

EXHIBIT “1”

TAX VALUATION AGREEMENT

THIS TAX VALUATION AGREEMENT (the "Agreement") is made and entered into as of this 14 day of October, 2005, by and between the Town of Sandwich, a municipal corporation and body politic of the Commonwealth of Massachusetts (the "Town") having its offices at 130 Main Street, Sandwich, Massachusetts 02563, and Mirant Canal, LLC, ("Mirant") a Delaware limited liability company having its principal place of business at 9 Freezer Road, Sandwich, Massachusetts 02563. The Town and Mirant may be collectively referred to hereafter as the "Parties."

RECITALS

WHEREAS, Mirant owns a steam electric generating facility (the "Facility") which is located on certain land owned by Mirant in the Town;

WHEREAS, Mirant is subject to certain local taxes in connection with its ownership of real and personal property;

WHEREAS, valuation of electric power generation plants for local tax purposes poses unique difficulties and involves complex procedures that must be implemented by the Town on annual basis; and

WHEREAS, the Parties now wish to set forth their understanding regarding valuation of the Facility and other Mirant property for local tax purposes.

NOW THEREFORE, in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. *Recitals.* The Parties ratify, confirm and incorporate herein the above Recitals.
2. *Property to be Taxed.* The property owned by Mirant which shall be taxed subject to the terms of this Agreement is described in Exhibit A attached hereto (the "Subject Property"). The Subject Property shall also include any material additions, improvements or other changes to the Subject Property which occur after the execution of this Agreement. This Agreement covers all real and personal property taxation and Community Preservation Act charges.
3. *Term.* This Agreement shall govern the taxation of the Subject Property for fiscal year 2006 through, and including, fiscal year 2013, unless otherwise provided herein. This Agreement may sooner terminate (i) pursuant to Sections 7 or 8 herein, or (ii) by written notice from Mirant to the Town in the event the Facility is temporarily or permanently retired and is no longer used by Mirant for production of electricity.
4. *Assessed Valuation of Subject Property.* The Parties agree that the full and fair cash valuation of the Subject Property shall be the amounts listed below for each of the fiscal years

included in the term of this Agreement. The following valuation schedule shall become effective at the beginning of the fiscal year immediately following the execution of this Agreement. For the purposes of this Agreement, each fiscal year shall begin on July 1 and shall end on June 30 the following calendar year.

VALUATION AND ESTIMATED TAX SCHEDULE

Fiscal Year	Fair Cash Value	Estimated Aggregate Tax Due
FY 2006	\$254,000,000	\$2,660,192
FY 2007	\$254,000,000	\$2,466,822
FY 2008	\$254,000,000	\$2,401,570
FY 2009 – Valuation Stabilizer	\$254,000,000	\$2,396,490
FY 2010	\$254,000,000	\$2,367,940
FY 2011	\$254,000,000	\$2,344,547
FY 2012	\$254,000,000	\$2,310,765
FY 2013—Valuation Stabilizer	\$254,000,000	\$2,279,599
FY 2006 – FY 2013 Est.-Average Aggregate Tax =		\$2,403,490

The valuations set forth in the above table are based on the Town's current appraised value of \$254,000,000 net of all pollution control exemptions.

The sole purpose of the valuation stabilizer in FY 2009 and FY 2013 is to permit the Town to adjust the fair cash valuation of the Subject Property for the remainder of the term of this Agreement in order to account for changes in the Town's real estate tax base. In the event the Town determines that an adjustment of the fair cash valuation of the Subject Property in FY 2009 or FY 2013 is appropriate, the Parties agree that they will re-open negotiations in order to determine the proper fair cash valuation of the Subject Property, provided, however, that the Parties agree that the valuation of the Subject Property shall not be adjusted up or down by more than 10 percent of the values specified in the above table. In the event that the Parties cannot agree on the proper fair cash valuation of the Subject Property, the dispute resolution procedures set forth in Section 16 shall not apply. Instead, after thirty (30) days of informal negotiations, the Town, in its sole discretion, may adjust the valuation of the Subject Property by no more than 10 percent of the values specified in the table above. Once any adjustments have been made pursuant to this Section 4, the result must yield an estimated average annual aggregate tax from FY 2006 – FY 2013 equal to \$2,403,490.

5. *Annual Certifications.* In each year after the base year of the valuation schedule set forth in Section 4, Mirant shall submit to the Town no later than March 1, an annual certification which describes any material additions, improvements or retirements that have occurred since submission of the revised description of the Subject Property or its last annual certification. In each annual certification, Mirant shall designate a representative who is available to answer any questions that the Town may have regarding the information that was provided or omitted on such annual certification.

6. *Valuation Adjustments and Audit Rights.* Additional material additions or improvements to the Subject Property (excluding any normal repair and maintenance expenditures and installation of

any pollution control equipment) shall trigger an upward adjustment of the valuation figures listed in Section 4 above. Substantial equipment retirements shall trigger a downward adjustment of the valuation figures listed in Section 4. Within thirty (30) days of receipt of each annual certification, the Town's Principal Assessor shall send Mirant a notice as to whether an adjustment in the valuation figures set forth in Section 4 is warranted, the reasons for the adjustment, and a revised future valuation schedule for the Subject Property. The revised valuation schedule shall take effect for the subsequent fiscal year unless within ninety (90) days of receipt of the revised valuation schedule Mirant sends the Town's Principal Assessor notice that it objects to such valuation schedule. If the Parties cannot agree as to the adjusted valuation amount, the Parties shall resolve the dispute in accordance with Section 16 below. In the event that the dispute resolution process set forth in Section 16 is initiated, the Town shall have a limited right to audit and inspect Mirant's records during the informal negotiation stage of the process. The scope of such audits shall be limited to reviewing information that is reasonably necessary to ascertain the accuracy of the information provided or omitted on Mirant's most recent annual certification. Such examinations shall be made upon not less than seven (7) days' prior notice during normal business hours at the Facility and in such manner as to not unreasonably interfere with Mirant's normal business activities. If such records are not kept at the Facility, Mirant shall deliver (at its sole expense) copies of such records to the office of the Town's Principal Assessor. Any information provided to the Town as part of an audit shall be treated as confidential. In the event the Town requests documents or information that Mirant determines is proprietary, upon request by Mirant, the Parties will enter into a commercially reasonable confidentiality agreement in order to limit disclosure of such information. Mirant shall have no obligation to provide the Town with any document that is privileged under applicable law.

7. *Amount and Timing of Payments; Failure to Make Timely Payments; Right to Cure.* Subject to the provisions of Section 4 hereof, the total amount of taxes to be paid by Mirant in any fiscal year shall equal the valuation for said fiscal year multiplied by the unified tax classification rate currently in effect in the Town. Payments due under this Agreement shall be billed in accordance with G.L. c. 60, § 3. Mirant shall make payment no later than five (5) days in advance of the due date of the relevant Town quarterly real and/or personal property commitment; provided, however, that the Town must issue each quarterly commitment to Mirant in a manner consistent with the Town's issuance of quarterly commitments to other taxpayers. If the due date for any payment is not a Business Day (a day in which major banks in Boston, Massachusetts are open for business, excluding any Saturday and Sunday), the due date for payment shall be the following Business Day. Payments must be made by wire transfer if the Town provides Mirant with wire account information with the tax commitment. Mirant's failure to make any payment required under this Agreement by the applicable due date shall not constitute a breach of the Agreement, provided such failure is (i) remedied within five (5) Business Days after Mirant's receipt of written notice from the Town, or (ii) the subject of a good faith dispute. Except as provided for in this Paragraph 7, the Town, based on Mirant's breach of the Agreement by its failure to make payment, can immediately terminate this Agreement upon written notice to Mirant. In addition, in the event of a uncured payment default that is not the subject of a good faith dispute, Mirant shall pay a late fee of one thousand dollars (\$1,000) per day for each day that any payment under this Agreement is due, provided, however, that no more than twenty-five thousand dollars (\$25,000) shall be due and owing for each instance of late payment or nonpayment. Interest shall also accrue on all late payments in accordance with G.L. c. 59, § 57.

8. *Change in Tax Classification System.* In the event the Town modifies its tax classification rate by adopting more than one use classification, except as provided below, the Parties agree that Section 4 of this Agreement shall be null and void. In such event, this Agreement shall be treated as a

payments made in lieu of taxes agreement and Mirant shall pay the Town the amount of estimated aggregate tax due as set forth in the tax schedule in Section 4.

9. *Representations and Warranties of Mirant.* Mirant hereby makes the following representations and warranties to the Town:

- (a) Mirant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the full limited liability company power and authority to carry on its business as it is now being conducted.
- (b) Mirant has taken all necessary limited liability company action to authorize and approve the execution and delivery of this Agreement.
- (c) To the best of Mirant's knowledge, none of the documents or information furnished by or on behalf of Mirant to the Town in connection with negotiation and execution of this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.
- (d) The person executing this Agreement on behalf of Mirant has the full power and authority to bind it to each and every provision of this Agreement.
- (e) In the event of a dispute over any term or provision of this Agreement, Mirant waives any defense or claim that this Agreement is unenforceable as a matter of law.

10. *Representations and Warranties of the Town.* The Town hereby makes the following representations and warranties to Mirant:

- (a) The Town is a municipal corporation and body politic of the Commonwealth of Massachusetts.
- (b) The Town has taken all necessary action to authorize and approve the execution and delivery of this Agreement.
- (c) The person or persons executing this Agreement on behalf of the Town have the full power and authority to bind it to each and every provision of this Agreement.
- (d) In the event of a dispute over any term or provision of this Agreement, the Town waives any defense or claim that this Agreement is unenforceable as a matter of law.

11. *Abatements.* For so long as this Agreement remains in effect, Mirant agrees that it will not seek an abatement or reduction of the amounts due to the Town hereunder and waives all such rights to the fullest extent permitted by law. Nothing in this Agreement shall be construed as limiting Mirant's right to challenge valuation adjustments made pursuant to Section 6 of this Agreement.

12. *Notices.* All notices and consents required or permitted by this Agreement shall be in writing and, if mailed, shall be deemed to have been given when dispatched by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the Town:

Town Administrator
Sandwich Town Hall
130 Main Street
Sandwich, MA 02563

with a copy to:

Jeffrey M. Bernstein, Esq.
BERNSTEIN, CUSHNER & KIMMELL, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116

If to Mirant:

Mirant Canal, LLC
9 Freezer Road
Sandwich, Massachusetts 02563
Attn: Plant Manager

with a copy to:

ATTN: General Counsel
Mirant Corporation
1155 Perimeter Center West
Atlanta, Georgia 30338

and a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attn: Ralph A. Child, Esq.

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either Party by notice to the other Party. Notice given otherwise than by mailing shall be effective when received.

13. *Entire Agreement; Construction with Other Agreements.* Except as expressly provided herein, this Agreement, along with the Exhibits attached hereto, constitute the entire and complete agreement of the Parties with respect to the taxation by the Town of the Subject Property, exclusive of all prior understandings, arrangements and commitments, all of which, whether oral or written, having been merged herein, except for contemporaneous or subsequent written understandings,

arrangements, or commitments signed by the Parties intended to be bound thereby.

14. *Binding Effect.* This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest hereunder, provided however, that in the event Mirant sells or conveys a portion of the Site (as such term is defined in Exhibit A attached hereto) that is not used in connection with the generation of electric power at the Facility, such portion of the Site shall be released from the terms of this Agreement and the value of Subject Property shall be adjusted as provided in Section 6 hereof.

15. *Applicable Law.* The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this Agreement.

16. *Dispute Resolution.* Unless otherwise expressly provided for in this Agreement (including, but not limited to, Section 4), the dispute resolution procedures of this Section 16 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use commercially reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties involved in the dispute. After one Party sends the other Party a written notice of dispute, the Parties shall enter into an agreement tolling any applicable statute of limitations or repose for a mutually agreeable period of time, which at a minimum will allow the Parties sufficient time to complete the dispute resolution process established in this paragraph. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. In the event that despite the good faith efforts of both Parties, the Parties are unable to appoint a mediator to commence the mediation within thirty (30) days of the expiration of the time period for informal negotiations, the aggrieved Party may commence judicial action as set forth below. The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty (30) days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, or seek injunctive or equitable relief as set forth below, venue for any judicial proceeding shall be any state or federal court in Massachusetts of competent jurisdiction. Notwithstanding the foregoing, injunctive or equitable relief may be sought without resorting to dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any judicial action, the Parties waive their rights to a jury trial and the "Prevailing Party" shall be entitled to payment from the opposing Party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the Party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action. The Parties shall continue to perform their obligations under this Agreement while any alternative dispute resolution proceeding is pending.

17. *Amendments.* No amendment to this Agreement shall be effective until reduced to writing and executed and delivered by both Parties.

18. *Severability; Reformation.* In case any one or more of the provisions (or parts of a provision) contained in this Agreement shall, for any reason, be held by any governmental authority, agency or court of competent jurisdiction, to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or part of a provision) of this Agreement; and this Agreement shall, to the fullest extent lawful, be reformed and construed as if such invalid, illegal or unenforceable provision (or part of a provision) had never been contained herein, and such provision (or part) reformed so that it will be valid, legal and enforceable to the maximum extent possible. In the event that any governmental authority, agency or court of competent jurisdiction invalidates any key provision(s) in this Agreement, the Parties agree to use commercially reasonable efforts to negotiate in good faith a new tax valuation agreement which shall attempt to the maximum extent possible to achieve the intent and the objectives of the Parties as set forth in this Agreement.

19. *Headings.* The descriptive headings of the sections in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

20. *Counterparts.* This Agreement may be executed in counterparts by the Parties hereto and will become binding upon the Parties at such time as the signatories hereto have signed each counterpart of this Agreement. All counterparts executed shall constitute one Agreement binding all Parties hereto, notwithstanding that all Parties are not signatories to the original or same counterpart.

21. *Waiver.* No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

22. *Joint Work Product.* This Agreement shall be considered the work product of both Parties, and, therefore, no rule of strict construction shall be applied against the other Party hereto.

23. *Bankruptcy Court Approval.* The Parties acknowledge and agree that this Agreement is subject to approval by the United States Bankruptcy Court for the Northern District of Texas ("Bankruptcy Court"). To obtain said approval, Mirant must file a motion with the Bankruptcy Court under the Federal Rules of Bankruptcy Procedure seeking approval of this Agreement (the "Motion"). A copy of this Agreement shall be attached as an exhibit to the Motion. As such, the Parties acknowledge and agree that this Agreement shall not remain confidential. This Agreement shall be binding on Mirant and the Town as of the date hereof, subject to the entry of the Approval Order. For purposes of this Settlement Agreement, the "Approval Order" shall mean an order, mutually agreed to by Mirant and the Town, that has been entered by the Bankruptcy Court, after notice and hearing, approving this Agreement. Mirant shall use commercially reasonable efforts to obtain the entry of the Approval Order, and the Town shall use commercially reasonable efforts to cooperate with and support Mirant's efforts to obtain entry of the Approval Order. In the event

the Approval Order is not entered by the Bankruptcy Court by October 26, 2005, or by such later date that the Parties agree to in writing, the Parties agree to use commercially reasonable efforts to negotiate in good faith a new tax valuation agreement which shall attempt to meet with the requirements of the Bankruptcy Court and, to the maximum extent possible, achieve the intent and the objectives of the Parties as set forth in this Agreement.

EXECUTED this 14 day of October, 2005.

ATTEST:

TOWN OF SANDWICH

By: _____

By: _____
George H. Dunham, Town Administrator

By: _____

By: _____
Edward L. Childs, Principal Assessor

ATTEST:

MIRANT CANAL, LLC

By: Alison Middle

By: [Signature]
Name: LISA D. JOHNSON
Title: PRESIDENT

EXECUTED this 14th day of October, 2005.

ATTEST:

By: *John Egan*

By: *John Egan*

ATTEST:

By: _____

TOWN OF SANDWICH

By: *George H. Dunham*
George H. Dunham, Town Administrator

By: *Edward L. Childs*
Edward L. Childs, Principal Assessor

MIRANT CANAL, LLC

By: _____
Name:
Title:

EXHIBIT A

Description of Subject Property

As herein, the term "Subject Property" shall include all of the following real and personal property, whether currently existing or acquired during the term of this Agreement, owned by Mirant or any affiliate thereof located on the Site (defined below):

- 1.1 approximately 136 acres of land located in Sandwich, Massachusetts, as more particularly described on *Exhibit B attached hereto (the "Site")*;
- 1.2 any and all structures and buildings constructed or to be constructed on the Site, including but not limited to, the existing buildings and structures located on the Site;
- 1.3 any and all equipment, machinery or facilities used in or related to the production of electricity, and ancillary and appurtenant facilities, fixtures, and personal property related thereto, located at the Site or used in connection with the generation or transmission of electric power from the Site, including but not limited to, oil storage, docking facilities, natural gas and electric lines;
- 1.4 any and all fuel, supplies, inventories, materials, spare parts and other consumable property located at the Site used in or related to the production of electricity; and
- 1.5 any and all other personal property located at the Site and owned by Mirant, including but not limited to, vehicles, office furniture and equipment.

The "Subject Property" shall not include any real or personal property not owned by Mirant or an affiliate thereof, including, without limitation, the so-called "Switchyard" and transmission and distribution facilities at or near the Site owned by third parties. The Parties acknowledge that the definition of Subject Property does not include any pollution control equipment, which is exempt from local property taxation; provided that in the event such pollution control equipment is in the future subject to local taxation, it shall be deemed to be part of the Subject Property.

EXHIBIT B

Description of Land

EXHIBIT B

Description of Land

ASSESSOR MAP-PARCEL	LOCATION	OWNER
86-013	1 ROUTE 6A	MIRANT CANAL LLC
86-014	1 TUPPER ROAD	MIRANT CANAL LLC
86-015	0 ROUTE 6A	MIRANT CANAL LLC
86-016	0 TUPPER ROAD	MIRANT CANAL LLC
86-018	0 TUPPER ROAD	MIRANT CANAL LLC
86-019	0 TUPPER ROAD	MIRANT CANAL LLC
87-012	51 TUPPER ROAD	MIRANT CANAL LLC
91-001	0 FREEZER ROAD	MIRANT CANAL LLC
91-002	0 TUPPER ROAD	MIRANT CANAL LLC
91-003	0 TUPPER ROAD	MIRANT CANAL LLC
92-002	9 FREEZER ROAD	MIRANT CANAL LLC
93-008	2 COAST GUARD ROAD	MIRANT CANAL LLC
93-009	0 TOWN NECK ROAD	MIRANT CANAL LLC
93-011-001	0 TOWN NECK ROAD	MIRANT CANAL LLC
93-158	0 COAST GUARD ROAD	MIRANT CANAL LLC