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SHG Hoboken Urban Renewal Associates, LLC

SHG HOBOKEN URBAN RENEWAL ASSOCIATES, LLC,

Plaintiff,

vs.

THE CITY OF HOBOKEN, NEW JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: L-4492-10

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff SHG Hoboken Urban Renewal Associates, LLC ("SHG"), by way of complaint against the Defendant City of Hoboken, New Jersey ("City"), states as follows:

INTRODUCTION

1. This action arises from the material breach by the City of a contract for the sale of real property designated as Block 1, Lot 1 on the Office Tax Map of the City of Hoboken and commonly known as the "Public Works Garage Site" (the "Premises") to Plaintiff SHG in connection with the planned redevelopment of the Premises by SHG.

2. Pursuant to the terms of the Purchase and Sale Agreement between the parties, the City was obligated, at its sole cost and expense, to investigate and remediate certain environmental conditions existing on the Premise and to obtain certain approvals from the New Jersey Department of Environmental Protection ("NJDEP") including, among other things, a site-wide No Further Action letter for soils and an approved Remedial Action Workplan for groundwater. The City was required to secure the NJDEP approvals and remediate the Premises to non-residential standards as a condition of closing.

3. Despite having over two years to conclude an environmental investigation and remediate the Premises, the City failed to act diligently and undertake any and all commercially reasonable efforts to obtain the requisite NJDEP approvals and to otherwise ensure that the environmental concerns on the Premises were properly addressed.

4. In addition, in seeking the NJDEP approvals, the City, with knowledge and notice, submitted information and reports to the NJDEP that mischaracterized the results of the investigations and ignored the regulatory requirements of the NJDEP-- as well as the advice of its own governmental consultants-- in an effort to fraudulently obtain the approvals by the Closing Date.

5. Three days prior to the closing, when it was readily apparent that the City could not obtain the necessary NJDEP approvals or meet other conditions required to be completed by the closing date, the City passed a resolution unilaterally terminating the Purchase and Sale Agreement and Redevelopment Agreement under the guise that SHG breached the Purchase and Sale Agreement. Thereafter, the City failed to appear at the closing where SHG appeared at the scheduled time and location ready, willing and able to conclude the sale.

6. Accordingly, this action is brought to: (i) compel the return of SHG's deposit of $2,550,000 plus accrued interest currently being held in escrow by the law firm of Ansell, Grimm & Aaron; (ii) compel the return of any and all fees paid by SHG to the City, including the City Fee of $200,000; (iii) for court costs and reasonable attorney's fees; and (iv) for such other relief as this Court deems appropriate.

PARTIES

June 30, 2008, SHG deposited $2,550,000 of the Purchase Price ("Deposit Monies") in escrow with the law firm of Ansell, Grimm & Aaron (f/k/a Ansell, Zaro, Grimm & Aaron) as escrow agent, with the balance of the Purchase Price due at closing. See Exhibit A at § 2.

13. The Closing Date for the Purchase and Sale of the Premises was originally scheduled to occur no later than May 31, 2010, but was extended upon the City's insistence to August 13, 2010 ("Closing Date").

B. The City's Environmental Obligations and Requirement to Vacate the Premises

14. Section 5 of the PSA imposed upon the City continuing environmental investigation and compliance obligations related to the remediation of the Premises.

15. Specifically, prior to the Closing Date, the City was contractually required, at its sole cost and expense, to cause the Premises to be remediated to non-residential standards and/or to obtain a Deed Notice or similar document approved by the New Jersey Department of Environmental Protection ("NJDEP"), together with an associated site-wide No Further Action letter for soils and an approved Remedial Action Work Plan for groundwater, which could include the institution of a Classification Exception Area of indeterminate length (collectively, "Seller's Environmental Approvals."). See Exhibit A at § 5(c).

16. Alternatively, the City could complete the remediation of soils by completing all activities such that the only remaining condition to obtaining the Environmental Approvals was the construction of environmental controls in conjunction with development and recording an NJDEP approved Deed Notice.

17. The remediation of the Premises and the receipt of Seller's Environmental Approvals was an express condition precedent to Closing. See id. at § 6(a)(iii).

18. In connection with the City's continuing environmental investigation and compliance under Section 5 of the PSA, and in accordance with an Access Agreement materially consistent with the form of agreement attached to the PSA as Exhibit C, SHG and/or its agents, contractors, engineers, attorneys, employees, invitees and representative had the right, at reasonable times and upon reasonable notice to the City, to have physical access to the Premises to conduct, at SHG's sole cost and expense, any and all studies, investigations and tests, including, but not limited to, environmental studies (i.e., soil and groundwater sampling), drainage studies, surveying studies, engineering studies, geo-technical studies, and physical inspections of the land, buildings and improvements located at the Premises (collectively, the "Physical Inspections"). See Exhibit A at § 5(b). SHG's right to perform such investigation was not limited in time or scope by the PSA.

19. The City was required to coordinate the satisfaction of its obligations pursuant to Section 5(c) of the PSA and its receipt of the Environmental Approvals, with SHG and SHG's environmental consultant. See Exhibit A at § 5(d).

20. The City was further required to use reasonable efforts to provide SHG with any prospective submissions to the NJDEP at least ten (10) days prior to such submission for SHG's review and comment, and to review and consider the incorporation of SHG's comments in good faith. See id. There was no corollary provision in the PSA imposing similar obligations upon SHG.

21. The City was also required to notify SHG of any meetings or substantive phone calls with NJDEP or any other applicable governmental agency concerning the City's Environmental Approvals at least ten (10) business days prior to such meetings or phone calls, and if such notice was not possible or practicable, as soon as possible. SHG had the right to

attend and participate in such meetings or phone calls to the extent permitted by the applicable governmental agency or official. Again, there was no corollary obligation in the PSA imposing similar obligations upon SHG.

22. The City was obligated to completely vacate the Premises by the Closing Date, i.e. by August 13, 2010.

23. In the event the City could not satisfy the express conditions precedent to Closing, including but not limited to remediating the Premises to the level specified in Section 5(c) and receiving the Seller's Environmental Approvals, then SHG would be entitled to, among other things, the immediate return of the Deposit Monies and City Fee. See id. at § 6(b); § 15(b).

24. Specifically, the PSA provides the following remedies for SHG in the event of a breach by the City:

> In the event that [the City] is in breach or default of this Agreement, and same remains uncured for a period of ten (10) days following notice thereof from [SHG], [SHG] shall have the right to . . . . terminate this Agreement by written notice delivered to [the City] on or before the Closing Date, ***and thereafter have the Deposit Monies, together with any accrued interest, and the City Fee (as defined in the Redevelopment Agreement) immediately returned to it,*** and all of the obligations of the respective parties hereunder shall terminate....

Exhibit A at § 15(b).

25. The PSA further provides that if either party initiates a lawsuit under Section 15, "the prevailing party shall be entitled to court costs and reasonable attorneys' fees." Id. at § 15(c).

26. As set forth below, the City failed to comply with its contractual obligations and SHG is now entitled to the return of the Deposit Monies, with accrued interest, and the City Fee.

C. SHG's Environmental Due Diligence

27. As contract purchaser and redeveloper of the Premises, SHG had an interest in ensuring and verifying that the City appropriately remediated the Premises in accordance with the City's contractual obligations and all applicable laws and regulations.

28. SHG's interest in complete and appropriate remediation stemmed from its legitimate concerns over the health and safety of the various workers that it would hire or retain to ultimately redevelop the Premises, the health and safety of the future residents, employees and neighbors of the redeveloped Premises and its economic interest in avoiding costly and time consuming construction delays in the planned redevelopment.

29. Accordingly, in connection with its contractual rights to engage in environmental due diligence upon the Premises, in February 2008, SHG retained H2M Associates, Inc. ("H2M") to perform environmental consulting and investigatory services upon the Premises.

D. The City Fails to Diligently Conduct the Environmental Investigation and Remediation of the Premises

30. Despite an obligation to diligently undertake and complete the environmental investigation and remediation of the Premises, the City failed to take the necessary measures to timely investigate the Premises and remediate the obvious environmental hazards associated with the Premises.

31. Although it had over two (2) years to complete the investigation and remediation to obtain the Environmental Approvals, the City delayed implementation of required

investigatory and remedial activities, and submission of the corresponding reports, repeatedly ignored SHG's constructive comments, ultimately necessitating out of desperation, the submission of incomplete, false and misleading reports to the NJDEP through the final days before the scheduled Closing Date.

32. Indeed, the City was aware of various environmental issues from prior studies that occurred several years before the PSA was even signed. The environmental investigation of the Premises actually began at least as early as 2002 with the removal of underground storage tanks and continued with the performance of additional sampling at the direction of NJDEP in 2006 (nearly a year after receiving NJDEP direction). In a May 6, 2005 letter report to Joseph Peluso, Hoboken's Director, Environmental Services, titled "Phase I Environmental Site Assessment/Preliminary Assessment & Limited Subsurface Investigation (annexed hereto as Exhibit C), additional investigation was recommended for various Areas of Concern ("AOC"), including potential underground storage tanks ("UST") in the sidewalk and the exterior catch basins. However, on page 9 of the Site Investigation/Remedial Investigation Report, dated June 2006, two (2) years before the PSA was even signed, the City's consultant states that this work had been "deferred." A copy of the June 2006 Site Investigation/Remedial Investigation Report ("2006 Report") is annexed hereto as Exhibit D.

33. Additionally, the 2006 Report states that the sub-grade hydraulic lifts were "abandoned," which indicated that the City knew that the lifts were present, whereas they were subsequently mischaracterized as "former hydraulic lifts" in the May 2009 PA/SI/RI/RAWP that the City submitted to the NJDEP.

34. As discussed herein, these issues have still not been resolved years later.

35. Even though SHG specifically raised investigatory and remedial issues that would necessarily need to be addressed to garner NJDEP approvals, the City repeatedly ignored SHG's recommendations and knowingly and intentionally made submissions that were at best incomplete and not in accordance with applicable NJDEP regulations, or purposefully false, misleading and fraudulent.

36. As such, the NJDEP often required the City to undertake the very same investigations and/or remediations previously recommended by SHG, oftentimes months later, resulting in the City's failure to timely obtain NJDEP approvals. Notably, with the exception of the 2002 removal of the regulated USTs and obtaining groundwater monitoring permits, the City did not require NJDEP approval for its investigatory and remedial work. Thus, the City could have avoided unnecessary delay resulting from awaiting NJDEP approval of various proposals.

37. Further, several of SHG's recommendation that were initially ignored by the City were subsequently required by the NJDEP and the City could have avoided unnecessary delays had it heeded SHG's material and technically appropriate recommendations.

(i) The City Ignores Most of SHG's Initial Recommendations in 2008

38. In May 2008, H2M commenced a Preliminary Assessment/Phase I Environmental Site Assessment ("ESA") on the Premises.

39. Based on H2M's ESA, SHG's environmental consultant identified twelve (12) AOCs on the Premises, which it set forth in a report dated October 27, 2008 (the "H2M Initial Report"). H2M recommended further investigation for seven (7) of those AOCs, including suspected USTs along Willow and Park Avenues, hydraulic lifts, storm sewers, historic fill, concrete staining, the compressor vent discharge and floor drains.

40. The H2M Initial Report was shared with the City in October 2008; however, the City did not agree with H2M's recommendations for further investigation of the floor drains, concrete staining, underground storage tanks and associated piping, storm sewer collection systems and compressor vent discharges. A copy of SHG's October 27, 2008 email and H2M Initial Report is annexed hereto as Exhibit E. Interestingly, while the City disputed many of H2M's recommendations in the Initial Report, the City's environmental consultant had made some of these same recommendations in 2005 and 2006.

41. The City initially ignored most of the recommendations in the H2M Initial Report, agreeing to undertake an additional investigation of only two (2) of these AOCs (the hydraulic lift and historic fill area).

42. In a meeting with the City on November 3, 2008, the City agreed to investigate several additional AOCs, including the catch basins, floor drains, concrete staining and groundwater. The proposed scope of work was provided to SHG on November 5, 2008 and approved on that same day. However, the City did not agree to undertake further investigation relating to the USTs (AOC 2D and AOC 2E) or the compressor vent discharge.

43. The City's repeated refusal to investigate these known AOCs in a timely and responsible manner resulted in its ultimate inability to satisfy its contractual obligations.

(ii) The City Submits an Incomplete PA/SI/RI/RAWP to NJDEP

44. On January 16, 2009, the City provided SHG with a draft of its environmental consultant's draft Preliminary Assessment ("PA")/ Site Investigation ("SI")/ Remedial Investigation ("RI")/ Remedial Action Work Plan ("RAWP") for the Premises.

45. Although the PSA provided SHG ten (10) days to review and comment upon any proposed submissions to the NJDEP, the City demanded SHG's comments within five (5) days, i.e. by January 21, 2009.

46. SHG provided the City with H2M's specific comments on January 20, 2009 and requested that these comments be incorporated into the submission to the NJDEP. H2M again recommended further environmental investigation, including investigation into the suspected USTs and concrete staining. H2M also stated that the 2006 Site Investigation Report/Remedial Investigation Report should be submitted to the NJDEP. A copy of SHG's January 20, 2009 email to the City with exhibits is annexed hereto as Exhibit F. The City ultimately included the data from the 2006 Report in a May 2009 submission (**see ¶50-51, *infra***), but revised the description of certain observations that were made during the removal of certain USTs.

47. On February 2, 2009, at 5:13 p.m., the City circulated another version of the PA/SI/RI/RAWP, which purported to incorporate SHG's comments and informed SHG that the City intended to finalize and send it to the NJDEP on February 5, 2009 and requested any final comments within two (2) days - by February 4, 2009.

48. Although the City incorporated minor changes into the revised draft, it did not agree to any additional investigation associated with the suspected USTs (AOC 2D and 2E).

49. Furthermore, the City failed to provide SHG with a copy of the Preliminary Assessment Report ("PAR") that was being attached as an exhibit to the PA/SI/RI/RAWP.

50. On February 3, 2009, SHG requested a copy of the PAR to review and comment upon.

51. On February 4, 2009, the City's environmental consultant provided SHG with final copies of the Preliminary Assessment summary, PA Report Form (Appendix A) and Areas

of Concern Descriptions (PA Report Appendix A). At that time, the City did not provide SHG with the remaining appendices, claiming that they were too voluminous to be distributed.

52. On February 5, 2009, SHG provided the City with specific comments to the text of the RAWP and PAR. SHG also included general comments which it believed warranted further revisions to the report and which SHG hoped would assist in attaining the Parties' mutual objective of a submission that satisfactorily addressed all issues in order to expedite the remediation process.

53. When no response to these comments was forthcoming, on February 11, 2009, SHG inquired as to the status of the report and the incorporation of SHG's specific and general comments. When no response was forthcoming to this follow up email, on March 13, 2009, SHG's environmental counsel again inquired as to the incorporation of these additional comments. In response, the City, through its environmental counsel, represented that it would respond the following week.

54. Over five (5) weeks after SHG submitted its comments to the PA/SI/RI/RAWP, and after two follow up emails by SHG, on March 18, 2009, the City finally responded to SHG's comments on the draft report and submitted a revised draft report.

55. On or about March 24, 2009, the City submitted further revisions to the Report for SHG's review and comment.

56. On April 3, 2009, the City represented that its environmental consultant's Report would be filed with the NJDEP the following week and that it would send SHG a copy of that submission.

57. Contrary to its representation, the City did not file a report with the NJDEP the following week.

58. In fact, upon information and belief, the City did not file the full report with the NJDEP until May 11, 2009. In that final report, the City incorporated only minor changes and did not agree to any additional investigation associated with the suspected USTs (AOC 2D and 2E) on the Premises. Notably, the report proposed sampling both exterior catch basins, but the City had only sampled one (1) basin. Moreover, upon information and belief, the sampling had been conducted in February 2009, nearly three (3) months prior to the submission of the final report to the NJDEP, yet the data was omitted from the report.

59. On May 28, 2009, SHG sent an email to the City's environmental counsel noting that the City's 2006 Phase I ESA recommended additional investigation concerning potential USTs and inquired as to why the more recent report recommended no additional investigation and the basis for the City's changed recommendation for the USTs. The City did not respond to this inquiry.

(iii) November 2009 NJDEP Meeting

60. On November 20, 2009, the City informed SHG that the NJDEP scheduled a meeting for November 25, 2009 to discuss the City's submission and asked SHG if it would like any of its representatives to attend this meeting.

61. In the November 20, 2009 email, for the first time, the City provided SHG with documents which indicated that additional indoor air testing was performed in February 2009. The City had failed to provide SHG with the required notice prior to the testing or the results of that testing.

62. On November 24, 2009, SHG advised the City that it was reviewing the spreadsheet that the City sent to the NJDEP in preparation for the meeting. SHG advised that it

did not understand why the City recommended deferring investigation of potential USTs under the sidewalks until redevelopment activities commenced.

63. SHG reminded the City that the PSA required the City to deliver a No Further Action letter for all soil AOCs and that if the investigation of these AOCs was deferred until development, then the City would not satisfy this contractual requirement. SHG requested an explanation for this discrepancy.

64. The City did not respond to these inquiries.

65. On November 25, 2009, the Parties met with NJDEP officials to discuss the PA/SI/RI/RAWP. During the meeting, NJDEP required additional investigation and/or data review of the USTs (AOC 2D and 2E), the interior floor drains, the hydraulic lifts and the catch basins, ***all*** of which had previously been recommended by SHG. Indeed, much of this work had been recommended to the City by its own consultant in the 2005 Phase I Report. Further, data obtained approximately nine (9) months earlier with regard to the hydraulic lifts was not discussed with the NJDEP at the meeting, and had still not been submitted to the NJDEP.

66. On or about November 30, 2009, SHG requested copies of emails and other documents between the City's environmental consultant and the NJDEP that were not previously provided to SHG. SHG further requested copies of the data related to additional work performed in April/May 2009 without SHG's knowledge. SHG requested that the City include its environmental counsel on all correspondence or communication with the NJDEP and to provide him with an opportunity to review all draft submissions to the NJDEP, as required by the terms of the PSA.

67. On December 3, 2009, at 7:41 p.m., the City provided SHG with a draft letter report concerning the 2009 testing activities at the Premises that was requested by the NJDEP and demanded that SHG provide its comments by the next day at noon.

68. Despite the fact that SHG was permitted ten (10) days to review and comment upon any proposed submissions to the NJDEP, the following day, on December 4, 2009, SHG, through its environmental consultant and counsel, provided various comments to the proposed NJDEP submission. A copy of December 4, 2009 email from Robert Crespi, Esq. to City representatives is annexed hereto as Exhibit G.

E. The NJDEP Determines that Additional Environmental Investigation is Required

69. On or about December 7, 2009, the NJDEP requested a site inspection of the Premises.

70. Based upon that site inspection, the NJDEP determined that additional investigation was required for the storm drains (catch basins) in the parking lot, hydraulic lifts, the oil/water separator (not previously identified as an AOC by the City), and the suspected USTs (AOC 2D and 2E) in the sidewalk. SHG had previously recommended investigation into these issues more than six (6) months earlier. Further, the City had previously falsely certified in the PA/SI/RI/RAWP that there were no oil/water separators on the Premises.

71. On or about December 15, 2009, the City advised SHG of these additional required investigations, which were conveyed to the City through discussions between the NJDEP and the City's environmental counsel. The City advised that the NJDEP would conduct additional inspections/samplings on December 16 and 17, 2009.

72. Upon receipt of the December 15, 2009 email, SHG objected to the continuing discussions between the City and NJDEP without SHG's knowledge and reminded the City of its obligation to include SHG on any communications with the NJDEP.

73. Additional investigation/sampling on the Premises occurred on December 16-17, 2009 and in February 2010.

74. On or about Thursday, May 6, 2010, nearly three (3) months after the sampling activities, the City provided a final draft Remedial Action Report/Remedial Action Work Plan with the results of the December 2009 and February 2010 sampling/excavation work at the Premises. Despite the bulk of this report (in excess of 1,000 pages) and the contractual requirement that the City provide SHG with ten (10) days to review and comment upon any proposed NJDEP submissions, the City requested that SHG provide comments by the close of business on Tuesday, May 11, 2010.

75. SHG provided comments on this proposed submission on May 14, 2010. In its response, SHG's environmental consultant identified several significant deficiencies with the proposed submission that would likely result in the NJDEP's rejection of either the entire report or, at a minimum, the majority of the conclusions and recommendations contained therein. A copy of SHG's environmental counsel's May 14, 2010 email and H2M's May 14, 2010 correspondence is annexed hereto as Exhibit H.

76. H2M's May 14, 2010 comments highlighted significant areas of concern about the City's proposed report and noted that a comparison of the RAR/RAWP to the New Jersey Department of Environmental Protection Technical Requirements for Site Remediation ("NJDEP Tech Regs") had revealed several issues that SHG felt would result in the NJDEP's

rejection of the submission, which would delay the completion of the remediation. See Exhibit H.

77. By email dated May 20, 2010, SHG's environmental counsel followed up on the City's response to SHG's comments to the draft report and asked when the City would provide its response to SHG's comments. SHG's environmental counsel further requested confirmation that the report would not be submitted until after SHG received the City's comments and the parties had an opportunity to discuss.

78. On May 21, 2010, pursuant to the PSA, the City scheduled a Closing Date for August 13, 2010 at 11:00 a.m. In that correspondence, the City represented that it would be "prepared to meet its obligations under the agreement prior to that time."

79. SHG's environmental counsel made numerous attempts to discuss SHG's comments to the report with the City's environmental counsel.

80. The City did not respond to these numerous attempts until an email dated May 25, 2010, from the City's environmental counsel wherein the City informed SHG that it would proceed with filing the RAR/RAWP with only one of SHG's comments incorporated into the revised submission.

81. Upon receipt of that email, SHG's environmental counsel informed the City that the revised report did not address SHG's material and technically appropriate concerns and requested that the report not be submitted until the parties had an opportunity to further discuss the disputed issues.

82. The City curtly responded that the RAR/RAWP report would "be submitted to NJDEP as stated."

83. SHG then requested complete copies of the report along with the submission letter. SHG also inquired if the NJDEP ever issued a report from the December 7, 2009 site inspection and whether the NJDEP had seen the post-excavation results for the hydraulic lift investigation.

84. On or about May 28, 2010, the City unilaterally submitted the Remedial Action Report/Remedial Action Work Plan to the NJDEP without incorporating the majority of SHG's material and technically appropriate comments. Notably, although the hydraulic lift investigation revealed soil quality well in excess of NJDEP standards and SHG commented that this contamination would require delineation pursuant to the NJDEP Tech Regs, the City ignored SHG's recommendation for delineation.

85. Concerned with the City's material and purposeful omissions from the RAR/RAWP that it unilaterally submitted to the NJDEP, SHG sought to arrange a conference call with the NJDEP to discuss its concerns with the City's remediation efforts.

86. By letter dated June 10, 2010, the City notified SHG of a purported pending breach of the PSA as a result of the scheduled telephone conference between SHG and the NJDEP. However, in this purported Notice of Pending Breach of Contract, the City failed to identify what provision of the PSA SHG was purportedly violating.

87. In response, by letter dated June 14, 2010, SHG advised the City that it could participate in the telephone conference on June 17, 2010 and requested that the City identify the provision in the PSA prohibiting a discussion between SHG and the NJDEP. A copy of the June 14, 2010 letter from Francis X. Regan, Esq. to Gordon N. Litwin, Esq. is annexed hereto as Exhibit I. Notably, to date, the City has yet to advise SHG as to what PSA provision was

purportedly violated since there is no provision prohibiting SHG from having ex parte communications with the NJDEP.

88. In that letter, SHG further advised the City that on numerous occasions, the City has admitted that it had ex parte communications with the NJDEP concerning the environmental remediation, without first informing SHG of such communications, or providing SHG with the opportunity to participate in that meeting. SHG advised that such communications constitute a clear breach of section 5(d) of the PSA and provided notice to the City of such breach. See id.

89. SHG further responded to the City's notices of pending or potential breaches of contract by letter dated June 25, 2010. A copy of the June 25, 2010 letter from Francis Regan, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit J. In that letter, SHG demanded that the City withdraw its June 11 and June 18, 2010 notices of pending or potential breaches of contract since such breaches do not exist nor have they occurred.

90. A conference call with representatives from the NJDEP, SHG and the City occurred on June 17, 2010 to discuss open issues concerning the Premises. The conference call was arranged by the City. During this call, the NJDEP indicated that, as predicted by SHG's environmental consultant, additional investigation and remediation of the Premises was required.

91. Following that telephone conference, SHG's environmental counsel informed the City that it would provide a summary of the telephone conference with the NJDEP and requested a draft of the scope of work to implement the NJDEP's requirements and an implementation schedule. SHG further advised the City that it would be providing a scope of work for additional due diligence sampling.

92. In response to this email, on June 18, 2010, the City issued a purported Notice of Additional Potential Breach of Contract, claiming that SHG did not have any right of physical access to the Premises, that the City would not be preparing a scope of work and that SHG could not submit minutes to the NJDEP of the conference call.

93. By letter dated June 22, 2010, SHG responded to the City's grossly mistaken and misleading position and interpretation of the PSA set forth in the June 18, 2010 correspondence and specifically rejected the City's attempt to re-write the PSA. SHG further discussed why it believed additional investigation was required. A copy of the June 22, 2010 letter from Robert Crespi, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit K.

94. Specifically, SHG (1) confirmed that it did not state that it intended to submit minutes to the NJDEP even though the PSA does not forbid such action; (2) reminded the City that Section 5 of the PSA expressly authorized SHG access to the property to conduct environmental investigation activities; and (3) that the City continued to misinterpret the language of the PSA in that the City, not SHG, was prohibited from any ex parte communications with the NJDEP.

95. As requested by the NJDEP, on June 24, 25, and 26, 2010, additional field activities occurred on the Premises. Contrary to the terms of the PSA, the City forbade SHG's environmental consultant from using a photoionization detector ("PID") to examine soil, discussing his observations, or even touching the soil or taking pictures of the activities. Notably, none of these investigatory actions would have interfered with the City's work in any way. SHG demanded that the unreasonable and prohibited restrictions be removed. While pictures were ultimately permitted by the City, the City refused to lift the other restrictions in contravention of the PSA.

96. As a result of the June 2010 field activities, additional conditions were discovered that required remedial action by the City. As a result, the City was to prepare a Supplemental Remedial Action Report ("SRAR") to document the field activities. The City was to forward the SRAR to SHG for review and comment before submission to the NJDEP.

97. By letter dated June 25, 2010, the City issued yet another misleading and frivolous Notice of Additional Potential Breach of Contract to SHG claiming, among other things, that SHG had no right to even be present during the additional remedial work.

98. By letter dated July 7, 2010, SHG responded to the City's June 25, 2010 letter, denying that it had violated the PSA in any manner. In that letter, SHG advised that "[i]f the City had performed its obligations in a timely manner, its obligations would have been satisfied well in advance of the closing date." A copy of the July 7, 2010 letter from Robert Crespi, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit L.

99. On July 16, 2010, the City advised that it would be sending SHG its SRAR draft on July 19, 2010 for SHG's review and comment.

100. Interestingly, despite its representation that a draft SRAR would be forthcoming on July 19, 2010, on the morning of July 19, 2010, the City advised SHG that additional soil sampling would take place on July 20, 2010.

101. By email dated July 19, 2010 at 2:02 p.m., the City provided a draft SRAR to SHG for AOC-10. The City requested comments by close of business on July 20, 2010.

102. By letter dated July 19, 2010, SHG responded to the City's request for comments within one business day. SHG noted that if "the City had been reasonably diligent in carrying out is environmental remediation activities rather than waiting until the last moment, not only would there by more than sufficient time for [SHG] to review and comment

on all submissions in accordance with the time periods set forth in the PSA, but it is likely that the City would have had its [No Further Action letter] long ago." SHG advised the City that it would review the draft SRAR in good faith and provide written comments on or before July 29, 2010. SHG also advised that to "the extent the City fails to abide by the terms of the PSA and submits the SRAR prior to receipt of SHG's comments (or alternatively, to the extent SHG fails to submit its written comments on or before July 29, 2010, the City submits the SRAR before the end of business on July 29, 2010), notice is hereby given that the City will be in material breach of the PSA and that SHG will seek such remedies against the City as are necessary and appropriate." A copy of the July 19, 2010 letter from Robert Crespi, Esq. to John Scagnelli, Esq. is annexed hereto as Exhibit M.

103. By letter dated July 20, 2010, the City advised SHG that it would accept comments on the draft SRAR until the close of business July 21, 2010 and would file the SRAR on July 22, 2010.

104. By letter dated July 21, 2010, SHG responded to the City's July 20, 2010 and outlined the continued short falls in the City's investigation. In addition, SHG objected to the City's demand of a 24 hour turnaround by SHG and its consultants to review the SRAR when the City took in excess of three weeks from the completion of the AOC-10 supplemental remediation activities to issue a draft of the report. Notwithstanding the City's continued bad faith and unreasonable demands, SHG requested that its environmental consultant expedite its review of the draft report and indicated that it would provide comments by July 23, 2010, only four (4) days after receiving the report. A copy of the July 21, 2010 letter from Robert Crespi, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit N.

105. On July 23, 2010, SHG provided its comments on the draft SRAR and asked the City when it wished to discuss or review any of the comments prior to submission to the NJDEP. SHG noted that it expected to receive confirmation of which comments would or would not be included in the final submission to the NJDEP prior to its actual submission, and the reasoning behind the exclusion of any such comments. A copy of the July 23, 2010 letter from Robert Crespi, Esq. to John Scagnelli, Esq. with exhibits is annexed hereto as Exhibit O. The main dispute involved the City's failure to properly characterize free product observed on the water in the hydraulic lift excavation.

106. On July 27, 2010, SHG's environmental counsel followed up with the City's environmental counsel since it did not receive any response to SHG's comments and inquired as to when the City wished to discuss the comments.

107. On July 30, 2010, the City provided its environmental consultant's response to SHG's comments, which ignored many material and technically appropriate comments by SHG's environmental consultant and only incorporated minor revisions and mischaracterized the free product observed on the water in the hydraulic lift excavation as "dark liquid."

108. On August 2, 2010, the City submitted the technically deficient and fraudulent SRAR with supporting documents to the NJDEP.

109. On August 3, 2010, SHG expressed its concern regarding the City's approach to the investigation, and in particular, to the City's environmental consultant's mischaracterization of the observations in the field. SHG could not let the City's mischaracterizations and failure to appropriately investigate the Premises stand and, therefore, demanded that the City schedule a conference call with the NJDEP to insure that the NJDEP considers all of the relevant facts. SHG advised the City that if it did not respond, then SHG would schedule the conference call

and invite the City to participate. A copy of the August 3, 2010 letter from Robert Crespi, Esq. to John Scagnelli, Esq. is annexed hereto as Exhibit P.

110. By letter dated August 4, 2010, the City advised that it did not believe a teleconference with the NJDEP was either necessary or beneficial and refused to participate in such a teleconference.

111. Accordingly, on August 5, 2010, SHG, through its environmental counsel, provided the NJDEP with additional information as it believed that the City's submission was deficient and incomplete and did not comply with applicable regulations. A copy of the August 5, 2010 email from Robert Crespi, Esq. to NJDEP officials with exhibits is annexed hereto as Exhibit Q. Notably, this submission included the City's responses to SHG's comments.

112. On August 5, 2010, the City issued a Notice of Breach of Contract as a result of SHG's submission of additional information to the NJDEP.

113. In response to the City's purported Notice of Breach of Contract, SHG advised the City that it continued to misinterpret and misstate the rights and obligations of the parties to the PSA and reminded the City that SHG had no choice but to submit the necessary information to the NJDEP, as was its right in order to protect its contractual interest and the interest of the public. A copy of the August 5, 2010 letter from Robert Crespi, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit R.

F. The City's Wrongful Termination of the PSA and RDA

114. Recognizing that it would be unable to satisfy its contractual obligations under the PSA as a result of its ongoing dilatory and fraudulent conduct, on August 9, 2010, the

City's Mayor convened a Special Emergency Meeting of the Hoboken City Council for August 10, 2010 regarding the upcoming Closing Date for the Premises.

115. Despite the fact that SHG had consistently provided prompt, reasonable feedback with respect to the investigation of the Premises and in an obvious attempt to wrongfully shift the blame to SHG for the City's ongoing mishandling of its contractual obligations, at the Special Emergency Meeting, the Hoboken City Council, acting as the Redevelopment Agency for the City, passed a resolution by a vote of 5-3 declaring SHG in breach of contract. A copy of the August 10, 2010 Resolution is annexed hereto as Exhibit S.

116. By letter dated August 11, 2010, the City provided SHG with Notice of Contract Termination for both the PSA and RDA due to "a material and incurable breach committed by SHG."

117. In response to the City's purported unilateral termination of the PSA and RDA, SHG advised the City that its grounds for the attempted termination of these agreements were specious and lacking in legal or factual basis. SHG reiterated that it never acted in bad faith or interfered with the City's ability to obtain the Environmental Approvals. SHG advised the City that it was ready, willing and able to close pursuant to the terms of the PSA on August 13, 2010 at 11:00 a.m. SHG warned the City that if it failed to appear and satisfy all conditions precedent to closing, it would be in breach of the PSA and pursuant to Section 15(b)(ii), SHG would be entitled the immediate return of the City Fee paid by SHG to the City and the Deposit Monies, with interest, being held by the law firm of Ansell, Grimm & Aaron as escrow agent. A copy of the August 12, 2010 letter from Francis Regan, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit T.

G. The City's Failure to Satisfy its Contractual Obligations

118. On August 13, 2010, SHG's representatives appeared for the Closing of the PSA and were ready, willing and able to close on the purchase and sale of the Premises. In furtherance of its continued bad faith and wrongful unilateral termination of the PSA and RDA, the City failed to appear at the Closing.

119. The City failed to obtain the required Environmental Approvals on or prior to the Closing Date.

120. The City failed to vacate the Premises on or prior to the Closing Date and, upon information and belief, continues to store various vehicles and equipment upon the Premises.

H. SHG's Notice of Actual Breach and Demand for Return of Deposit Monies and City Fee

121. As a result of the aforementioned wrongful conduct by the City, by letter dated August 13, 2010, SHG provided the City with Notice of Actual Breach and Demand for Return of Deposit and Fees. A copy of the August 13, 2010 letter from Francis X. Regan, Esq. to Gordon Litwin, Esq. is annexed hereto as Exhibit U.

122. In response, the City refused to release the Deposit Monies or the City Fee paid by SHG to the City. Despite its ongoing pattern of wrongful conduct, the City maintains that it is entitled to maintain the Deposit Monies as liquidated damages.

COUNT ONE
(Breach of Contract)

123. SHG repeats and realleges the allegations contained in each and every preceding paragraph as if fully set forth at length herein.

124. The City breached the terms of the PSA and RDA by, among other things, improperly terminating the PSA and RDA, failing to appear at the closing and failing to meet its contractual obligations and satisfy all conditions precedent to closing, including without

limitation, delivery of the No Further Action letter for soil and an approved Remedial Action Work Plan for groundwater from the NJDEP and vacation of the Premises.

125. As a result of the City's conduct, SHG has been damaged.

COUNT TWO
(Breach of Covenant of Good Faith and Fair Dealing)

126. SHG repeats and realleges the allegations contained in each and every preceding paragraph as if fully set forth at length herein.

127. By its wrongful conduct as detailed above, the City has violated the spirit of the parties' business relationship, and has demonstrated patent bad faith.

128. By virtue of its wrongful acts, the City has breached the implied covenant of good faith and fair dealing, which applied to the PSA and RDA.

129. As a direct and proximate result of such breach, SHG has suffered and will suffer damages.

COUNT THREE
(Unjust Enrichment)

130. SHG repeats and realleges the allegations contained in each and every preceding paragraph as if fully set forth at length herein.

131. SHG has complied with its contractual obligations under the PSA, and the RDA.

132. The City is legally obligated to return the wrongfully retained City Fee and Deposit Monies with accrued interest to SHG.

133. Despite due demand, the City has failed and refuses to pay SHG the City Fee and Deposit Monies with accrued interest.

134. As a result of the foregoing, SHG has been damaged.

COUNT FOUR
(Attorneys' Fees)

135. SHG repeats and realleges the allegations contained in each and every preceding paragraph as if fully set forth at length herein.

136. The PSA provides that if either party initiates a lawsuit under Section 15, "the prevailing party shall be entitled to court costs and reasonable attorneys' fees." Id. at § 15(c).

137. As a result of the City's various breaches and repeated wrongful refusal to refund the City Fee and/or the Deposit Monies, SHG has incurred and will continue to incur significant expenses, including but not limited to attorneys' fees and costs for bringing this action, in an amount to be determined at trial.

WHEREFORE, Plaintiff SHG Hoboken Urban Renewal Associates, LLC hereby demands judgment as follows:

A. Return of the Deposit Monies and City Fee with accrued interest;

B. Awarding an amount of compensatory damages to be determined at trial;

C. Awarding interest, attorneys' fees and costs of suit; and

D. Awarding such other and such further relief as this Court deems fit.

WOLFF & SAMSON PC

Attorneys for Plaintiff
SHG HOBOKEN URBAN RENEWAL
ASSOCIATES, LLC

By _____
PAUL COLWELL
MARGARET O'ROURKE WOOD

Dated: August 17, 2010

JURY DEMAND

Plaintiff SHG Hoboken Urban Renewal Associates, LLC hereby demands a trial by jury on all triable issues raised in this Complaint pursuant to R 1:8-2(b) and R 4:35-1(a).

WOLFF & SAMSON PC

Attorneys for Plaintiff
SHG HOBOKEN URBAN RENEWAL
ASSOCIATES, LLC

By Margaret O'Rourke Wood
PAUL COLWELL
MARGARET O'ROURKE WOOD

Dated: August 17, 2010

DESIGNATION OF TRIAL COUNSEL

The Plaintiff SHG Hoboken Urban Renewal Associates, LLC hereby designates Paul Colwell as trial counsel in this matter.

WOLFF & SAMSON PC

Attorneys for Plaintiff
SHG HOBOKEN URBAN RENEWAL
ASSOCIATES, LLC

By Margaret O'Rourke Wood
PAUL COLWELL
MARGARET O'ROURKE WOOD

Dated: August 17, 2010

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned hereby certifies that to her knowledge this action is not the subject of any other actions pending in any court or pending arbitration proceeding. The undersigned further certifies that there are no other parties known to her that must be joined in this action.

WOLFF & SAMSON PC

Attorneys for Plaintiff
SHG HOBOKEN URBAN RENEWAL
ASSOCIATES, LLC

By Margaret O'Rourke Wood
PAUL COLWELL
MARGARET O'ROURKE WOOD

Dated: August 17, 2010