

**TRUST INDENTURE  
FOR THE LOVETT ELECTRIC GENERATING FACILITY**

by and among

**HAVERSTRAW-STONY POINT CENTRAL SCHOOL DISTRICT  
and MIRANT LOVETT, LLC**

with

**COUNTY OF ROCKLAND**  
as Trustee

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Dated as of June 30, 2006

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This **TRUST INDENTURE** (the “**Trust Indenture**”), dated as of June 30, 2006, is by and among the **HAVERSTRAW-STONY POINT CENTRAL SCHOOL DISTRICT**, a central school district of the State of New York, with an office at 65 Chapel Street, Garnerville, New York (the “**Participating Tax Jurisdiction**”), the **COUNTY OF ROCKLAND**, a body corporate and politic existing under the laws of the State of New York, with an office at 11 New Hempstead Road, New City, New York (the “**County**” or “**Trustee**”), and **MIRANT LOVETT, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware, with an office at 37 Elm Street, Tomkins Cove, County of Rockland, New York (the “**Company**”) (the Participating Tax Jurisdiction, the County, and the Company are referred to herein as the “**Parties**”),

### **WITNESSETH :**

**WHEREAS**, the County of Rockland Industrial Development Agency (the “**Agency**”), by resolution adopted on February 13, 2006 (the “**Inducement Resolution**”), agreed at the request of the Town of Stony Point (the “**Town**”), the School District, and the County, (together, the “**Tax Jurisdictions**”) and the Company, to undertake a certain project (the “**Project**”) consisting of: (a) the acquisition of a leasehold interest in approximately 56± acres of improved real property located in the Town of Stony Point, County of Rockland, State of New York (the “**Land**”), together with a 453 megawatt (“**MW**”) electric generating facility located on the Land and commonly referred to as the Lovett Electric Generating Facility (the “**Facility**”) (the Land and the Facility are collectively referred to as the “**Project Facility**”); (b) the sublease of the Project Facility to the Company to maintain the operation of the Project Facility in Rockland County, to preserve the competitive position of the Company in the merchant energy industry as that industry faces the financial challenges created by deregulation, to induce continued capital investment by the Company in the Project Facility, and to prevent the closing or distressed sale of the Project Facility so as to preserve the permanent private sector jobs currently existing at the Project Facility; and (c) the grant of “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of exemption from real property taxes and this Agreement (the “**Financial Assistance**”); and

**WHEREAS**, over the past year representatives of the Tax Jurisdictions and the Company have been engaged in negotiations regarding resolution of real property tax certiorari proceedings dating back to 2000 concerning the assessed value of the Project Facility and the tax or in-lieu of tax treatment of the Project Facility; and

**WHEREAS**, all outstanding real property tax certiorari proceedings relating to the Project Facility have been resolved by settlement (the “**Settlement**”) and the Company and the Tax Jurisdictions have entered into a certain Stipulation of Settlement to reflect the Settlement which was approved by order of the State of New York Supreme Court, Rockland County (the “**Court**”), dated June \_\_, 2006 (the “**Stipulation of Settlement and Order**”); and

**WHEREAS**, the Stipulation of Settlement and Order also requires the formation of the trust arrangement contemplated by this Trust Indenture and obligates the Company to pay \$15,000,000 (the “**Trust Revenues**”) to the Trustee, which payment may be treated by the

Company as payment in satisfaction of any and all obligations of the Company or its affiliates to the School District, as set forth in the Stipulation of Settlement and Order; and

**WHEREAS**, by resolution dated June \_\_, 2006 (“**Town Authorizing Resolution**”), a copy of which is attached hereto as Exhibit “A”, the Town Board of the Town confirmed its approval of the Settlement, approved the PILOT Agreement, consented to exemption of the Project Facility from general *ad valorem* levies and taxes imposed by the Town, and authorized the execution and delivery of all Settlement documents including the PILOT Agreement by the Town Supervisor; and

**WHEREAS**, by resolution dated June \_\_, 2006 (“**School District Authorizing Resolution**”), a copy of which is attached hereto as Exhibit “B”, the Board of Education of the School District confirmed its approval of the Settlement, approved this Trust Indenture, the PILOT Agreement, consented to exemption of the Project Facility from general *ad valorem* levies and taxes imposed by the School District, and authorized the execution and delivery of all Settlement documents including this Trust Indenture and the PILOT Agreement by the School District Superintendent; and

**WHEREAS**, by resolution dated June \_\_, 2006 (“**County Authorizing Resolution**”), a copy of which is attached hereto as Exhibit “C”, the Board of Legislators of the County approved this Trust Indenture, the PILOT Agreement, consented to exemption of the Project Facility from general *ad valorem* levies and taxes imposed by the County, and authorized the execution and delivery of all Settlement documents including this Trust Indenture and the PILOT Agreement by the County Executive of the County; and

**WHEREAS**, the Parties have requested that the County serve as Trustee under this Trust Indenture for the purposes set forth herein and the County agrees to accept and administer the trust created hereby;

**NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:**

That the Company and the Participating Tax Jurisdiction, in consideration of the premises and of other good and lawful consideration, the receipt of which is hereby acknowledged, and to secure the performance and observance of all of the covenants and conditions herein or therein contained, have executed and delivered this Trust Indenture unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular the property hereinafter described, to wit:

**GRANTING CLAUSE**

All right, title and interest of the Company in and to the Trust Revenues.

**TO HAVE AND TO HOLD, IN TRUST, WITH THE POWER OF SALE**, all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental instrument or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over

or confirmed as aforesaid, or intended, agreed or covenanted so to be, together with all the appurtenances thereto appertaining (said properties, rights, privileges, leasehold, and franchises, including any cash and securities hereafter deposited or required to be deposited with the Trustee (other than any such cash which is specifically stated herein not to be deemed part of the Trust Estate) being herein collectively referred to as the “**Trust Estate**”) unto the Trustee and its successors and assigns forever;

**BUT IN TRUST, NEVERTHELESS**, for the proportionate benefit and security of the Participating Tax Jurisdiction;

**ALL THINGS NECESSARY** to make this Trust Indenture a valid agreement and contract for the security of the Participating Tax Jurisdiction in accordance with the terms of and this Trust Indenture have been done;

**IT IS HEREBY COVENANTED AND DECLARED** that the Trust Estate is to be held and applied by the Trustee, subject to the further covenants, conditions and trusts hereinafter set forth.

## **ARTICLE I DEFINITION OF TERMS, CONSTRUCTION AND CERTAIN GENERAL PROVISIONS**

**Section 1.01 Definition of Terms.** For all purposes of this Trust Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) This “Trust Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof;

(b) All references in this instrument designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Trust Indenture as a whole and not to any particular Article, Section or other subdivision;

(c) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular number; and

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles applied in accordance with Section 1.02 of this Trust Indenture.

“**Agency**” means the Rockland County Industrial Development Agency.

“**Company**” means Mirant Lovett, LLC.

“**County Authorizing Resolution**” means that resolution dated June \_\_, 2006, as set forth on Exhibit “C” attached hereto and made a part hereof, whereby the Board of Legislators of the County approved this Trust Indenture, a payment in-lieu of tax agreement, consented to exemption of the Project Facility from general *ad valorem* levies and taxes imposed by the County, and authorized the execution and delivery of all Settlement documents including this Trust Indenture and the PILOT Agreement by the County Executive of the County.

“**Court**” means the State of New York Supreme Court, Rockland County.

“**Designated Officer**” means the Chairman of the governing body of one of the Parties, its Chief Executive Officer, President, any Vice President, the Treasurer, Assistant Treasurer, Secretary or Assistant Secretary, or any other person or persons so designated by an Officer’s Certificate delivered to the Trustee.

“**Facility**” shall have the meaning ascribed to it in the first recital to this Trust Indenture.

“**Government Obligations**” means direct obligations of the United States of America or obligations, the full and timely payment of the principal of and interest on which is unconditionally guaranteed by the United States of America.

“**Inducement Resolution**” means the resolution adopted on February 13, 2006 by the Rockland County Industrial Development Agency, agreeing to undertake the Project.

“**Land**” shall have the meaning ascribed to it in the first recital to this Trust Indenture.

“**Participating Tax Jurisdiction**” means the School District.

“**Parties**” means the County, the Participating Tax Jurisdiction and the Company.

“**Permitted Investments**” means dollar denominated investments, to the extent permitted by Chapter 87 of the Laws of Rockland County, Investment Policy attached as Exhibit “D”.

“**Person**” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity.

“**Project**” means the project more fully described in the first recital of this Trust Indenture.

“**Project Facility**” means the Lovett Electric Generating Facility, as more fully described in the first recital of this Trust Indenture.

“**School District**” means the Haverstraw-Stony Point Central School District.

“**School District Authorizing Resolution**” means that resolution dated June \_\_, 2006, as set forth on Exhibit “B” attached hereto and made a part hereof, whereby the Board of Trustees

of the School District confirmed the Settlement and authorized execution of all Settlement documents including this Trust Indenture and the PILOT Agreement.

“**Settlement**” shall have the meaning ascribed to it in the fourth recital of this Trust Indenture.

“**Stipulation of Settlement and Order**” means the Settlement document which was approved by order of the Court, Rockland County, dated \_\_\_\_\_, 2006.

“**Tax Jurisdictions**” means the County, Town, and School District.

“**Town**” means the Town of Stony Point, New York.

“**Town Authorizing Resolution**” means that resolution dated June \_\_, 2006, attached hereto as Exhibit “A” and made a part hereof, whereby the Town Board of the Town confirmed the Settlement and authorized execution of all Settlement documents and the PILOT Agreement.

“**Trustee**” means the County of Rockland, New York, as trustee hereunder.

“**Trust Estate**” has the meaning given such term in the Granting Clauses hereof.

“**Trust Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“**Trust Revenues**” means monies the Company is obligated to pay to the Trustee for the purpose of settling all claims against the Company asserted by the Participating Tax Jurisdiction, including, without limitation, unpaid taxes.

**Section 1.02 Effect of Headings and Table of Contents.** The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

**Section 1.03 Successors and Assigns.** All covenants and agreements in this Trust Indenture shall bind the parties’ respective successors and assigns, whether so expressed or not.

**Section 1.04 Severability Clause.** In case any provision in this Trust Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## **ARTICLE II INVESTMENT AND DISPOSITION OF TRUST ESTATE**

The Trust Estate shall be invested by the Trustee in Permitted Investments during the term hereof and shall be paid out to the Participating Tax Jurisdiction in the amounts and shares

and at such times as set forth on the attached Schedule “A”. After payment of the final payment set forth on Schedule “A”, the balance of the Trust Estate shall be paid to the Participating Tax Jurisdiction in the shares set forth on Schedule “A”, after reimbursement to the Trustee of its reasonable expenses pursuant to Section 3.02 hereof. Upon such final payment, this Trust Indenture shall be of no further force and effect.

### **ARTICLE III CONCERNING THE TRUSTEE**

**Section 3.01 Duties and Liabilities of Trustee.** The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Trust Indenture and no implied covenants or obligations shall be read into this Trust Indenture against the Trustee.

**Section 3.02 Standard of Care.** Provided that the Trustee acts in good faith, the Trustee shall not personally be liable for any action or omission in the performance of the duties set forth in the Trust Indenture, and shall be indemnified and held harmless by the Participating Tax Jurisdiction against the Trustee’s actions and omissions, except to the extent that any such action or omission constitutes gross negligence or willful misconduct on the part of the Trustee.

**Section 3.03 Reliance on Documents or Advice of Professionals.** Except as otherwise provided herein, the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties. The Trustee may also engage and consult with legal and accounting professionals to be selected by the Trustee and shall not be liable for any action taken or suffered by the Trustee in reliance upon the advice of such professionals.

**Section 3.04 Indemnification.** Provided the Trustee acts in good faith in the Trustee’s performance of the administration of this Trust Indenture, the Trustee shall be indemnified by the Participating Tax Jurisdiction, against any and all claims, causes of action and liability, including all expenses and defense costs associated therewith, and shall be held harmless by the Participating Tax Jurisdiction as to the Trustee’s actions and omissions in the performance of the administration of this Trust Indenture, except to the extent that such actions or omissions constitute gross negligence or willful misconduct on the part of the Trustee. In the event that any legal proceeding is instituted against the Trustee in the Trustee’s individual capacity on account of any actions or omissions taken by the Trustee in connection with the acceptance or administration of this Trust Indenture, then prior to the final disposition of such action, the Participating Tax Jurisdiction shall advance to the Trustee such fees and costs as are reasonably incurred by the Trustee in defending against such action; provided, however, that the Trustee first: (i) executes an affidavit attesting to the fact that the Trustee has acted in good faith and has not taken any actions constituting gross negligence or willful misconduct; and (ii) executes an instrument whereby the Trustee promises to reimburse to the Participating Tax Jurisdiction such advanced amounts in the event that the final disposition of such action includes a finding that the Trustee has failed to act in good faith, was grossly negligent or took any action constituting

willful misconduct in connection with the performance of the administration of this Trust Indenture.

#### **ARTICLE IV MISCELLANEOUS PROVISIONS**

**Section 4.01 No Personal Liability.** No recourse under this Trust Indenture shall be had against any officer, director, agent or employee, as such, past, present, or future, of any Participating Tax Jurisdiction, the Company, the Trustee or of any of their respective successors; it being expressly understood that this Trust Indenture and the obligations incurred hereunder are solely obligations of the entities named herein as Parties, and that no personal liability whatever shall attach to such persons or any of them, under this Trust Indenture; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, or under or by reason of the obligations, covenants, or agreements contained in this Trust Indenture are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Trust Indenture.

**Section 4.02 Benefits of Provisions of Trust Indenture.** Nothing in this Trust Indenture, expressed or implied, shall give or be construed to give any Person, other than the Parties, any legal or equitable right, remedy, or claim under or in respect of this Trust Indenture, or under any covenant, condition, and provision herein contained; all its covenants, conditions, and provisions being for the sole benefit of the Parties.

**Section 4.03 Execution in Counterparts.** This Trust Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument.

**Section 4.04 Notices.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when in writing and mailed by first class mail, postage prepaid, addressed as follows:

If to the School District:

Haverstraw-Stony Point Central School District  
65 Chapel Street  
Garnerville, New York 10923  
Attention: Superintendent  
Telephone No: (845) 942-3000  
Telecopy No.: (845) 942-3175

with copies to:

Whiteman, Osterman & Hanna, LLP  
One Commerce Plaza  
Albany, New York 12260  
Attention: Jonathan P. Nye / Michael Whiteman  
Telephone No.: (518) 487-7600 / (518) 487-7600  
Telecopy No.: (518) 487-7777 / (518) 487-7777

Haverstraw-Stony Point Central School District  
65 Chapel Street  
Garnerville, New York 10923  
Attention: Assistant Superintendent for Business  
Telephone No.: (845) 942-3006  
Telecopy No.: (845) 942-3026

If to the County:

County of Rockland  
Allison Parris County Office Building  
11 New Hempstead Road  
New City, New York 10956  
Attention: County Executive  
Telephone No.: (845) 638-5122  
Telecopy No.: (845) 638-5856

with copies to:

Office of the County Attorney  
Allison Parris County Office Building  
11 New Hempstead Road  
New City, New York 10956  
Attention: County Attorney  
Telephone No.: (845) 638-5180  
Telecopy No.: (845) 638-5676

County Finance Department  
Sain Building  
18 New Hempstead Road  
New City, New York 10956  
Attention: Chris Kopf  
Telephone No.: (845) 638-5135  
Telecopy No.: (845) 638-5644  
If to the Company:

Mirant Bowline, LLC  
c/o Mirant New York, Inc.  
8711 Westphalia Road  
Upper Marlboro, Maryland 20774  
Attention: President  
Telephone No.: (301) 669-8047  
Telecopy No.: (301) 669-8002

with copies to:

Hiscock & Barclay, LLP  
One Park Place  
300 South State Street, P.O. Box 4878  
Syracuse, New York 13221  
Attention: Peter H. Swartz / Matthew S. Moses  
Telephone No.: (315) 425-2792 / (315) 425-2765  
Telecopy No.: (315) 425-8592 / (315) 425-8565

Mirant Corporation  
1155 Perimeter Center West  
Atlanta, Georgia 30338-5416  
Attention: General Counsel  
Telephone No.: (678) 579-5000  
Telecopy No.: (678) 579-6767

**Section 4.05 Applicable Law.** This Trust Indenture shall be governed by the applicable laws of the State of New York.

**Section 4.06 Jurisdiction.** The parties hereto agree that the Court has jurisdiction over this Trust Indenture and any dispute relating thereto.

**IN WITNESS WHEREOF**, the Parties have caused this Trust Indenture to be signed, and to evidence its acceptance of the trust created by this Trust Indenture, the Trustee has caused this Trust Indenture to be executed by its duly authorized representatives, all as of the day and year first above written.

**HAYERSTRAW-STONY POINT  
CENTRAL SCHOOL DISTRICT**

By: \_\_\_\_\_  
Dr. Dodge Watkins  
Superintendent

**COUNTY OF ROCKLAND**

By: \_\_\_\_\_  
C. Scott Vanderhoef  
County Executive

**MIRANT LOVETT, LLC**, a Delaware  
limited liability company

By: Its Managing Member, Mirant New  
York, Inc., a Delaware corporation

By: \_\_\_\_\_  
Jeffrey R. Perry  
President

## **EXHIBIT LIST**

- Exhibit "A" Town Authorizing Resolution
  - Exhibit "B" School District Authorizing Resolution
  - Exhibit "C" County Authorizing Resolution
  - Exhibit "D" County Investment Policy
- Schedule "A" Payments from Trust Estate

**EXHIBIT "A"**

**Town Authorizing Resolution**

**EXHIBIT "B"**

**School District Authorizing Resolution**

**EXHIBIT “C”**

**County Authorizing Resolution**

**EXHIBIT “D”**

**County Investment Policy**

## SCHEDULE "A"

| <u>Total<br/>Trustee<br/>Payment</u> | <u>School District<br/>Tax Year</u> | <u>School District<br/>Payment Date</u> | <u>School District<br/>Payment<br/>(100%)</u> |
|--------------------------------------|-------------------------------------|---|---|
| \$ 3,000,000                         | 2005 Assessment Year                | Closing                                 | \$ 3,000,000                                  |
| \$ 2,750,000                         | 2006-2007                           | September 30, 2006                      | \$ 2,750,000                                  |
| 2,250,000                            | 2007-2008                           | September 30, 2007                      | 2,250,000                                     |
| 2,000,000                            | 2008-2009                           | September 30, 2008                      | 2,000,000                                     |
| 1,750,000                            | 2009-2010                           | September 30, 2009                      | 1,750,000                                     |
| 1,500,000                            | 2010-2011                           | September 30, 2010                      | 1,500,000                                     |
| 1,250,000                            | 2011-2012                           | September 30, 2011                      | 1,250,000                                     |
| 500,000                              | 2012-2013                           | September 30, 2012                      | 500,000                                       |