

Date: [Insert Date]

To: [Insert Name of Joint Venture Partner/Board of Directors]

From: [Insert Name/Title of Advisor/Legal Counsel]

Subject: ADVISORY: Environmental Indemnification Framework for [Insert Project Name] Brownfield Redevelopment

Dear [Insert Name],

This letter provides a template for the environmental indemnification framework regarding the Joint Venture (JV) for the redevelopment of the brownfield site located at [Insert Address]. Given the historical contamination associated with this site, a robust indemnification structure is required to allocate risk and protect the JV assets.

1. Scope of Environmental Liabilities

The indemnification shall cover "Pre-existing Environmental Conditions," defined as any hazardous substances, pollutants, or contaminants present in soil, groundwater, or structures prior to the JV Closing Date. This includes, but is not limited to, costs related to remediation, government mandates, and third-party toxic tort claims.

2. Allocation of Responsibility

- **Contributor Indemnity:** The party contributing the real estate (the "Contributor") shall indemnify the JV entity and the incoming partner for all liabilities arising from Pre-existing Environmental Conditions.
- **Development Indemnity:** The JV entity shall be responsible for environmental conditions caused or exacerbated by new construction activities, improper waste disposal during development, or post-closing spills.

3. Mechanics of Indemnification

The Indemnifying Party shall be responsible for:

- Costs of investigation and "No Further Action" (NFA) certification.
- Legal fees and expert witness costs.
- Fines or penalties imposed by [Insert Relevant Environmental Agency, e.g., EPA].
- Third-party claims for property damage or personal injury.

4. Limitations and Caps

The parties must agree upon:

- **Survival Period:** The indemnity shall remain in effect for [Insert Number, e.g., 5 to 10] years following project completion.
- **Basket/Deductible:** A minimum threshold of \$[Insert Amount] before a claim can be filed.
- **Liability Cap:** Total indemnity shall be capped at \$[Insert Amount] or a percentage of the total project value.

5. Environmental Insurance

To support these obligations, the JV shall procure Pollution Legal Liability (PLL) insurance. The policy shall name both partners as "Additional Insureds" and serve as the primary layer of protection before personal indemnification triggers.

Please review these terms for inclusion in the definitive Joint Venture Agreement. We recommend a Phase II Environmental Site Assessment (ESA) be updated to establish a baseline for these protections.

Sincerely,

[Insert Signature]

[Insert Printed Name]

[Insert Company/Firm Name]