

MIRANT LOVETT, LLC

to

**COUNTY OF ROCKLAND
INDUSTRIAL DEVELOPMENT AGENCY**

INDEMNITY AGREEMENT REGARDING HAZARDOUS MATERIALS

Dated as of June 30, 2006

County of Rockland Industrial Development Agency

**Straight-Lease Transaction
(Mirant Lovett, LLC Project)**

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (the “**Agreement**”) is made and given as of the ____ day of June, 2006, by **MIRANT LOVETT, LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware (the “**Company**”) with a place of business located at 37 Elm Street, Tomkins Cove, New York 10986, to and in favor of the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, (the “**Agency**”) whose address is One Blue Hill Plaza, P.O. Box 1576, Pearl River, New York 10965-8576 and their respective successors and assigns, with reference to the recitals hereinafter set forth.

RECITALS

A. The Company is the owner of certain real property located in the Town of Stony Point, County of Rockland described in Exhibit “A” attached hereto and incorporated herein by this reference (the “**Land**”), together with all improvements now on or hereafter located thereon (collectively with the Land, the “**Project Facility**”).

B. The Company has leased the Project Facility to the Agency pursuant to a certain company lease agreement (the “**Company Lease**”) dated as of June 30, 2006 between the Company and the Agency and the Agency has leased the Project Facility to the Company pursuant to a certain lease agreement (the “**Lease Agreement**”) dated as of June 30, 2006 between the Agency and the Company.

C. As a condition to its entering into the above-described transaction, the Agency has required the Company to provide certain indemnities concerning Hazardous Materials or Contamination (both as hereinafter defined) which have been or are hereafter released or otherwise came upon or come to be located upon, in, under, or affecting the Land or the Project Facility.

NOW, THEREFORE, for and in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and the Company hereby agree as follows:

1. Definitions. The following definitions shall apply for the purposes of this Agreement. Capitalized terms used herein and not defined shall have the meaning given to such terms in Article I of the Lease Agreement.

(a) “**Clean-Up**” shall mean Response, Removal or other Remedial Action or any other action which may be required under any of the Environmental Laws.

(b) “**Contamination**” shall mean the uncontained presence of any Hazardous Materials on, about or beneath the Land or arising from the Project Facility which may require Clean-Up or which may be in violation of any of the Environmental Laws.

(c) **“Environmental Law”** shall mean any federal, state or local statute, regulation or ordinance, whether currently existing or hereinafter promulgated during the term of this Lease, or any judicial or administrative decree or decision with respect to Hazardous Materials, drinking water, ground water, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water, run off, waste emissions, or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes as amended as of the date hereof, and all regulations promulgated thereunder as of the date hereof: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund or CERCLA) (codified in scattered sections of 26 U.S.C.; 33 U.S.C. 1251 and 42 U.S.C. 9601 et seq.), the Clean Water Act of 1977 (33 U.S.C. 1251 et. seq., The Clean Air Act (42 U.S.C. 7401 et. seq.), the Resource Conservation and Recovery Act of 1975 (the Solid Waste Disposal Act of RCRA) (42 U.S.C. 6901 et. seq.), the Safe Drinking Water Act (21 U.S.C. 349; 42 U.S.C. 201 and 300f through 300j-9); and the Hazardous Materials Transportation Act, as amended (49 U.S.C. 1801-1812).

(d) **“Release”** shall mean any spilling, leaking, pumping, emitting, emptying, discharging, injecting, depositing, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment by the Company of any Hazardous Materials on under, or in any way involving or affecting the Project Facility that is not authorized by a governmental entity or authority.

(e) **“Regulatory Action(s)”** shall mean any notice or violation, citation, complaint, request for information, order, directive, compliance schedule, notice of claim, consent decree, action, litigation or proceeding brought or instituted by a State, the United States Environmental Protection Agency, the United States Army Corps of engineers, the United States Coast Guard or any other governmental entity or authority under or in connection with any Environmental Law involving the Company or any assignee tenant of the Lease Agreement and relating to the Project Facility, which alleges a violation of or non-compliance with an Environmental Law.

(f) **“Response,” “Removal,” “Remedial Action”** shall be defined with reference to sections 101-(23) - 101.(25) of CERCLA, 42 U.S.C. 9601 (23) - 9601 (25).

(g) **“Hazardous Materials”** shall mean all pesticides, pollutants, contaminants, chemicals, gasoline, petroleum products, asbestos, radioactive materials (including by-project, source and/or special nuclear materials), urea formaldehyde, flammable explosives or other hazardous wastes or toxic materials, including but not limited to materials now or hereafter subject to regulation under the Environmental Laws.

2. Covenants of the Company.

(a) The Company shall use reasonable efforts to not manufacture, generate, handle, release or otherwise deal with, or cause or permit any tenant or subtenant of the Project Facility to manufacture, generate, handle, release or otherwise deal with Hazardous Materials on the Land or Project Facility (except for Hazardous Materials used, managed or otherwise handled in the ordinary course of business or in management or maintenance of the Project Facility,

which the Company warrants and covenants will be stored, handled, labeled, used, and disposed of in compliance with Environmental Laws). The Company shall not allow a lien relating to Hazardous Materials to be imposed or remain on the Land or Project Facility pursuant to any Environmental Law or other laws, order, rule or regulation of the United States, any state or local government, or any agency thereof, as heretofore or hereafter amended. If it shall be determined that the Company, any predecessor in title to or in possession of the Land, or any other tenant or subtenant of the Project Facility or any other person in possession of the Land or Project Facility, caused or permitted any such Release or contamination for which the Company or any subsequent owner of the Project Facility would be liable, the Company shall act promptly to effectuate a Clean-Up.

(b) If the Plant Manager or administrative office of the Company receives any notice of (i) any event or third party or private action involving any Release or Contamination on, from, or involving the Project Facility, or any portion thereof, or caused by the Company or any tenant or subtenant of the Project Facility or any other person in possession of any portion of the Project Facility, or (ii) any Regulatory Action affecting the Company, the Land or the Project Facility, or any portion thereof, or the Company's, or its tenant's or subtenants, operations on the Land or the Project Facility, the Company shall give written notice of same to the Agency within five (5) business days in accordance with the Lease Agreement and shall promptly comply with the Company's obligation under Environmental Laws with regard to such Release, Contamination, or Regulatory Action, and shall keep the Agency informed of the status of such proceedings on a regular basis.

(c) The Company shall control and participate in any Regulatory Action, private claim, or legal proceeding through knowledgeable and experienced counsel of its choice and shall keep the Agency informed of the status of such proceedings on a regular basis.

(d) Nothing contained herein shall be construed to limit or negate the Company's obligations and indemnities under the Lease Agreement.

(e) The Company's indemnity obligations with respect to Hazardous Materials are limited to the terms of this Agreement.

3. Indemnity Agreement.

(a) The Company covenants and agrees, at its sole cost and expense, to indemnify, defend, protect and save the Agency, and any director, member, officer, employee, servant, or agent thereof, and persons under the control or supervision of the Agency, harmless against and from all liens, damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency or the Project Facility and attributable to circumstances arising directly or indirectly from or out of: (A) any contamination or Release on, in, under or of all of any portion of the Project Facility, regardless of whether or not caused by or within the control of the Company; or (B) the violation of any of the Environmental Laws relating to or affecting the

Project Facility or the Company, whether or not caused by or within the control of the Company; or (C) the enforcement of this Agreement, including, without limitation, (i) the costs of Clean-Up of the Project Facility or any surrounding areas and (ii) additional costs required to take necessary precautions to protect against a Release on, in, under or affecting the Project Facility, or the spread of any contamination, or into the air, any body of water, any other public domain or any surrounding area. The Agency's rights under this Agreement shall be in addition to all rights of the Agency as beneficiary under the Lease Agreement, and under any other documents or instruments evidencing, securing or relating to the transaction described above. Payments by the Company under this Agreement shall not reduce the Company's obligations and liabilities under the Lease Agreement.

(b) The indemnity set forth in this Paragraph 3 shall survive the termination or expiration of the Lease Agreement. It is agreed and intended by the Company that subject to limitations set forth in Section 5, said warranties, representations, and indemnity shall inure to the benefit of the Agency.

(c) It is agreed and intended by the Company and the Agency, that the indemnity set forth above may be assigned or otherwise transferred by the Agency to its successors and assigns, without notice to the Company and without any further consent of the Company. To the extent consent of any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by the Company in order to maximize the extent and effect of the indemnity given hereby.

4. No Waiver. The liabilities of the Company under this Agreement shall in no way be limited or impaired by the provisions of the Lease Agreement. In addition, notwithstanding any terms of the Lease Agreement to the contrary, the liability of the Company under this Agreement shall in no way be limited or impaired by: (i) any extension of time for performance required by the provisions of the Lease Agreement; (ii) any transfer, sale, assignment or foreclosure of the Lease Agreement or the other Project Documents, or any sale or transfer of all or part of the Land or Project Facility; (iii) any exculpatory provision in the Project Documents, or to any other security, or limiting the rights to a deficiency judgment against the Company; (iv) the accuracy or inaccuracy of the representations and warranties made by the Company or others in this transaction under the other Project Documents; (v) the release of the Company, or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Lease Agreement or the other Project Documents, by operation of law, voluntary act, or otherwise; or (vi) the release or substitution, in whole or in part, of any security for the obligations of the Company, and, in any such case, whether with or without notice to the Company and with or without consideration.

5. Limitation. The Company shall have no indemnity obligation with respect to Hazardous Materials, Release(s), or Regulatory Action(s) that are first introduced to the Project Facility or any portion thereof without the Company's participation subsequent to the date of any transfer of all of the Company's ownership interest in the Project Facility.

6. Delay. No delay on the Agency's part in exercising any right, power or privilege under the Lease Agreement or the Project Documents, shall operate as a waiver of any privilege, power or right hereunder.

7. Notices and Requests. Any and all notices, elections, demands, or requests permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, demand, or request, and shall be delivered personally or sent by registered, certified, or express United States mail, postage prepaid, or Federal Express or any similar service requiring a receipt, to the other party at its address set forth in the first paragraph hereof, or to such other party and at such other address within the continental United States of America as may have theretofore been designated in writing. The date of receipt of such notice, election or demand shall be the earliest of (i) the date of actual receipt of such notice, election or demand, (ii) three (3) days after the date of mailing thereof by registered or certified mail, (iii) one (1) day after the date of mailing thereof by Express Mail, or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refund upon presentation for delivery) thereof, if applicable.

8. Amendments. No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instruments in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9. Binding Effect. Except as herein provided, this Agreement shall inure to the benefit of, and shall be binding upon, successive owners of the Project Facility, each of the Parties, and, as permitted by this Agreement, their respective successors and assigns.

10. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and to be performed therein.

IN WITNESS WHEREOF, the Agency and Company have caused this Agreement to be executed under seal as of the day and year first written above.

MIRANT LOVETT, LLC, a Delaware limited liability company

By: Mirant New York, Inc., its sole member

By: _____
Jeffrey R. Perry
President

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Eric Dranoff
Chairperson of the Board of Directors

STATE OF NEW YORK)
) SS:
COUNTY OF ROCKLAND)

On the ____ day of _____ in the year 2006 before me, the undersigned, a notary public in and for said state, personally appeared JEFFREY R. PERRY, President of Mirant Lovett, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individuals, or the persons upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF ROCKLAND)

On the ____ day of _____ in the year 2006 before me, the undersigned, a notary public in and for said state, personally appeared ERIC DRANOFF, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public