

LEASE AGREEMENT

Dated as of June 30, 2006

by and among

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

and

MIRANT LOVETT, LLC

Affecting the Land generally known by the street address
37 Elm Street, Tomkins Cove
Town of Stony Point
in the County of Rockland,
State of New York
as more particularly described in
Exhibit "A" to this Lease Agreement

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LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of June 30, 2006 (this “**Agreement**”), by and among the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “**Agency**”), having its principal office at One Blue Hill Plaza, Pearl River, New York 10965, party of the first part, and **MIRANT LOVETT, LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York, (the “**Company**”) having an office at 37 Elm Street, Tomkins Cove, New York 10986, party of the second part:

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 564 of the New York Laws of 1980, as amended (together with the Enabling Act, the “**Act**”) for the benefit of the County of Rockland and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company for a “project” within the meaning of the Act (the “**Project**”) (as described below) within the territorial boundaries of the County of Rockland and located on a portion of that certain lot, piece or parcel of land generally known as and by the street address 37 Elm Street, Tomkins Cove, Town of Stony Point, and otherwise described in Exhibit “A” attached hereto; and

WHEREAS, the Project will consist 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, more particularly described in Exhibit “A” attached hereto (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, to facilitate the Project and pursuant to a Stipulation of Settlement and Order between the County of Rockland, the Town of Stony Point, the Haverstraw-Stony Point Central School District (together, the “**Tax Jurisdictions**”), and the Company (the “**Stipulation of Settlement and Order**”), the Agency and the Company have entered into negotiations to enter into a “straight lease transaction” within the meaning of the Act in which the Agency will acquire a leasehold interest in the Project Facility and the Agency will lease its interest in the Project Facility to the Company pursuant to this Agreement, and, in furtherance of such purposes, on May 16, 2006, the Agency adopted a resolution (the “**Agency Authorizing Resolution**”) approving the Project, the acquisition of a leasehold interest in the Project Facility by the Agency and the lease of the Project Facility by the Agency to the Company; and

WHEREAS, the provision by the Agency of financial assistance to the Company through a straight lease transaction has been determined to be necessary to the reuse and continued operation of the Project Facility; and if the Agency does not provide such financial assistance, the Company may cease to operate the Project Facility; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Company will grant a leasehold interest in the Project Facility to the Agency pursuant to a Company Lease Agreement, dated the date hereof (the “**Company Lease**”) between the Company and the Agency; and

WHEREAS, pursuant to this Agreement, the Agency will lease to the Company the Project Facility; and

WHEREAS, pursuant to a PILOT Agreement dated as of the date of this Agreement among the Agency and Company and the applicable taxing jurisdictions, the Company will agree to make certain payments in lieu of real estate taxes with respect to the Project Facility;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or of the County of Rockland, and neither the State of New York nor the County of Rockland shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Project Facility, including moneys received under this Agreement):

ARTICLE I
DEFINITIONS AND REPRESENTATIONS

Section 1.1 **Definitions.** The following terms shall have the following meanings in this Agreement:

“**Act**” shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 564 of the New York Laws of 1980, as amended.

An “**Affiliate**” of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term “control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

“**Agency**” shall mean the County of Rockland Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

“**Agreement**” shall mean this Agreement and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

“**Authorized Representative**” shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary or Administrator of the Agency, or any other officer, manager or employee of the Agency who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Agency has given written notice to the Company; and (ii) in the case of the Company, the President, the Vice-President, Secretary or Assistant Secretary or any other officer or employee thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Company has given written notice to the Agency.

“**Base Rent**” shall mean the rental payment described in Section 3.3 of this Agreement.

“**Business Day**” shall mean any day which shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in the County are authorized by law or executive order to close.

“**Commencement Date**” shall mean June 30, 2006.

“**Company**” shall mean Mirant Lovett, LLC, a Delaware limited liability company and its successors and assigns pursuant to Section 8.2 hereof.

“**Company Lease**” shall mean the Company Lease Agreement dated as of the date of this Agreement, together with any and all amendments thereof and supplements thereto made in conformity therewith.

“**Company’s Property**” shall have the meaning specified in Section 4.1(c) hereof.

“**County**” shall mean the County of Rockland, New York.

“**Event of Default**” shall have the meaning specified in Section 7.1 hereof.

“**Execution Date**” shall mean June __, 2006, on which date this Agreement was executed and delivered.

“**Facility**” means a 453 MW electric generating facility located on the Land and commonly referred to as the Lovett Electric Generating Facility.

“**Fiscal Year of the Company**” shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Company for accounting purposes as to which the Company shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

“**Improvements**” shall mean the Project Facility and any and all other buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date or the Execution Date on the Land and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

“**Independent Accountant**” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld).

“**Land**” shall mean those certain parcels of improved real property generally known by the street address 37 Elm Street, Tomkins Cove, Town of Stony Point all as more particularly described in Exhibit “A” - “Description of the Land” hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

“**Lease Agreement**” shall mean this Agreement, together with any and all amendments hereof and supplements thereto made in conformity herewith.

“**Liens**” shall have the meaning specified in Section 6.5(a) hereof.

“**Lovett Consent Decree**” shall mean that certain Consent Decree dated June 11, 2003, and all subsequent amendments, modifications, and letter agreements thereto, between the Company (along with Mirant New York, Inc.) and the State of New York and Erin Crotty, Commissioner of the Department of Environmental Conservation of the State of New York, entered in the United States District Court, Southern District of New York, Civil Action No. 03CV4236, whereby the Company committed to either shut down the Project Facility or install on the Project Facility, by 2007 through 2008: (a) emission control technology consisting of selective catalytic reduction technology; (b) alkaline in-duct injection technology (or an alternative control technology approved by the Department of Environmental Conservation); and (c) a baghouse.

“**Loss Event**” shall have the meaning specified in Section 5.1(a) hereof.

“**Net Proceeds**” shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys’ fees and any extraordinary expenses of the Agency or the Company) incurred in the collection thereof.

“**Opinion of Counsel**” shall mean a written opinion of counsel for the Company which shall be reasonably acceptable to the Agency.

“**Organizational Documents**” shall mean the Certificate of Formation and Limited Liability Company Operating Agreement of the Company, as amended from time to time.

“**Permitted Encumbrances**” shall mean:

- (i) this Agreement;
- (ii) Liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic’s, workmen’s, repairmen’s, materialmen’s, contractors’, carriers’, suppliers’ or vendors’ Lien or right in respect thereof, either in existence as of the Execution Date, or arising thereafter, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any Lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any contractor hired to perform Project work may place on or with respect to the Project Facility or any part thereof;
- (v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not materially interfere with or impair the Company’s use and enjoyment of the Project Facility as herein provided;

(vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Project Facility as do not, as set forth in a certificate of an Authorized Representative of the Company delivered to the Agency, either singly or in the aggregate, render title to the Project Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency;

(vii) any Lien or encumbrance required by that certain Credit Agreement dated as of January 3, 2006, among Mirant North America, LLC, the several banks and other financial institutions or entities party thereto from time to time, including Deutsche Bank Securities, Inc. and Goldman Sachs Credit Partners L.P., as co-syndication agents, and JPMorgan Chase Bank, N.A. as administrative agent; and

(viii) any Lien or encumbrance required by that certain (A) Debtor-In-Possession Credit Agreement dated as of January 3, 2006, among the Company, Mirant New York, Inc., Mirant Bowline, LLC, and Hudson Valley Gas Corporation and Mirant North America, LLC and Mirant Americas Energy Marketing, LP (succeeded by Mirant Energy Trading, LLC) and (B) Debtor-In-Possession Credit Agreement dated as of January 3, 2006, among the Company, Mirant New York, Inc., Mirant Bowline, LLC, and Hudson Valley Gas Corporation and Mirant Corporation.

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

“**PILOT Agreement**” shall mean that certain PILOT Agreement dated as of the date hereof among the Agency, Company, and the Tax Jurisdictions.

“**PILOT Mortgage**” shall mean that certain PILOT Mortgage dated as of the date hereof among the Agency, Company, and the Tax Jurisdictions.

“**Project**” shall mean the acquisition of a leasehold interest in the Project Facility, all for the purpose of operating an electricity generating facility and administrative offices.

“**Project Counsel**” shall mean Montalbano, Condon & Frank, P.C., selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

“**Project Documents**” shall mean the Company Lease, this Agreement, the PILOT Agreement, the PILOT Mortgage, the Indemnification Agreement Regarding Hazardous Materials and all other documents executed by Company in connection with this transaction.

“**Project Facility**” shall have the meaning assigned to it in the recitals of this Agreement.

“**Rental Payments**” shall mean Base Rent.

“**Special District Taxes**” means any special assessments and special *ad valorem* taxes levied or imposed on the Project Facility that are not subject to the exemption provided by RPTL Section 412-a. For the purposes of this Agreement, Special District Taxes are limited to charges (but not usage charges) and taxes issued or levied by the Town Lighting District #1, Town Fire District #1, Town Ambulance District, and County Solid Waste Authority.

“**State**” shall mean the State of New York.

“**Stipulation of Settlement and Order**” means a certain Stipulation of Settlement and Order which settled litigation between the Tax Jurisdictions and the Company concerning the tax treatment of the Project Facility.

“**Tax Jurisdictions**” means the Town of Stony Point, the Haverstraw-Stony Point Central School District, and the County of Rockland.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires, any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3 Representations and Warranties by Agency. The Agency represents and warrants that the Agency (i) is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, (ii) is authorized and empowered to enter into straight lease transactions pursuant to the Act, and (iii) by proper action of its members, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

Section 1.4 Findings by Agency. The Agency, based upon the representations and warranties of the Company contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby affirms its findings and determinations set forth in the Agency Authorizing Resolution, and further finds and determines, that

(i) the approval of the PILOT Agreement and the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Company to continue to operate the Project Facility;

(ii) the Project is reasonably necessary to discourage the Company from ceasing to operate the Project Facility;

(iii) the Company, but for the PILOT Agreement approved by the Agency as contemplated by this Agreement, would consider ceasing to operate the Project Facility and discontinuing the related jobs; and

(iv) no funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of a manufacturing plant within the State.

Section 1.5 Representations and Warranties by the Company. The Company makes and affirms the following representations and warranties:

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and qualified to do business and in good standing under the laws of the State of New York. The Company is not in violation of any provision of its Organizational Documents, has the corporate power and authority to own its respective properties and assets, to carry on its business as now being conducted by it and to execute and deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which it is or shall be a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on the part of the Company and will not violate any provision of law, any order of any court or agency of government, the Organizational Documents or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) Except for the Lovett Consent Decree, there is no action or proceeding pending or threatened by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Agreement and each other Project Document to which it shall be a party (except to the extent the Lovett Consent Decree would require shut-down of the Project Facility) and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Company shall be a party or in connection with the performance of the obligations of the Company hereunder and under each of the Project Documents have been obtained.

(d) The Project Facility will constitute a “project” under the Act, and the Company intends to operate the Project Facility, or cause the Project Facility to be operated, in

accordance with this Agreement and as a qualified “project” in accordance with and as defined under the Act.

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the Company through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is reasonably necessary to induce the Company to proceed to continue to operate the Project.

(f) The Company, but for the PILOT Agreement and the straight lease transaction approved by the Agency as contemplated by this Agreement, would consider ceasing to operate the Project Facility and discontinuing the related jobs.

(g) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(h) This Agreement and the other Project Documents to which the Company is a party constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

(i) The Company will use all reasonable efforts to maintain ongoing compliance with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Project Facility; provided, however, that the Company reserves all of its rights: a) to negotiate and settle any alleged violation of Legal Requirements (as defined in Section 4.5 hereof), past, present, or future, with any applicable governmental agency, and (b) under the Lovett Consent Decree.

(j) No Person other than the Company or a permitted sublessee is or will be in use, occupancy or possession of any portion of the Project Facility.

ARTICLE II LEASEHOLD INTEREST TO THE AGENCY; THE PROJECT

Section 2.1 Leasehold Interest to the Agency. The Company will convey to the Agency, pursuant to the Company Lease, a leasehold interest in the Project Facility; provided that subject to the provisions of the Company Lease, the Company will have the exclusive possession of the Project Facility thereunder. The Agency’s acceptance of the leasehold interest in and to the Project Facility pursuant to the Company Lease is effected and performed solely at the request of the Company to provide for the PILOT Agreement.

Section 2.2 The Project.

(a) The Company shall pay (i) all of the costs and expenses in connection with the preparation of the Company Lease, memorandum thereof, the delivery thereof and of any instruments and documents relating thereto, including but not limited to this Agreement and all Project Documents, and the filing and recording of any memoranda of lease or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the conveyance of a leasehold interest and transfer, or attributable to periods prior to such conveyance to the Agency, as set forth in Section 2.1 hereof and in the Company Lease, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(b) The Company unconditionally represents, warrants, covenants and agrees that it has obtained, or will obtain, all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Project Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Project Facility and this Agreement. Company shall furnish copies of same to the Agency immediately upon receipt thereof.

Section 2.3 Limitation on Sales Tax Exemption. It is understood and agreed to that none of the Company or agents of the Company or operators of the Project Facility shall claim any exemption for sales or use taxes based upon the Agency's participation in the Project.

**ARTICLE III
LEASE OF PROJECT FACILITY AND RENTAL PROVISIONS**

Section 3.1 Lease of the Project Facility.

(a) In consideration of the Company's covenant to make rental payments and of the other covenants of the Company set forth herein and in the other Project Documents, the Agency hereby leases to the Company, and the Company hereby leases from the Agency, the Project Facility for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Company, and the Company hereby accepts, sole and exclusive possession of the Project Facility.

(b) The Company hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Project Facility will be a "project" within the meaning of the Act; (ii) the Company will not take any action, or suffer or permit any action, if such action would cause the Project Facility not to be a "project" within the meaning of the Act; and (iii) the Company will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Project Facility not to be a "project" within the meaning of the Act. The Company shall not occupy, use or operate the Project Facility, or allow the Project Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Project Facility or for any

use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire co-terminus with the PILOT Agreement or such earlier date as this Agreement may be terminated as hereinafter provided.

Section 3.3 Rental Provisions. The Company shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00, which shall constitute the entire amount of Base Rent payable hereunder.

ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements.

(a) Subject to its rights, remedies, and obligations under the Lovett Consent Decree, during the term of this Agreement, the Company will (i) keep the Project Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Project Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Company at the Project Facility shall not be impaired or diminished in any way and (ii) make all replacements, renewals and repairs in such a manner as to be equal to or better in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.

(b) The Company shall have the privilege of making such alterations of or additions to the Project Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that

(i) as a result of such alterations or additions, the fair market value of the Project Facility is not materially reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Project Facility is not materially impaired,

(ii) such additions or alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Project Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances,

(iii) such additions or alterations do not change the nature of the Project Facility so that it would not constitute a “project” within the meaning of the Act.

(iv) alterations of and additions to the Project Facility shall constitute a part of the Project Facility, subject to this Agreement, to the extent required by the PILOT Agreement, and the Company shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey a leasehold interest to such property to the Agency and to subject such property to this Agreement.

(c) The Company shall have the right to install or permit to be installed at the Project Facility machinery, equipment and other personal property at the Company’s own cost and expense (the “**Company’s Property**”) without conveying a leasehold interest to such Company’s Property to the Agency nor subjecting such Company’s Property to this Agreement. The Company’s Property shall not constitute part of the Project Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Company’s Property. The Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company’s Property, without the consent of or notice to the Agency.

Section 4.2 Removal of Property of the Project Facility.

(a) The Company shall have the privilege from time to time of removing from the Project Facility any fixture constituting part of the real property or any machinery, equipment or other property installed in the Project Facility (in either case, the “**Existing Project Facility Property**”) and thereby acquiring such Existing Project Facility Property, **provided, however**, no such removal shall be effected if such removal would change the nature of the Project Facility as a “project” within the meaning of the Act.

(b) The removal from the Project Facility of any Existing Project Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Company to any abatement or reduction in the Rental Payments payable by the Company under this Agreement.

(c) Within 120 days after the close of each Fiscal Year of the Company (i) during which Fiscal Year action was taken by the Company pursuant to Section 4.1(b) or 4.2(a) hereof, the Company shall furnish to the Agency a written report of an Authorized Representative of the Company summarizing the action taken by the Company during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) during which Fiscal Year of the Company no action was taken by the Company pursuant to Section 4.1(b) or 4.2(a) hereof, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company certifying to the fact that no such action was taken by the Company pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

Section 4.3 Taxes, Assessments and Charges. The Company shall pay when the same shall become due all Special District Taxes lawfully levied and assessed upon or against the Project Facility.

Section 4.4 Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Company shall maintain or cause to be maintained insurance, with insurance companies authorized to conduct business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company and its Affiliates, including, without limitation:

(i) (A) Property damage insurance and (B) during any period of construction, renovation, improvement or reconstruction of the Project Facility, Builders' All Risk insurance, whether by endorsement or otherwise, including coverage therein for completion and/or premises occupancy, all of which insurance shall in each case include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Project Facility against loss or damage to the Project Facility by fire, lightning, boiler explosion, machinery breakdown, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State); any such insurance shall have a per occurrence limit of \$400 million;

(ii) Commercial general liability insurance in accordance with customary insurance practices for similar operations with respect to the Project Facility and the business thereby conducted in an amount of \$135 million, which insurance (A) will also provide coverage for broad form property damage and bodily injury, and (B) may be effected under overall blanket or excess coverage policies of the Company or any Affiliate;

(iii) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company or the Agency is required by law to provide; and

(iv) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require as set forth in a written notice from an Authorized Representative of the Agency submitted to an Authorized Representative of the Company.

(b) All insurance required by Section 4.4(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State.

(c) Each of the policies or binders evidencing the insurance required above to be obtained shall:

(i) designate (except in the case of workers' compensation insurance) the Agency as additional insureds as their respective interests may appear;

(ii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest in the Project Facility;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Project Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project Facility owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Project Facility shall be applied in accordance with Section 5.1 of this Agreement.

(e) As a condition to the execution and delivery of this Agreement by the Agency, the Company, at or prior to the Execution Date, shall deliver or cause to be delivered to the Agency duplicate copies of binders or certificates evidencing compliance with the insurance requirements of this Section 4.4. Within fifteen (15) days after the expiration of any such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Company, at its own cost and expense, shall make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.4, and shall cause any sublessee, contractor or other insuring party under this Section 4.4 to take similar action with

respect to such party's insurance required hereunder. The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.4 would or might be suspended or impaired.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OF COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE PROJECT FACILITY OR THE BUSINESS, OPERATIONS OR FINANCIAL CONDITION OF THE COMPANY.

Section 4.5 Compliance with Law. The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, use all reasonable efforts to promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, the Project Facility, any occupant, user or operator of the Project Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices, including the Agency's Labor Policy, a copy of which is annexed hereto as Appendix A) (the "**Legal Requirements**"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions; provided, however, the Company reserves all of its rights: (a) to negotiate and settle any alleged violation of Legal Requirements, past, present, or future, with any applicable governmental agency, and b) under the Lovett Consent Decree. The Company will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Project Facility or any part thereof. The Company shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Company (or any other Person occupying, operating or using the Project Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Company or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Company may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Company or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

**ARTICLE V
DAMAGE OR DESTRUCTION**

Section 5.1 Damage or Destruction.

In the event that at any time during the term of this Agreement the Project Facility shall be damaged or destroyed, the Company shall have the rights set forth in the PILOT Agreement.

**ARTICLE VI
PARTICULAR COVENANTS**

Section 6.1 Restrictions on Company. The Company covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a limited liability company, (ii) continue to be subject to service of process in the State and qualified to do business in the State, and (iii) except as may be provided in the PILOT Agreement, not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date.

Section 6.2 Indemnity.

(a) The Company shall at all times defend, indemnify and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), (other than, with respect to each Indemnified Party, losses arising from the willful misconduct of such Indemnified Party), arising upon or at the Project Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Project Facility, (iii) any defects (whether latent or patent) in the Project Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, custody, occupancy, ownership, leasing, subletting or operation of the Project Facility or any portion thereof, (v) the execution and delivery by the Indemnified Party or the Company of, or performance by the Indemnified Party or the Company, as the case may be, of any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby, or (vi) any matters concerning title to the Project Facility. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Company or its respective directors, officers, partners, employees, agents or servants or persons under the control or supervision of the Company or any other Person who may be at the Project Facility, due to

any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Company releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and the Company agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Company with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 6.2.

(c) Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Agency relating to the enforcement of the provisions herein specified.

(d) For the purposes of this Agreement, the Company shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Section 6.3 Compensation and Expenses of the Agency. The Company shall pay the reasonable and documented fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's Project Counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

The Company further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$500.00 payable upon the Commencement Date and on every January 1 thereafter until the termination of this Agreement; provided, however, that the Company may elect to prepay, without penalty or interest, such annual administrative servicing fees.

Section 6.4 Retention of Interest in Project Facility; Grant of Easements; Release of Land.

(a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its interest in the Project Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Company and any purported disposition without such consent shall be void.

Notwithstanding the foregoing paragraph, the Agency will, at the written request of an Authorized Representative of the Company, so long as there exists no Event of

Default hereunder, grant such rights of way or easements over, across, or under, the Land, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of this Agreement, as shall be necessary or convenient for the operation or use of the Project Facility, provided that such leases, rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Project Facility. The Agency agrees, at the sole cost and expense of the Company, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of this Agreement.

(b) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Company to any abatement or diminution of the Rental Payments payable under Section 3.3 hereof required to be made by the Company under this Agreement or any other Project Document to which it shall be a party.

Section 6.5 Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called “**Liens**”), whether or not valid, is made against the Project Facility or any part thereof or the interest therein of the Agency or the Company or against any of the Rental Payments payable under this Agreement or the interest of the Agency or the Company under this Agreement, other than Permitted Encumbrances or Liens being contested as permitted by Section 6.5(b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and the Company and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency’s interest in the Project Facility.

(b) The Company may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Project Facility or any part thereof or interest therein, or in this Agreement, of the Agency or the Company or against any of the Rental Payments payable under this Agreement, (2) neither the Project Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Company nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Company shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.6 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT FACILITY, OR THE SUITABILITY OF THE PROJECT FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY IS SATISFIED THAT THE PROJECT FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE PROJECT FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.7 Financial Statements. The Company agrees to furnish to the Agency, as soon as available and in any event within one hundred and twenty (120) days after the close of each fiscal year of the Company, a copy of the most recent fiscal year annual certified balance sheets as of the end of such most recent fiscal year, prepared in accordance with generally accepted accounting principles and practices.

Section 6.8 Employment Information, Opportunities and Guidelines.

(a) Annually, by October 1 of each year until the termination of this Agreement, the Company shall submit to the Agency an employment report, in such form as may be requested by the Agency, relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, certified as to accuracy by the chief financial or accounting officer of the Company.

(b) The Company shall ensure that all employees and applicants for employment by the Company or its Affiliates with regard to the Project Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Land is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, where practicable, to first consider, and cause each of its Affiliates at the Project Facility to first consider, persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created

pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“**DOL**”), to release to the Agency and/or the County of Rockland Economic Development Corporation (“**EDC**”), and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Company and the employees of the Company and the Company to enable the Agency and/or EDC to comply with its reporting requirements required by any and all applicable laws, rules or regulations. In addition, upon the Agency’s request, the Company shall provide to the Agency any employment information in the possession of the Company which is pertinent to the Company and the employees of the Company to enable the Agency and/or EDC to comply with its reporting requirements required by any and all applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company, or any information previously released as provided by all or any of the foregoing parties (collectively, “**Employment Information**”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The County of Rockland, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (a) reports prepared by the Information Recipients pursuant to applicable laws, rules or regulations, (b) other reports required of the Agency, and (c) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Nothing in this Section shall be construed to require the Company to violate any existing collective bargaining agreement with respect to existing employees or hiring new employees.

Section 6.9 Further Assurances. The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, if applicable, at the sole cost and expense of the Company, as the Agency deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 6.10 Recording and Filing. A memorandum of this Agreement shall be recorded by the Company in the appropriate office of the Clerk of the County of Rockland, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

ARTICLE VII
EVENTS OF DEFAULT; REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Failure of the Company to pay any amount (including Rental Payment, fee or charge) that has become due or payable or to observe and perform any covenant, condition or agreement on its part to be performed under this Agreement or any documents ancillary thereto, and (i) continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency or any tax jurisdiction, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, and the Company fails to proceed within such thirty (30) days to commence and diligently proceed to cure same;

(b) Default by the Company of its obligations under this Agreement, the PILOT Agreement, the PILOT Mortgage or any documents ancillary thereto beyond any applicable cure or grace period;

(c) After emerging from bankruptcy, the Company shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(d) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Company shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(e) Any material representation or warranty made (i) by the Company in the application and related materials submitted to the Agency for approval of the Project or the

transactions contemplated by this Agreement, or (ii) by the Company herein or in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;

(f) The commencement of proceedings to foreclose the lien of any mortgage or lien on the Project Facility; or

(g) Any loss of the leasehold interest by the Agency to the Project Facility.

Section 7.2 Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the consequences of default shall be as set forth in Section 3.11 of the PILOT Agreement and the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement. Additionally, the Agency may terminate this Agreement.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

Section 7.4 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

Section 7.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other expenses for the collection of the Rental Payments payable

hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Force Majeure. In case by reason of *force majeure* the Agency or the Company shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Company to make the Rental Payments required under the terms hereof, or to comply with Sections 4.4 or 6.2 hereof), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*," as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Company shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Company shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Company.

Section 8.2 Assignment, Transfer or Sublease.

(a) Provided that the Company is not in default of its obligations hereunder, the Company may at any time assign or transfer this Agreement or sublease the whole or any part of the Project Facility without the prior written consent of the Agency upon ninety (90) days' prior notice, provided that

(i) the Company shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that the assignment, transfer or sublease shall not cause the Project Facility to cease being a “project” under the Act;

(ii) any assignee or transferee of the Company in whole of the Project Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the Company to be kept and performed, shall be liable for the performance thereof, subject to service of process in the State, and be qualified to do business in the State;

(iii) any assignee, transferee or sublessee shall utilize the Project Facility as a qualified “project” within the meaning of the Act;

(iv) such assignment, transfer or sublease shall not violate any provision of this Agreement or any other Project Document; or

(v) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Company for the payment of all Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement which Company is obligated to perform or of any other Project Document to which the Company shall be a party.

The Company shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least ten (10) days prior to the date of execution thereof and once effective (in the case of an assignment or transfer) shall act to release Mirant Lovett, LLC from its obligations hereunder, except the obligations set forth in Sections 4.5 and 6.2 above in relation to claims, demands, costs, expenses and liabilities for losses, damages and injuries, or taxes arising prior to such assignment, transfer or sublease.

(b) If the Project Facility or any part thereof is sublet or occupied by any Person other than the Company, the Agency, in the event of the Company’s default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the sublessee or occupant during the continuance of any such default. In case of such event, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenants herein concerning assignment, transfer or sublease of this Agreement, or constitute the acceptance of the sublessee or occupant as tenant, or a release of the Company from the further performance of the covenants herein contained on the part of the Company.

(c) The Company covenants and agrees that it shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or suffer any amendment, modification, termination or assignment of any sublease entered into in accordance with this Section.

(d) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Project Facility, the Company shall complete and execute such survey and questionnaire and return the same to the Agency.

Section 8.3 Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

Section 8.4 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Agency, to the Chairperson, County of Rockland Industrial Development Agency, One Blue Hill Plaza, Pearl River, New York 10965 with copies to the Executive Director of the Agency at the same address and to counsel to the Agency at Montalbano, Condon & Frank, P.C., 67 North Main Street, New City, NY 10956;

(b) if to the Company, to 37 Elm Street, Tomkins Cove, New York 10986, Attention: President, with a copy to Hiscock & Barclay, LLP, 300 South State Street, Syracuse, New York 13202; and

(c) if the Notice, certificate, or communication relates to provisions of the PILOT Agreement or the Stipulation of Settlement and Order, a copy of same shall be sent to all those designated for receipt of notice under the PILOT Agreement.

The Agency and the Company may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

Section 8.5 Prior Agreements Superseded. This Agreement, together with the PILOT Agreement and other Project Documents, shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Project Facility.

Section 8.6 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 8.7 Inspection of Project Facility. The Company will permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable notice, to enter the Project Facility but solely for the purpose of (a) assuring that the Company is operating the Project Facility, or is causing the Project Facility to be operated, as a qualified “project” within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (b) determining whether the Project Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Project Facility as such latter obligation is and shall remain solely the obligation of the Company.

Section 8.8 Effective Date; Counterparts. This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.9 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, successive owners of the Project Facility, each of the Agency and the Company, and, as permitted by this Agreement, their respective successors and assigns.

Section 8.10 Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

Section 8.11 Law Governing. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 8.12 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Project Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 8.13 Non-Discrimination.

(a) At all times during the maintenance and operation of the Project Facility, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated” shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Company shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency and the Company shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Project Facility.

Section 8.14 Recourse under this Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the County and neither the State nor the County shall be liable on any obligation so incurred, by any such obligation shall be payable solely out of amounts payable to the Agency by the Company hereunder.

Section 8.15 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on June ____, 2006.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written in their respective names and by their duly authorized representatives.

**COUNTY OF ROCKLAND INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Eric Dranoff
Chairperson of the Board of Directors

MIRANT LOVETT, LLC,
a Delaware limited liability company

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

By: _____
Jeffrey R. Perry
President

EXHIBIT "A"

DESCRIPTION OF REAL PROPERTY

LEGAL DESCRIPTION ATTACHED HERETO.

Together with:

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by the Company now or hereafter attached to, contained in or used or acquired in connection with the Project Facility or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

And which is also known as the following tax parcels, as such tax parcels may be modified from time to time:

- | | |
|------------|------------|
| 10.04-2-2 | 10.04-2-3 |
| 10.04-2-4 | 10.04-2-5 |
| 10.04-2-6 | 10.04-2-7 |
| 10.04-2-8 | 10.04-2-9 |
| 10.04-2-10 | 10.04-2-11 |
| 10.04-2-12 | 10.04-2-13 |
| 10.04-2-14 | 10.04-2-15 |
| 10.04-2-16 | 10.04-2-17 |
| 10.04-2-18 | 10.04-2-19 |
| 10.02-3-17 | |

on the official tax map of the Town.