parts of the development weren't constructed." 6T5:22-6:1.

The Trial Court then reminded the parties that its initial "decision was to hopefully reignite and reinitiate this project, to let the parties get back together, let them have some discussions." 6T6:4-7. After reviewing post-trial events, involving Defendant's competing garage project, the Trial Court remarked that "sometimes things just change. The appetite changes, and it just is not going to be what everybody once thought it was. And this Court thought that perhaps everybody getting back together, maybe they could arrange financing." 6T7:10-15.

The Trial Court then summed up:

> And I say all this because the tenor of the paperwork is still like waiting to continue this project, and I think the Court was pretty clear and I will make it clear now, ***that unless there was an agreement by the parties or contingencies were met or they were waived, the alternative was to reform the project garage, and that was what the Court intends to do,*** because after all these years have passed, after the contingencies haven't been met and the Court didn't find that there was some sort of deliberate, willful contact some circumvent that, they had to use it on a dilapidated garage.
>
> [6T8:4-15 (emphasis added).]

Despite these explicit findings, Defendant contends that reformation may ***only*** be granted to reform the contract to one which the parties meant to be in existence but for a drafting mistake. Db13 (quoting Kuller v. Fire Ass'n of Phil., 124 N.J. Eq. 473, 475 (E. & A. 1938). That is not the case. In Bonnco Petrol v. Epstein, 155 N.J. 599 (1989), the Supreme Court found that neither party had claimed a fact mistake or an inaccurate writing. Id. at 609. Instead, the Court noted that "each party argues that its conflicting view of their earlier agreement must prevail. Bonnco believed it agreed to a credit provision, and the Epsteins believed they did not. The facts, therefore, do not support the conclusion that the contract was based on mutual mistake." Ibid. Yet the facts did "support the conclusion that the contract must be rescinded on the grounds of equitable fraud." Ibid. That holding does ***not*** require equitable fraud to trigger a reformation remedy.

To the extent that Defendant asks this Court to impose a black-letter requirement that the Trial Court had to have found either mutual mistake, or a unilateral mistake on Center City's behalf and unconscionable conduct on the part of Defendant, that is form over substance. As the Trial Court was keenly aware, a court of equity "always attempts to get at the substance of things, and to ascertain, affirm, and enforce rights and duties which spring from the 'real'

relations of parties. It will never suffer the mere appearance and external form to conceal the true purposes, objects, and consequences of a transaction." 2 Pomeroy's Equity Jurisprudence (5 ed. 1941), § 378 at 41.

In that regard, the record below demonstrates significant, troubling behavior on behalf of Defendant. The transcript of the post-judgment oral decision contains at least ***five*** references to the "unconscionable" results of this contractual relationship. The Trial Court held that "part of what I found was that anything otherwise [other than reformation] would be unconscionable." 6T11:1-2. The Trial Court held that the Defendant's position in this matter to be, essentially, "[w]e just want your money and then we could do what we want and run the garage." 6T11:24-25. Thus, the Trial Court properly found that "that is unconscionable and that is why the formula needs to be revised." 6T12:1-3.

Accordingly, no matter how the Trial Court labeled its March 15, 2024 Order, whether as reformation, or a remedy for breach of contract, or otherwise (*i.e.* the form of relief), it directly addressed Defendant's significant misconduct and provided appropriate relief to Center City to remedy the misconduct.

In addition, the Trial Court's finding that Defendant committed unconscionable behavior also amounts to a violation of the "square corners" doctrine. It is undisputed that Defendant is a public entity. As such, we note the Appellate Division's holding in CBS Outdoor, Inc. v. Borough of Lebanon

Planning Board/Board of Adjustment, 414 N.J. Super. 563 (App. Div. 2010), which held that "[f]or almost a half-century, our State's public policy jurisprudence has expressly insisted that governmental agents and units of government observe certain standards and norms--particularly during litigation--that are beyond reproach." Id. at 585 (citations omitted). Moreover, "[o]ne of the hallmarks of the 'turn square corners' doctrine is that its application is not dependent upon a finding of bad faith. Instead, it focuses the judicial inquiry upon whether government seeks an unfair 'litigational advantage'". Id. at 586-587.

In addition, as the Supreme Court has held:

> We have in a variety of contexts insisted that governmental officials act solely in the public interest. In dealing with the public, government must "turn square corners." Gruber v. Mayor and Tp. Com. of Raritan Tp., 73 N.J. Super. 120 (App. Div.), aff'd., 39 N.J. 1 (1962). ***This applies, for example, in government contracts***. See Keyes Martin v. Director, Div. of Purchase and Property, 99 N.J. 244 (1985). Also, in the condemnation field, government has an overriding obligation to deal forthrightly and fairly with property owners. See Rockaway v. Donofrio, 186 N.J. Super. 344 (App. Div. 1982); State v. Siris, 191 N.J. Super. 261 (1983). It may not conduct itself so as to achieve or preserve any kind of bargaining or litigational advantage over the property owner. Its primary obligation is to comport itself with compunction and integrity, and in doing so government may have to forego the freedom of action that private citizens may employ in dealing with one another.

> [F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426-27 (1985) (supersession by statute unrelated to the holding regarding the square corners doctrine) (emphasis added).]

Here, the Trial Court properly held that Defendant's refusal to build the Authority Garage, combined with the inability to perform the agreement following the June 30, 2022 Order, resulted in an unconscionable result where Center City bore the costs of the parking garage, and Defendant enjoyed all the profits. As such, reformation was the appropriate remedy in light of all the facts detailed by the Trial Court, and as set forth above. Defendant cannot escape its obligation to "turn square corners" with Center City even if it did not act in "bad faith" or fraudulently. Defendant's attempt to have its cake and eat it with the subject property demonstrates that it did not turn square corners in litigation and, as a result, the Trail Court's decision should stand.

Accordingly, Center City respectfully requests that this Court affirm the Trial Court's March 15, 2024 Judgment and dismiss Defendant's appeal.

POINT IV

IN THE ALTERNATIVE, IF THIS COURT REVERSES THE REFORMATION REMEDY, THIS COURT MUST COMPEL DEFENDANT TO COMPLY WITH THE SPECIFIC PERFORMANCE REMEDY FROM WHICH DEFENDANT DOES NOT APPEAL (REMEDY ISSUE NOT ARGUED BELOW)

From its motion for a stay in the Trial Court, through its motion for leave to appeal from the Trial Court's March 15, 2024 Order, Da49; Da397; and its motion for a stay of the March 15, 2024 Order in this Court, Da400, the ***only*** issue Defendant has raised on appeal is the Trial Court's imposition of the reformation remedy. Defendant has ***not*** challenged the Trial Court's imposition of the specific performance remedy, Da361. Nor has Defendant challenged ***any*** of the Trial Court's factual findings in this matter.

As set forth above, sitting as a Court of Equity, the Trial Court properly found that Defendant must affirm its obligations under the Redevelopment Agreement. When its holding to remedy that breach—specific performance—failed, the Trial Court, by necessity, reformed the subject agreements to achieve a just result. Thus, "[e]quity regards and treats as done what in good conscience ought to be done. Martindell v. Fiduciary Counsel, Inc., 133 N.J. Eq. 408, 413 (E. & A. 1943). In addition, "the fundamental principles which govern a court

of equity in decreeing the specific performance of contracts are in essence the same whether the contract concerns realty or personalty." Id. at 414.

More particularly, "specific performance is a discretionary remedy resting on equitable principles and requiring the court to appraise the respective conduct and situation of the parties." Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104, 113 (App. Div. 1990), certif. denied, 126 N.J. 321 (1991). Moreover, "[t]o establish a right to specific performance, the party seeking the relief must demonstrate that the contract in question is valid and enforceable at law, and that the terms of the contract are clear." Est. of Cohen ex rel. Perelman v. Booth Computers, 421 N.J. Super. 134, 149-150 (App. Div.), certif. denied, 208 N.J. 370 (2011).

Again, Defendant does not challenge a single fact found by the Trial Court—it only challenges the imposition of the reformation remedy. See Db20 (Defendant's Conclusion, asking this Court to reverse the reformation of the Redevelopment Agreement and Operating Agreement and the requirement that it pay Center City $499,007.77 in retroactive fees). Accordingly, if this Court accepts Defendant's argument, the most this Court could do would be to remand the matter to the Trial Court to oversee the imposition of the specific performance of those agreements, which presumably would require Defendant to build the Authority Garage. Otherwise, the Defendant, a public entity with

the obligation to turn square corners, would unjustly be allowed to continue to realize revenue while obligating Center City to continue to pay costs with absolutely no hope or prospect of recouping any of its significant investment in Paterson, and essentially breach its obligations to Center City pursuant to the Redevelopment Agreement and Operating Agreement without recourse to Center City.

Accordingly, if this Court does not affirm the Trial Court's reformation of the subject agreements, then its remedy should be to remand the matter for the Trial Court with instructions to implement the specific performance of those agreements, pursuant to their terms.

CONCLUSION

For the foregoing reasons, Plaintiff, Center City Partners, LLC, respectfully requests that the Court affirm the Trial Court's March 15, 2024 Order and Decision, and dismiss the appeal of Defendant, Paterson Parking Authority.

Respectfully submitted,

LUM, DRASCO & POSITAN LLC
Attorneys for Plaintiff/Respondent, Center City Partners, LLC

By: /s/ Dennis J. Drasco
DENNIS J. DRASCO
A Member of the Firm

A Member of the Firm

Dated: August 5, 2024

CENTER CITY PARTNERS, LLC, Plaintiff/Appellee, vs. PATERSON PARKING AUTHORITY, Defendant/Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002593-23 Submitted: August 21, 2024 On Appeal from an Interlocutory Order, dated March 15, 2024, of the: CHANCERY DIVISION – BERGEN COUNTY DOCKET NO. BER-C-103-21 CIVIL ACTION Sat Below: Edward A. Jerejian, P.J.Ch.

REPLY BRIEF ON BEHALF OF APPELLANT PARKING AUTHORITY OF THE CITY OF PATERSON

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PRELIMINARY STATEMENT

As set forth in the prior submissions of the Parking Authority of the City of Paterson (the "Authority") and further herein, Center City Partners, LLC ("Center City") has not met its burden of establishing the legal standard for reformation of contract. The March 15, 2024 Order of the trial court, Da49, reformed the redevelopment agreement, dated February 24, 2005 (the "Redevelopment Agreement") by and among the City of Paterson (the "City"), Center City and the Authority, and the Operating Agreement between the Authority and Center City (the "Operating Agreement"). The Redevelopment Agreement was reformed to remove the monetary threshold of $1,600,000, above which the Authority and Center City would share "excess profits" pursuant to Section 8.6 of the Redevelopment Agreement, thereby allowing Center City to receive 66.66% of revenue generated from the Center City Mall Garage parking, after expenses, with the Authority receiving 33.33% of the revenue.

The March 15, 2024 Order further directed the Authority to pay Center City $499,007.77 in fees as a result of said reformation, retroactive to August 2019. The trial record is clear the Authority never engaged in any conduct which would meet the well-established standard for reformation of a contract.

The Authority, at all times during the duration of the Redevelopment Agreement and Operating Agreement, acted in accordance with the express terms of both agreements and any deviation from these terms was undertaken with the approval or consent of Center City. Further, the parties were represented by competent counsel and financial advisory professionals during the relevant contractual negotiations. While Center City may not be pleased with the financial results of these duly negotiated agreements, there is no basis in law to permit the reformation of these agreements.

As set forth further herein, Center City has not met its burden of establishing the legal standard for reformation of contract. There is no allegation of any mutual mistake of the parties with respect to either agreement, and no demonstrated instance of fraud or unconscionable conduct on the part of the Authority, which elements are essential in granting the extraordinary remedy of reformation of contract. The trial court misapplied the law in reforming the Redevelopment Agreement and Operating Agreement, and its decision therefore must be reversed.

For these reasons, the Authority asks this Court to reverse and set aside the provisions of the March 15, 2024 Order of the trial court granting reformation of the Redevelopment Agreement and Operating Agreement and

ordering payment by the Authority to Center City in the amount of $499,007.77 in retroactive fees as a result of said reformation.

STATEMENT OF FACTS

The Authority refers to and relies upon the Statement of Facts set forth in its revised Brief of July 3, 2024[1].

PROCEDURAL HISTORY

The Authority refers to and relies upon the Procedural History set forth in its revised Brief of July 3, 2024.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT MISAPPLIED THE GOVERNING LAW IN THE MARCH 15, 2024 ORDER (Da49)

The Authority has asked this Court to reverse the reformation of the Redevelopment Agreement and Operating Agreement, as set forth in the March 15, 2024 Order. Da49. Such "review of any order entered by the trial court is limited," and this Court "will not disturb an order unless it is unsupported by the facts of record, *Rova Farms Resort, Inc. v. Investors Insurance Co. of America*, 65 N.J. 474, 483-84 (1974), **or** the judge misapprehended or misapplied the governing law." *Manalapan Realty, L.P. v.*

[1] In this submission, the Authority relies on the same defined terms as used in its initial revised Brief in support of appeal, dated July 3, 2024.

Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (emphasis added). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." *Manalapan Realty, L.P.*, 140 N.J. at 378, *citing State v. Brown*, 118 N.J. 595, 604 (1990); *Dolson v. Anastasia*, 55 N.J. 2, 7 (1969); *Pearl Assurance Co. Ltd. v. Watts*, 69 N.J. Super. 198, 205 (App. Div. 1961).

As stated in the Authority's brief in chief, "[t]he traditional grounds justifying reformation of an instrument are either mutual mistake or unilateral mistake by one party and fraud or unconscionable conduct by the other." *Dugan Constr. Co. v. N.J. Tpk. Auth.*, 398 N.J. Super. 229, 242-43 (App. Div.), *certif. denied*, 196 N.J. 346 (2008) (*quoting St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden*, 88 N.J. 571, 577 (1982)). The record before the trial court is clear -- there was no mistake by either party in the drafting of the relevant documents, and the Authority did not engage in any fraud or unconscionable conduct. Center City argues the trial court "did not need to make a finding of fraud or mistake to reform the Redevelopment Agreement," and that the trial court acted within its discretionary powers to impose such a remedy. *See*, Center City Brief ("Br."), at 38. "Mandates of deference do not apply when issues of law are involved, however." *Cosme v.*

Boro. of East Newark Tp. Comm., 304 N.J.Super. 191, 203 (App. Div. 1997), *citing In re J.W.D.*, 149 N.J. 108, 117 (1997).

In this instance, the trial court misapplied the clear legal standard for reformation of contract, and "the questions for determination turn not upon the resolution of disputed facts, but rather upon the legal consequences of the factual complex when applicable rules of law are applied thereto." *Pearl Assur. Co. v. Watts*, 69 N.J. Super. at 205. "[W]here the trial judge misapplies the law to the facts, it is the duty of the reviewing court to adjudicate the controversy in the light of applicable principles in order that a manifest denial of justice be avoided." *Id.*, *citing Kavanaugh v. Quigley*, 63 N.J. Super. 153, 158 (App. Div. 1960). "The determination whether or not a trial judge has pronounced judgment agreeably with the applicable rule of law is, in this connection, as in all others, one to be made independently by an appellate court, unfettered by principles of decisional deference." *Cosme*, 304 N.J. Super. 203, *citing In re J.W.D.*, 149 N.J. at 117. It is for these reasons that (1) the within appeal is properly before this Court, and (2) this Court should reverse the trial court's reformation of the Redevelopment Agreement and Operating Agreement as set forth in the March 15, 2024 Order.

POINT II

THE TRIAL COURT IMPROPERLY EXERCISED ITS EQUITABLE DISCRETION IN REFORMING THE REDEVELOPMENT AGREEMENT AND OPERATING AGREEMENT

"[E]quity will generally conform to established rules and precedents, and will not change or unsettle rights that are created and defined by existing legal principles." *Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp*., 100 N.J. 166, 183 (1985), *citing* S. Symons, 2 J. Pomeroy *Equity Jurisprudence*, § 425 at 188 (5th ed. 1941); 27 Am.Jur.2d, *Equity* § 123 at 649 (1966); 30 *C.J.S., Equity* § 103 at 1066 (1965). *See*, Da458-Da459. While the trial court sought to craft an "equitable" remedy in this instance, the reformation ordered by the March 15, 2024 Order defied settled legal principles, by which a court of equity is bound. "This is the basis for the equitable maxim 'equity follows the law,' which instructs that as a rule a court of equity will follow the legislative and common-law regulations of rights, and also obligations of contract." *Dunkin' Donuts of Am., Inc*., 100 N.J. at 183, *citing Natovitz v. Bay Head Realty Co*., 142 N.J.Eq. 456, 463–64 (E. & A.1948) . "[T]he settled precedent is that in the absence of fraud, accident, or mistake, a court of equity cannot change or abrogate the terms of a contract." *Id., citing Mfrs.' Fin. Co. v. McKey*, 294 U.S. 442, 447, 55 S.Ct. 444, 449, 79 L.Ed. 982, 986 (1935).

Further, "[e]quitable relief cannot be claimed because a contract is oppressive, improvident, or unprofitable, or because it produces hardship." *Id.* at 183-184.

Reformation of a contract is an equitable remedy, and the precedent is well-settled. "Equity will reform a contract in the case of a mistake of one party accompanied by fraud or other inequitable conduct by the other party." *Santamaria v. Shell E. Petroleum Prods.*, 116 N.J. Eq. 26, 31 (1934), *citing Forman v. Grant Lunch Corp.*, 113 N. J. Eq. 175 (1933). As set forth at length in the Authority's brief in chief and in Center City's opposition, the trial court record is devoid of any facts or evidence that demonstrate mutual mistake, unilateral mistake, or fraud on the part of the Authority. As has been stated previously, both parties were represented by competent counsel throughout the negotiation of the both the Redevelopment Agreement and Operating Agreement. The terms of these agreements accurately reflect the terms agreed upon by the Authority, the City, and Center City. The negotiation and execution of a series of agreements that one party now seeks to avoid does not support any charge of fraud or unconscionable conduct on the part of the Authority.

In this case, the trial court's attempt at crafting an equitable remedy did not follow the well-settled law governing reformation of a contract. For this reason, the reformation of the Redevelopment Agreement and Operating

Agreement, as set forth in the March 15, 2024 Order, must be reversed and set aside.

POINT III

THE TRIAL COURT IMPROPERLY ORDERED REFORMATION OF THE REDEVELOPMENT AGREEMENT AND OPERATING AGREEMENT

The reformation of a contract is an "extraordinary remedy." *Martinez v. John Hancock Mutual Life Ins. Co.*, 145 N.J. Super. 301, 312 (App. Div. 1976), *certif. denied*, 74 N.J. 253 (1977) (internal citations omitted). "For a court to grant reformation there must be 'clear and convincing proof' that the contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be." *Cent. State Bank v. Hudik-Ross Co., Inc.*, 164 *N.J. Super.* 317, 323-324 (App. Div. 1978), *citing Brodzinsky v. Pulek*, 75 *N.J. Super.* 40, 48 (App. Div.), *certif. denied*, 38 *N.J.* 304 (1962). It is clear the reformed terms of the Redevelopment Agreement and Operating Agreement, as contemplated by the March 15, 2024 Order, are not what the Authority agreed to in 2005 and 2006 when these agreements were executed.

It is required "for reformation for mutual mistake that the minds of the parties have met and reached a prior existing agreement, which the written document fails to express." *Bonnco Petrol, Inc. v. Epstein*, 115 N.J. 599, 608 (1989) (internal citations omitted). Where no mutual mistake exists,

reformation of a contract may be granted only when the facts of the case give rise to equitable fraud. *Id.* at 609. Where reformation is appropriate, the purpose "is to restore the parties to the status quo ante and prevent the party who is responsible for the misrepresentations from gaining a benefit." *Id.* at 612.

At trial, Center City never established that a mutual mistake of the parties or fraudulent conduct on the part of the Authority existed. The trial record is clear the Authority never engaged in bad faith or fraudulent conduct. Center City cannot point to a single fact in the record to suggest otherwise. Instead, it relies on references to "unconscionable results of this contractual relationship." *See*, Center City Br. at 43. Center City's dissatisfaction with the Project resulting from the Redevelopment Agreement and Operating Agreement does not equate to unconscionable conduct by the Authority in drafting or performing under either agreement. Immediately after trial, the trial court confirmed there was no evidence of fraud on the part of the Authority. "I don't believe that the Parking Authority was dealing in bad faith or defrauding Center City or somehow entered into this massive reconstruction project, which is extremely beneficial to the City of Paterson and its citizens and the public, where they duped them into this and we're never going to build

this." 5T 26:12-18. The record below is clear -- the well-established standard for reformation of contract has not been met in this case.

The Authority, at all times, acted in accordance with the terms of the subject agreements. The terms of the Redevelopment Agreement and Operating Agreement, as reformed by the March 15, 2024 Order, do not reflect the terms the Authority agreed to, and do not reflect the meeting of the minds nearly twenty (20) years ago when these agreements were reduced to writing. For these reasons, the trial court erred in reforming the Redevelopment Agreement and Operating Agreement.

POINT IV

THERE IS NO BASIS TO COMPEL SPECIFIC PERFORMANCE PURSUANT TO THE MARCH 15, 2024 ORDER OR THE JUNE 30, 2022 ORDER

With respect to the issue of specific performance, as set forth in the June 30, 2022 Order, Da361-366, the trial court ordered the Authority and Center City to work cooperatively towards "recommencing the project" and ordered the parties to "negotiate in good faith to achieve the satisfaction or waiver of the financing contingencies pursuant to [Section] 8.7 of the Redevelopment Agreement." Da361-Da362. The trial court further provided "[i]f the financing contingencies are not met, the parties then shall confer pursuant to [Section] 8.7(d) of the Redevelopment Agreement and negotiate for a period of

ninety (90) days after determination by the FSA (Assured Guaranty) for alternatives." *Id*.

Pursuant to Section 8.7 of the Redevelopment Agreement, the City, the Authority, and Center City acknowledged the consent of Financial Security Assurance, Inc. ("FSA," now known as Assured Guaranty), the third-party insurer of the Authority's outstanding parking revenue bonds, was required prior to undertaking any action or issuing any additional obligations to finance the construction of the Authority Garage. Da111-Da112. Specifically, Section 8.7(a) of the Redevelopment Agreement provides as follows:

> The parties acknowledge that Financial Security Assurance, Inc. ("FSA") is the insurers of the Authority outstanding parking revenue bonds and as such has a material interest in the operations, financial security or revenue generation prospects of the Authority and in particular, the operation of the Current Parking Facilities conducted in and around the Project Site. As a result, any activities that have the potential to impair the Authority's operations, financial security or revenue generation prospects or, the issuance of additional obligations (either on parity with or junior lien to the Authority outstanding bonds) to finance, among other things, including the Authority Garage, will require FSA's consent.

Section 8.7(b) of the Redevelopment Agreement further described that FSA had expressed a conditional willingness to support the Project only if additional financial guaranties were provided, as follows:

> In furtherance of Section 8.7(a) above, the Authority represents that it has approached FSA regarding the development of the Project, including the financing of the Authority Garage and FSA has indicated a willingness to support the Project and to insure additional obligations (parity or junior lien in nature) to finance the Authority Garage provided that the City agrees to guaranty directly or contingently, the Authority's outstanding bonds and any additional obligations. FSA has required that the City's guaranty be a full faith and credit obligation of the City secured by the levy of ad valorem taxes without limitation as to rate or amount.

Da111. Section 8.7(c) of the Redevelopment Agreement defined the "Financing Contingency" as "[t]he requirement for the Authority to obtain FSA consent to the transaction contemplated herein including the issuance of additional obligations." Da111. Finally, Section 8.7(d) of the Redevelopment Agreement provides:

> In the event that FSA does not agree to insure the Authority's bonds or other obligations expected to be issued to finance the Authority Garage, the parties agree to negotiate other financial alternatives in good faith for a period of 90 days after FSA's determination.

Da112. Simply put, the decision to construct the Authority Garage is not in the sole discretion of the Authority. The trial court clearly recognized the requirement, set forth in Section 8.7(a), that FSA, now known as Assured Guaranty, must consent to the Authority's construction of the Authority

Garage. In accordance with the June 30, 2022 Order, the Authority sought consent of Assured Guaranty for such construction, Da367-Da395, which consent was ultimately denied. Da396. The Authority has, in all respects, complied with the requirements of the June 30, 2022 Order, and has specifically performed its obligations as set forth in Section 8.7 of the Redevelopment Agreement.

To establish a right to the remedy of specific performance, a plaintiff must demonstrate: (1) that the contract in question is valid and enforceable at law, *Jackson v. Manasquan Sav. Bank*, 271 N.J. Super. 136, 144 n. 8 (Law Div. 1993); (2) **that the terms of the contract are "expressed in such fashion that the court can determine, with reasonable certainty, the duties of each party and the conditions under which performance is due**," *Salvatore v. Trace*, 109 N.J. Super. 83, 90 (App. Div. 1969), *aff'd* 55 N.J. 362, 262 (1970), and (3) that an order compelling performance of the contract will not be "harsh or oppressive," *Stehr v. Sawyer*, 40 N.J. 352, 357 (1963) (emphasis added). Section 8.7(a) of the Redevelopment Agreement clearly sets forth the duties of the Authority in constructing the Authority Garage, and the condition – prior consent of Assured Guaranty – precedent to the Authority's performance. Neither the June 30, 2022 Order, nor the

Redevelopment Agreement, contemplated the Authority's construction of the Authority Garage without the consent or approval of Assured Guaranty.

The Authority and Center City stipulated prior to trial that the estimated cost to construct the Authority Garage would be "approximately 24 million dollars." 4T 51:14-22. Without the ability to obtain financing, there is no possibility that the Authority could proceed with construction of the Authority Garage. Ordering the Authority to construct the Authority Garage despite Assured Guaranty's withholding of consent to finance such construction is in direct contravention to an express term of the Redevelopment Agreement, is not contemplated by the June 30, 2022 Order, and lacks any basis in economic reality. Again, Center City is asking the Court to re-write the Redevelopment Agreement in a manner more favorable to Center City, and detrimental to the Authority. For these reasons, the relief requested by Center City should be denied.

CONCLUSION

For all the foregoing reasons, and those set forth in the Authority's revised Brief of July 3, 2024, the provisions of the March 15, 2024 Order of the trial court granting reformation of the Redevelopment Agreement and Operating Agreement, and ordering payment by the Authority to Center City in the amount of $499,007.77 in retroactive fees as a result of said reformation, respectfully, must be reversed and set aside.

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