

Environmental Indemnity Agreement

This Environmental Indemnity Agreement (“**Agreement**”) is made and entered into as of the October 8, 2024, by and between THE PANTRY LOFTS, LTD, a Florida limited partnership, (the “**Buyer**”), and CITY OF FORT LAUDERDALE, a Florida municipal corporation, (the “**City**”) whose address is 101 NE 3rd Avenue, Suite 2100, Fort Lauderdale, FL 33301.

RECITALS

WHEREAS, the City is the owner of certain real property located at 221 NW 6th Street, Fort Lauderdale, Florida 33311 (the “**Property**”) which is currently under a Purchase and Sale Agreement dated October 20, 2020, as amended (the “**PSA**”) with the Buyer;

WHEREAS, pursuant to the PSA, the Buyer is conducting or intends to conduct environmental cleanup and remedial activities at the Property prior to the closing date of the sale;

WHEREAS, the City desires to ensure that it is indemnified and held harmless from any and all liabilities, damages, claims, costs, and expenses arising from or relating to any environmental contamination or cleanup activities associated with the Property, including but not limited to those arising from the Buyer’s environmental cleanup and remediation activities, whether conducted before or after the closing date;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Indemnification by Buyer

The Buyer hereby agrees to indemnify, defend, and hold harmless the City, its elected officials, officers, employees, agents, and representatives (collectively, the “**Indemnified Parties**”) from and against any and all claims, actions, suits, proceedings, damages, liabilities, fines, penalties, losses, costs, and expenses (including reasonable attorneys’ fees and expenses) arising out of, in connection with, or related to:

1.1. The presence, release, or discharge of any hazardous substances, materials, or wastes, including but not limited to petroleum products or byproducts, asbestos, polychlorinated biphenyls (PCBs), and any other materials classified as hazardous under federal, state, or local environmental laws, ordinances, or regulations (collectively, “**Hazardous Materials**”) on, under, or about the Property, whether existing prior to, during, or after the Buyer’s environmental cleanup activities.

1.2. Any environmental cleanup, remediation, investigation, removal, or other response actions required by any federal, state, or local government authority or agency or by law to address the presence or release of Hazardous Materials at or in connection with the Property, including any costs incurred by the City in connection with such actions.

1.3. Any breach by the Buyer of any environmental laws, regulations, or ordinances applicable to the environmental condition of the Property or the Buyer's environmental cleanup activities.

1.4 All required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and, all cleaning, detoxification, remediation, cleanup and disposal; and all tests, audit, monitoring, and reporting; and all fees, costs, assessments, fines and penalties charged by environmental agencies.

1.5 liability for damages resulting from the personal injury or death of any agent, licensee, subtenant, vendor, employee or volunteer of Buyer, regardless of whether Buyer has paid the employee under the Workers' Compensation Laws of the State of Florida, or other similar federal or state legislation for the protection of employees.

2. Environmental Laws

For purposes of this Agreement, "Environmental Laws" shall mean any and all applicable federal, state, and local statutes, regulations, ordinances, and rules governing or relating to the protection of the environment, public health, and safety, and the release or threatened release of Hazardous Materials, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), and the Florida Environmental Protection Act (F.S. 403).

3. Duration of Indemnification

The obligations of the Buyer under this Agreement shall survive the closing of the sale of the Property and shall continue in full force and effect indefinitely.

4. Defense of Claims

In the event any claim or legal action is brought or asserted against the City or any of the Indemnified Parties arising from or related to any matters covered by this Agreement, the Buyer shall, at its own expense, defend the City or such Indemnified Party(ies) with counsel reasonably acceptable to the City. The City shall have the right to participate in any such defense at Buyer's own expense.

5. No Waiver of Sovereign Immunity

Nothing in this Agreement shall be deemed to waive, limit, or modify in any way the City's sovereign immunity under Florida law, nor shall this Agreement be construed to create any third-party beneficiary rights in any person or entity not a party to this Agreement.

6. Miscellaneous

6.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of law provisions. In the event of litigation arising from this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs through the appellate level.

6.2. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, agreements, and understandings, whether oral or written.

6.3. Amendments. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and executed by both parties.

6.4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

6.5. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when delivered personally or sent by certified mail, return receipt requested, to the addresses of the parties set forth above or such other addresses as the parties may designate in writing.

6.6 Compliance. Buyer shall have the absolute responsibility to ensure that all operations or activities conducted upon the Property are in compliance with all Environmental Laws and all permits, licenses and other environmental agency approvals required for any such activity conducted upon the Property. Buyer covenants that any and all Hazardous Materials removed from the Property shall be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposition of such Hazardous Materials and wastes and only in accordance with Environmental Laws and consistent with all conditions of any and all permits, licenses and other environmental agency approvals required for such removal and transportation.


Hazardous Materials means any hazardous or toxic substances, materials or wastes, including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table, 49 CFR 172.101 or by the Environmental Protection Agency as hazardous substances, 40 CFR Part 302, as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radon, (v) any substance designated as a "hazardous substance" pursuant to Sec. 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et seq. or listed pursuant to Sec. 307 of the Clean Water Act, 33 U.S.C. Sec. 1317, (vi) defined as "hazardous waste" pursuant to Sec. 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq., (vii) defined as a "hazardous substance pursuant to Sec. 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., or (viii) designated as a "hazardous substance" as defined in Chapter 403, Part IV, Florida Statutes, or (ix) any other similar federal, state or local regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Environmental Indemnity Agreement as of the date first written above.

CITY OF FORT LAUDERDALE

By: 
Name: Susan Grant
Title: Acting City Manager

THE PANTRY LOFTS, LTD.

By: 
Name: Oscar Sol
Title: Manager