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ATTORNEYS FOR THE
MirMA LANDLORDS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:	§	Chapter 11 Case
MIRANT CORPORATION, et al,	§	Case No. 03-46590 (DML)
	§	Jointly Administered
DEBTORS.	§	
	§	Hearing Date and Time:
	§	

**THE MIRMA LANDLORDS' MOTION TO COMPEL
PAYMENT OF ALTERNATIVE RENT ARISING FROM
MIRANT MID-ATLANTIC, LLC'S TERMINATION OF REPORTING
COMPANY STATUS UNDER THE SECURITIES EXCHANGE ACT OF 1934**

TO THE HONORABLE D. MICHAEL LYNN, UNITED STATES BANKRUPTCY JUDGE:

The MirMA Landlords¹ submit this Motion seeking an order of the Court compelling Mirant Mid-Atlantic, LLC ("MirMA") to comply with its statutory duties under Sections 365(d)(3) and (d)(10)² of the Bankruptcy Code by paying alternative rent to the MirMA Landlords as required by the operative leases and related agreements, as a result of MirMA's

¹ The MirMA Landlords are comprised of the following: (1) SEMA OP4 LLC, SEMA OP5 LLC, SEMA OP6 LLC, SEMA OP7 LLC, Morgantown OL3 LLC, Morgantown OL4 LLC, Dickerson OL2 LLC, and Dickerson OL3 LLC, all of which are special purpose entities affiliated with Bank One, NA; (2) SEMA OP1 LLC, SEMA OP2 LLC, SEMA OP3 LLC, Morgantown OL1 LLC, Morgantown OL2 LLC, and Dickerson OL1 LLC, all of which are special purpose entities affiliated with Verizon Capital Corp.; and (3) SEMA OP8 LLC, SEMA OP9 LLC, Morgantown OL5 LLC, Morgantown OL6 LLC, Morgantown OL7 LLC, and Dickerson OL4 LLC, all of which are special purpose entities affiliated with UnionBanCal Corporation.

² The MirMA Landlords reserve all rights regarding the classification of the leases which are the subject of this Motion, as either real or personal property leases.

decision to terminate its reporting company status under the Securities Exchange Act of 1934 (the “Exchange Act”). In support thereof, the MirMA Landlords state as follows:

I. SUMMARY OF RELIEF REQUESTED

1. MirMA unilaterally terminated its status as a reporting company in August, 2003. MirMA’s leases with the MirMA Landlords require MirMA to pay alternative rent at an increased rate of .50%, totaling approximately \$5 million per year, should it fail to maintain reporting company status under the Exchange Act. MirMA has failed to pay the alternative rent due.³ The obligation to pay alternative rent corresponds to an increase in interest provided for in notes executed by the MirMA Landlords, in favor of certain certificate holders. The increased rent was provided for in the leases to compensate for the loss in liquidity of the certificates issued in connection with the lease transactions due to MirMA’s termination of its reporting company status.

2. MirMA’s inexplicable decision to terminate its reporting company status is curious since it has the information necessary to complete the required reports and the cost of maintaining reporting company status is a fraction of the alternative rent payable as a result of the termination. Pursuant to Sections 365(d)(3) and (d)(10) of the Code, the MirMA landlords seek to compel MirMA to pay the alternative rent due, and continue to pay such alternative rent, until MirMA resumes its reporting status with the Securities and Exchange Commission (the “SEC”).

³ MirMA’s failure to pay the alternative rent was cited previously as an existing default under the leases in the MirMA Landlords’ opposition to MirMA’s Motion for a second extension of the time to assume unexpired leases.

II. FACTUAL BACKGROUND

3. The MirMA Landlords acquired interests in certain energy generating facilities, including those generating units commonly known as the Morgantown Base-Load Units 1 and 2 and Dickerson Base-Load Units 1, 2 and 3 (collectively the “Power Plants”), in a series of transactions involving the Owner Lessors (the “OLs”), Potomac Electric Power Company (“PEPCO”), and Southern Energy Mid-Atlantic Corp. (“SEMA”), the predecessor in interest to MirMA.⁴ Pursuant to one of these transactions, PEPCO conveyed the Power Plants to the OLs in connection with MirMA’s acquisition of various assets from PEPCO, including the land on which the Power Plants sit.

4. The acquisition of the Power Plants was structured such that the Power Plants would be owned by the OLs, who are in turn owned by the Owner Participants (the “OPs”), all of which are special purpose entities affiliated with Verizon Capital Corp., UnionBanCal Corporation, and Bank One, N.A. (the OLs and the OPs are referred to collectively as the “MirMA Landlords”).⁵ To finance the approximate \$1.5 billion cost of the Power Plants, the OPs provided approximately 20% in cash and borrowed the remainder of the purchase price from a group of certificate holders (the “Certificate Holders”) for whom U.S. Bank, N.A., as successor to State Street Bank and Trust Company of Connecticut, N.A., serves as both Pass Through Trustee and Lease Indenture Trustee (collectively, the “Trustee”). The OP’s obligation to the Certificate Holders is evidenced by notes payable to the bondholders (the “Lessor Notes”) which are secured by liens against both the OPs’ and OLs’ interests in the Power Plants.

⁴ Although the documents governing the relationship between the MirMA Landlords and MirMA refer to SEMA, for simplification purposes, MirMA will be substituted for SEMA to reflect the current nature of the relationship.

⁵ *See, supra*, text accompanying note 1.

5. The Power Plants are leased by the MirMA Landlords to MirMA through a set of written leases and related agreements. MirMA, which owns the land on which the Power Plants sit after acquiring it from PEPCO, leased this land to the OLs under a long-term ground lease arrangement (of 99 years, including renewals), who then subleased the land back to MirMA for a term equaling the term of the lease of the Power Plants from the OLs to MirMA. The leases and related agreements are collectively referred to as the “Leases”.

6. On July 14-15, 2003, MirMA, in addition to seventy-four separate Mirant Corporation (“Mirant”) entities (collectively the “Debtors”), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “Code”). On July 15, 2003, this Court granted the Debtors’ motion requesting joint administration of the Debtors’ bankruptcy estates. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Code.

7. Pursuant to the Leases, MirMA is required to make lease payments, payments that service debt payments to the Trustee and also provide a return to the OPs, in addition to performing various other material obligations contained within the Leases.

8. The Leases contemplate that MirMA will maintain its status as a reporting company under the Exchange Act by filing all requisite financial statements with the SEC. Furthermore, the Leases provide that should MirMA’s status as a reporting company change, it must pay alternative rent representing an increased rate of .50% per year (“Alternative Rent”). The imposition of the Alternative Rent mirrors the increase in interest provided for in the Lessor Notes, which likewise arises from MirMA’s failure to maintain its reporting company status.

9. On or about August 28, 2003, MirMA inexplicably terminated its status as a reporting company by filing a Form 15 with the SEC, at which time MirMA's obligation to pay the Alternative Rent was triggered. On December 30, 2003, MirMA paid the base rent due under the Leases, but failed to pay the Alternative Rent. MirMA's failure to pay the Alternative Rent constitutes a Lease Event of Default under each Facility Lease.

10. On or about June 22, 2004, the Trustee provided notice to the MirMA Landlords of MirMA's termination of its status as a reporting company, and that Alternative Rent was due and unpaid. A true and correct copy of the Letter from the Trustee to Wilmington Trust dated June 17, 2004, is attached hereto as Exhibit "A".

III. ARGUMENT AND AUTHORITIES

A. MIRMA IS OBLIGATED TO PAY ALTERNATIVE RENT UNDER THE LEASES

11. The Leases obligate MirMA to pay Alternative Rent in the event that MirMA elects to cease being a reporting company under the Exchange Act. Sections 3.4(b) and (d) of the Facility Leases state in pertinent part:

- (b) In the event that...[MirMA] ceases to maintain its status as a reporting company under the Exchange Act (a "Reporting Cessation")..., [the MirMA Landlords] and [MirMA] will institute an alternative rent schedule (the "Alternative Rent Schedule") to replace Schedules 1-1, 1-2 and 1-3 attached hereto.... The Alternative Rent Schedule will require amounts of Periodic Lease Rent during the Basic Lease Term ("Alternative Rent") to be paid that equal the sum of (x) the Periodic Lease Rent that would have been paid absent a...Reporting Cessation, as the case may be, and (y) an amount equal to the increased interest paid pursuant to the Lessor Notes because of the...Reporting Cessation, as the case may be (the "Additional Amount").
- (d) Anything herein or in any other Operative Document to the contrary notwithstanding, Periodic Lease Rent (excluding any Equity Portion of Periodic Lease Rent included in such installment) payable on any Rent Payment Date, whether or not adjusted in accordance with this Section 3.4, shall, in the

aggregate, be in an amount at least sufficient to pay in full principal and interest payable on the Lessor Notes on such Rent Payment Date. . .

Facility Leases, § 3.4(b) and (d) (a true and correct copy of Section 3.4 of a Facility Lease is attached as Exhibit “B”).

12. The Alternative Rent that MirMA must pay mirrors the MirMA Landlords obligations to the Certificate Holders under the Lessor Notes as it includes “an amount equal to the increased interest paid pursuant to the Lessor Notes....” *Facility Lease*, § 3.4(b). Paragraph 3 of the Lessor Notes quantifies the increased interest that MirMA is required to pay, providing that:

In the event that [MirMA] ceases to maintain its status as a reporting company under the Securities Exchange Act of 1934, as amended (such Act, the “Exchange Act” and such cessations, a “Reporting Cessation”)...., additional interest (in addition to the interest otherwise payable with respect to this Lessor Note) shall thereafter accrue on this Lessor Note until but not including the date on which such Reporting Cessation shall cease to exist (and provided no other Reporting Cessation shall then be continuing) at a rate of 0.50% per annum, which additional interest shall be payable hereon at the times, in the manner and subject to the same terms and conditions set forth herein and in the Indenture, as nearly as may be, as though the interest rate set forth above had been increased by 0.50% per annum.

Lessor Notes, p. 2 (a true and correct copy of Page 2 of a Lessor Note is attached as Exhibit “C”).⁶

13. Therefore, when MirMA elected to terminate its reporting company status under the Exchange Act, the obligation for payment of the Alternative Rent arose.

⁶ Section 5.1 of the Pass Through Trust Agreements, provides for MirMA “to maintain its status as a reporting company under the Exchange Act, and file a copy of all such information and reports with the Commission for public availability within the time periods specified in the Commission’s rules and regulations...and make such information available to securities analysts and prospective investors upon request. *Pass Through Trust Agreement*, § 5.1.

B. REGARDLESS OF WHETHER THE LEASES ARE REAL OR PERSONAL PROPERTY LEASES, THE PAYMENT OF ALTERNATIVE RENT IS REQUIRED

(1) Sections 365(d)(3) and (d)(10) Require MirMA to Pay Alternative Rent

14. Section 365(d)(3) places a statutory obligation upon a debtor leasing nonresidential real property to “... timely perform all the obligations of the debtor, except those specified in Section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected” 11 U.S.C. § 365(d)(3).

15. Section 365(d)(10) imposes a similar duty upon a debtor leasing personal property, providing that the debtor “shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after sixty (60) days after the order for relief in a case under Chapter 11 of this title under an unexpired lease of personal property . . . until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after noticing a hearing and based on [sic] the equities of the case, orders otherwise, with respect to the obligations or timely performance thereof . . .” 11 U.S.C. §365(d)(10).

16. The plain language of Section 365(d)(3) and (d)(10) unequivocally require a debtor-in-possession to perform all obligations under its leases from the date of entry of the order of relief until the date that the lease is assumed or rejected, subject only to the possible applicability of the exceptions list in Section 365(b)(2). *See United States v. Ron Pair Enters.*, 489 U.S. 235, 240-41, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989) (“[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute.”). Neither Section 365(d)(3) nor (d)(10) allows any latitude as to

which obligations must be timely performed by the debtor. Thus, the debtor does not get to “pick and choose” – it must perform all obligations and perform them timely.

17. No obligation required to be performed by Section 365(d)(3) or (d)(10) is more important than the obligation to make the required payments specified under the lease. *See In re Ernst Home Center, Inc.*, 209 B.R. 955, 965-66 (Bankr.W.D.Wash. 1997) (lessors of realty have a right to receive timely payments under Section 365(d)(3), with that right ringing hollow if the lessor had no right to adequate protection). The debtor’s obligation to pay rent was specifically highlighted in the debates over the enactment of Section 365(d)(3), where Senator Hatch emphasized that this section requires performance of “all the obligations of the debtor under a lease of nonresidential real property at the time required by the lease. This timely performance requirement will ensure that debtor-tenants pay their rent...on time pending the trustee’s assumption or rejection of the lease.” 130 *Cong. Rec.* § 8894-95 (daily ed. June 29, 1984) (emphasis added). Both Sections 365(d)(3) and (d)(10) require a debtor to pay rent pending the debtor’s decision of whether to assume or reject, subject to the “carve outs” listed in Section 365(b)(2). None of these carve-outs is applicable here and therefore, MirMA is obligated under the Leases to pay Alternative Rent to the MirMA Landlords.

(2) None Of the “Carve Outs” Specified in Section 365(b)(2) Applies Here

18. The only “carve outs” permitted by Congress (to the otherwise absolute rule that all obligations of leases must be performed by debtors until the leases are assumed or rejected) are provided by the section’s cross-reference to Section 365(b)(2). The exceptions listed there have equal applicability to Sections 365(d)(3) and (d)(10).

19. The “exceptions list” referenced in Section 365(b)(2) (i.e., the list of obligations the debtor does *not* have to perform) is comprised of three well-known contractual *ipso facto* provisions (i.e., insolvency/financial condition, commencement of a bankruptcy case, and appointment of a trustee or custodian to take possession) and, newly added in 1994, sub-part (D): “*the satisfaction of any **penalty rate or provision** relating to a **default** arising from any failure by the debtor to perform **nonmonetary obligations** under the executory contract or unexpired lease.*” 11 U.S.C. § 365(b)(2)(D) (emphasis added). The first three sub-parts to Section 365(b)(2) clearly are inapplicable to the relief requested in this Motion. The fourth exception does not apply either because the Alternative Rent is not a penalty.⁷

(3) Alternative Rent is Not a Penalty

A. New York Law Applies

20. In determining whether a contractual provision is a “penalty rate” under Section 365(b)(2)(D), courts first look to state law to determine if the provision is a penalty under applicable state law. *See In re Yates Development, Inc.*, 241 B.R. 247, 254-56 (Bankr.M.D.Fla. 1999) (where court applied Florida law to determine if damages provision was a penalty and therefore unenforceable).

21. In the instant case, the Leases bear a reasonable relationship to New York, Maryland, Delaware, and Texas. Thus, to resolve any choice of law issues as to whether New

⁷ Although not relevant here, Courts and other commentators do not agree on the interpretation and application of § 365(b)(2)(D); namely whether the word “penalty” modifies and applies to both “rate” and “provision”, or only “rate.” The MirMA Landlords believe that the former interpretation is correct. Nevertheless, regardless of this Court’s position on the issue, the Alternative Rent payment requested in the Motion is not a penalty and therefore MirMA is obligated to pay it.

York, Maryland, Delaware or Texas law would apply, the Owner Lessors and MirMA agreed to the following provision in the Facility Leases:

This Facility Lease was negotiated in the State of New York which [MirMa] and the [MirMA Landlords] agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and, in accordance with § 5-1401 of the New York General Obligations Law, **in all respects, including matters of construction, validity and performance, this Facility Lease shall be governed by, and construed in accordance with, the laws of the State of New York** applicable to contracts made and performed in such State and any Requirement of Law of the United States of America, except provisions for the creation and enforcement of the leasehold interest created hereby shall be governed by and construed according to the law of the state in which the Facility is located, it being understood that, to the fullest extent permitted by the law of the state in which the [Power Plants are] located, the law of the State of New York shall govern the **validity and the enforceability of the representations, warranties, covenants and obligations** of [MirMA] and the [MirMA Landlords] under this Facility Lease and all other Operative Documents and all of the indebtedness arising hereunder or thereunder. To the fullest extent permitted by law, [MirMA] and the [MirMA Landlords] hereby unconditionally and irrevocably waive any claim to assert that the law of any other jurisdiction governs this Facility Lease, except as expressly otherwise provided above.

Facility Lease, § 23.6 (emphasis added). The MirMA Landlords and MirMA further agreed that the **“LESSOR NOTE[S] SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE, WITH THE LAWS OF THE STATE OF NEW YORK.”** *Lessor Notes*, p. 4 (emphasis in original).

22. Thus, based on the choice of law provisions contracted for by the MirMA Landlords and MirMA in the Leases, interpretation of the Leases are to be made applying the law of the State of New York, subject to the “carve out” of Maryland for enforcement of the leasehold interest. MirMA’s obligation to pay Additional Rent concerns the “validity and enforceability” of certain covenants within the Leases. Therefore, the “carve out” for Maryland is not applicable in this instance, and New York law applies in interpreting the Leases.

23. Moreover, in determining which state's law should apply, courts are not required to compare each state's contacts in order to validate the contracted-for choice of law provision, as the court is only required to determine if there are sufficient contacts between the transaction and the state actually chosen by the parties, and whether those contacts were contrived to avoid application of another state's laws. Thus, the Court need not compare MirMA's and the MirMA Landlords' relative contacts to New York, Maryland, Delaware and Texas, but need only to look at the parties contacts to New York. Here, there are sufficient contacts between the transaction and the State of New York, as the Leases were negotiated in the State of New York, and both MirMA and the MirMA Landlords agreed that the Leases have "a substantial relationship to the parties and to the underlying transaction." *Facility Leases*, § 23.6. As such, the Court should uphold and validate the parties' decision to contract for New York law to apply and apply such law in its interpretation of the pertinent provisions under Leases.

B. MirMA's Obligation to Pay Alternative Rent is a Pass Through – it Merely Parallels the Alternative Rent Applicable Under the Lessor Notes Due to MirMA's Failure to Maintain its Reporting Company Status.

24. Under New York law, parties to a contract may provide for anticipatory damages in the event one party fails to perform all or part of the contract, provided that the provision is neither unconscionable nor against public policy. *LeRoy v. Sayers*, 635 N.Y.S.2d 217, 221-22 (N.Y.App.Div. 1995). "Although the parties to an agreement may provide for [anticipatory damages]..., such a provision will only be upheld if the amount fixed is a reasonable measure of the probable actual loss in the event of a breach, and...the actual loss suffered is difficult to determine precisely." *Evangelista v. Ward*, 764 N.Y.S.2d. 705, 706 (N.Y.App.Div. 2003) (internal quotations omitted). Applying this standard to the facts of the case, Section 23.6 of the

Facility Lease is not a penalty provision because it merely and reasonably approximates the actual damages suffered due to MirMA's failure to remain a reporting company under the Exchange Act.⁸

C. *The Alternative Rent Provides Compensation for Loss of Marketability of the Certificates Caused by the Termination of MirMA's Reporting Company Status.*

25. If MirMA fails to remain a reporting company under the Exchange Act, the interest payable on the Lessor Notes increases by .50%. This interest increase was agreed to as compensation for the loss in liquidity of the Pass Through Certificates ("Certificates") to the Pass Through Certificate Holders should MirMA become a non-reporting company. Provided that MirMA remains a reporting company under the Exchange Act, the Securities Act of 1933 (the "Securities Act") allows for the Certificates to be traded in public markets. Once MirMA fails to maintain its status as a reporting company under the Exchange Act, however, the Certificates become less liquid because they no longer can be traded in the public markets, and only can be traded to (a) qualified institutional buyers in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A, (b) to a limited number of other institutional "accredited investors" (as defined by Rule 501(a)(1), (2), (3) or (7) of the Securities Act) that, before purchasing the Certificates, deliver to the initial purchasers a letter containing

⁸ The same result would also be reached under either Maryland, Delaware, or Texas law, as under those jurisdictions a contractual provision is also deemed not to be a penalty if the liquidated damage closely approximates the actual damages and such damages are difficult to accurately estimate or ascertain. *See Phillips v. Phillips*, 820 S.W.2d 785, 788 (Tex. 1991) ("In order to enforce a liquidated damage clause, the court must find: (1) that the harm caused by the breach is incapable or difficult of estimation, and (2) that the amount of liquidated damages called for is a reasonable forecast of just compensation."); *Traylor v. Grafton*, 332 A.2d 651, 662 (Md. 1975) ("if the sum agreed upon is a reasonable forecast of the just and fair compensation for the harm that would result by a breach of the contract and the resultant injury is difficult to estimate accurately or actual damages could not be easily ascertained, such a clause has been held enforceable as liquidated damages."); *Lee Builders v. Welch*, 103 A.2d 918, 919 (Del.Ch. 1954) (an enforceable liquidated damages provision is distinguishable from a penalty where the damages which the parties might reasonably anticipate to result from a breach must be difficult or impossible to prove accurately and the agreed upon amount is reasonable).

certain representations and agreements, and (c) to certain persons in offshore transactions in reliance on Regulation S of the Securities Act.

26. The economic harm resulting from MirMA's failure to maintain its reporting company status, while tangible, is difficult to quantify. Therefore, the MirMA Landlords, MirMA and the Trustee agreed to an interest increase of .50 basis points under the Lessor Notes (the same interest rate customarily used in comparable transactions) as compensation for such harm. In turn, in Section 23.6 of the Facility Leases, MirMA agreed to pay Alternative Rent to the MirMA Landlords in the same amount. The parallel provision for the payment of Alternative Rent was necessary because otherwise the MirMA Landlords could bare the burden of increased rent under the Lessor Notes, even though such increase results solely from MirMA's failure to maintain reporting company status.

D. If MirMA is not Compelled to Pay the Alternative Rent, the MirMA Landlords Will Be Prejudiced Because Their Interests Under the Lessor Notes Are Jeopardized.

27. As a result of MirMA's default, the MirMA Landlords are in the unenviable position of either paying the Alternative Rent due or risking other consequences with respect to defaults under the Lessor Notes if such rent is not paid.

E. MirMA's Decision not to Maintain Its Status as a Reporting Company is Peculiar Since MirMA Possesses the Requisite Information to Comply and the Cost to Comply is Substantially Less Than the Required Alternative Rent Payment.

28. MirMA's decision not to maintain its reporting company status post-petition is difficult to fathom. Terminating reporting company status post-bankruptcy is the exception to the rule that most reporting companies intending to emerge from bankruptcy maintain their

reporting status during the case. See Stegenga, Honeybone & Emerson, *The Reporting Dilemma: Clarifying the Record on SEC Reporting in Chapter 11*, AIRA NEWS, October/November 2003. Other debtors in mega bankruptcies comparable to the Mirant cases (e.g., Kmart and UAL Corp.) continued, or are continuing, to file regular Form 10-Qs and 10-Ks. *Id* at 2. The decision to terminate reporting company status defies economic logic as well. Because MirMA has and is providing its financial information to Mirant (which has retained its status as a reporting company) for inclusion in Mirant's own filings with the SEC, MirMA clearly has compiled, or otherwise has access to, the financial information necessary to comply with its reporting requirements under the Exchange Act. Thus, the cost to resume and maintain its status as a reporting company is substantially less than the amount of Alternative Rent due under the Leases (around \$5 million per year). Why then did MirMA terminate its reporting company status and never resurrect it?

IV. CONCLUSION

29. Pursuant to Sections 365(d)(3) and (d)(10), MirMA is required to perform all its obligations under the Leases until a decision on assumption or rejection is made. Among these obligations is MirMA's obligation to pay Alternative Rent due to MirMA's failure to maintain its status as a reporting company under the Exchange Act. Since deciding to terminate its status as a reporting company, MirMA has failed to pay the Alternative Rent due to the MirMA Landlords, thereby depriving them of their bargained for consideration under the Leases, and exposing them to further prejudice and harm under the Lessor Notes and related documents.

WHEREFORE, the MirMA Landlords request that this Court order, pursuant to Sections 365(d)(3) and (d)(10), MirMA to pay all Alternative Rent that has accrued since MirMA

terminated its status as a reporting company and continue to pay such Alternative Rent until such time as it is no longer due as a result of MirMA's resuming its reporting status with the SEC.

The MirMA Landlords further pray for such other relief as is just and equitable.

Date: July 2, 2004.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

/s/ Louis R. Strubeck, Jr.

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ATTORNEYS FOR THE
MirMA LANDLORDS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served, by United States first class mail, postage prepaid, on July 2, 2004, upon the attached Official Master Service List.

/s/ Louis R. Strubeck, Jr.

Louis R. Strubeck, Jr.



Corporate Trust Services
One Federal Street - 3rd Floor
Boston, MA 02110

06-21-04A10:47 RCVD

June 17, 2004

VIA FEDERAL EXPRESS AND FACSIMILE

To the Owner Lessors referenced on the attached Schedule A, c/o
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890-0001

Re: Mirant Mid-Atlantic

To Whom It May Concern:

Reference is hereby made to the Mirant Mid-Atlantic LLC Leveraged Lease Financing of the Morgantown and Dickerson Generating Units. U.S. Bank National Association ("U.S. Bank"), as successor in interest to Street Bank and Trust Company of Connecticut National Association, serves as Trustee (the "Pass Through Trustee") under three Pass Through Trust Agreements with Southern Energy Mid-Atlantic LLC n/k/a Mirant Mid-Atlantic LLC ("MIRMA"), each dated as of December 18, 2000, pursuant to which the MIRMA 8.625% Pass Through Certificates Series A, 9.125% Pass Through Certificates Series B, and 10.060% Pass Through Certificates Series C, were issued (the "Certificates"). U.S. Bank also serves as Trustee (the "Lease Indenture Trustee," and together with the Pass Through Trustee, the "Trustee") under eleven separate Indentures of Trust, Mortgages and Security Agreements ("Indentures") with eleven separate Owner Lessors, each dated as of December 19, 2000. Pursuant to each Indenture, a Series A, B and, in some cases, C Note was issued, which Notes are held by the corresponding Pass Through Trusts. Each of the Pass Through Trust Agreements and Indentures are listed on Schedule A attached hereto. All capitalized terms used, but not defined herein, will have the same meaning as set forth in the Participation Agreements listed on Schedule A ("Participation Agreements").

The purpose of this letter is to notify you of the occurrence and continuance of certain Lease Events of Default and Lease Indenture Events of Default and to provide you with an opportunity to exercise your cure rights with respect to such defaults in accordance with Section 4.3 of the Indentures.

Reporting Cessation

Section 5.1 of each of the Pass Through Trust Agreements requires that MIRMA maintain its status as a reporting company under the Exchange Act and file all requisite financial statements with the SEC. On or about August 28, 2003, however, MIRMA filed documentation with the SEC to terminate its status as a reporting company. Pursuant to Section 2.4(b) of the Indentures and the third paragraph of each Lessor Note, such a reporting cessation causes additional interest to accrue on the Lessor Notes until the reporting cessation is cured at a rate of .50% per year (the ".50% Increase"). This automatic increase in interest rate is also applicable to the Certificates, pursuant to Section 4.5(c) of each of the Pass Through Trust Agreements.

MIRMA is obligated, under Section 3.4 of each Facility Lease, to pay the .50% Increase as part of Periodic Lease Rent, without the requirement of written notice and demand therefor. Its failure to include the .50% Increase in interest in its last semi-annual rental payment on December 30, 2003 constitutes a Lease Event of Default under Section 17(a) of each Facility Lease and, in turn, a Lease Indenture Event of Default under Section 4.2(a) of each Indenture. The failure of the Owner Lessors to pay the .50% Increase under the terms of each Lessor Note also constitutes a Lease Indenture Event of Default under Section 4.2(b) of each Indenture. Moreover, additional interest has accrued, and continues to accrue, on the unpaid .50% Increase at the Overdue Rate, which additional interest is payable on demand in accordance with Section 2.4(c) of the Indentures. U.S. Bank, in its capacity as Lease Indenture Trustee under each of the Indentures, hereby demands payment of such additional interest at the Overdue Rate.

The Owner Lessors have the opportunity, but not the obligation, to cure the above referenced payment defaults under Section 4.3 of the Indentures.

Supplemental Lease Rent

MIRMA is also required to pay, as Supplemental Lease Rent, the fees and expenses incurred by the Indenture Trustees, Pass Through Trustees and their agents in responding to MIRMA's bankruptcy. See Section 3.3 of each Facility Lease. "Supplemental Lease Rent" is defined, in Appendix A to the Participation Agreements ("Appendix A"), as "any and all amounts, liabilities and obligations . . . which (MIRMA) assumes or agrees to pay under the Operative Documents . . . to . . . any . . . Person." The term "Operative Documents" is defined in Appendix A to include, inter alia, the Participation Agreements, the Indentures and Pass Through Trust Agreements.

In Section 7.7 of the Pass Through Trust Agreements, MIRMA agrees to pay the fees and expenses of the Pass Through Trustee, including the reasonable fees and

expenses of its agents and counsel. Section 7.15(g) of the Indentures also provides for the payment of the Lease Indenture Trustee's fees and expenses, notably the extraordinary fees and expenses arising after a default. Finally, pursuant to Section 10.1(x) of the Participation Agreement, MIRMA agrees to indemnify the Pass Through Trustees and Lease Indenture Trustees for their continuing fees and expenses, including the reasonable fees and expenses of their counsel and other agents, "arising out of the discharge of their duties under or in connection with the Operative Documents."

Because payment of the Pass Through Trustees' and Lease Indenture Trustees' fees are an obligation of MIRMA under the Pass Through Trust Agreements, Indentures and Participation Agreements, they qualify as Supplemental Lease Rent and are payable on demand.

By letter dated as of December 22, 2003, a copy of which is enclosed, the Trustee requested that MIRMA pay all fees and expenses accrued through the end of November, 2003, namely, \$1,057,950.16, as Supplemental Lease Rent. In a subsequent letter dated as of June 17, 2004, also enclosed, the Trustee repeated its request for payment of the amounts contained in the December letter, and asked that MIRMA also pay the additional fees and expenses incurred by the Trustee through the end of May, 2004, namely, \$1,356,339.84.

To date, MIRMA has failed to pay the amount set forth in the December letter, triggering a Lease Event of Default under Section 17(b) of each Facility Lease and a Lease Indenture Event of Default under Section 4.2(a) of each Indenture. Failure to pay the amounts contained in the June letter will constitute an additional Lease Event of Default and Lease Indenture Event of Default. Interest at the Overdue Rate accrues on unpaid Supplemental Lease Rent.

To the extent that MIRMA does not fulfill its obligation to pay the above-referenced Supplemental Lease Rent on June 30, 2004, the next semi-annual payment date, the Trustee intends to use any Rent received in satisfaction of its outstanding fees and expenses, in accordance with Section 3.3 of each of the Indentures. Utilizing this course of action will, however, create a deficit in the funds to be applied in payment of the Lessor Notes and Pass Through Certificates. If funds are not available to avoid such deficit, an additional payment default will occur under Section 4.2(b) of each of the Indentures, on which interest at the Overdue Rate will accrue. Again, the Owner Lessors have the option of curing such default under Section 4.3 of the Indentures by reimbursing the Trustee for its total fees and expenses outstanding through the end of May, 2004, namely, \$2,414,290.00.

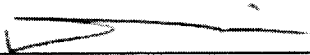
The Trustee reserves all rights under and in respect of the Operative Documents including, without limitation, in respect of any future or additional defaults.

Wilmington Trust Company, as Owner Manager
June 17, 2004
Page 4 of 4

Should the Owner Lessors wish to discuss the information contained herein in greater detail, they are encouraged to contact the Trustee's counsel in this matter, Ira H. Goldman of Shipman & Goodwin LLP at (860) 251-5820 or Ronald J. Silverman of Bingham McCutchen at (212) 705-7868.


U.S. Bank National Association,
Not in its individual capacity but
solely as Indenture Trustee

By:


Michael J. D'Angelico
Vice President

U.S. Bank National Association,
Not in its individual capacity but
solely as Pass Through Trustee

By:


Michael J. D'Angelico
Vice President

373534 v.01

Schedule A

Indentures of Trust, Mortgages and Security Agreements

1. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL1 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
2. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL2 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
3. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL3 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
4. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL4 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
5. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL5 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
6. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL6 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
7. Indenture of Trust, Mortgage and Security Agreement between Morgantown OL7 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
8. Indenture of Trust, Mortgage and Security Agreement between Dickerson OL1 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
9. Indenture of Trust, Mortgage and Security Agreement between Dickerson OL2 LLC and State Street Bank and Trust Company of Connecticut, National Association, n/k/a U.S. Bank National Association, dated as of December 19, 2000
10. Indenture of Trust, Mortgage and Security Agreement between Dickerson OL3 LLC and State Street Bank and Trust Company of Connecticut, National Association n/k/a U.S. Bank National Association, as Lease Indenture Trustee, dated as of December 19, 2000
11. Indenture of Trust, Mortgage and Security Agreement between Dickerson OL4 LLC and State Street Bank and Trust Company of Connecticut, National

FACILITY LEASE AGREEMENT

(L1)

Dated as of December 19, 2000

between

MORGANTOWN OLI LLC,
as Owner Lessor

and

SOUTHERN ENERGY MID-ATLANTIC, LLC
as Facility Lessee

MORGANTOWN BASE-LOAD UNITS 1 AND 2
1,164 Megawatt (net), Coal-Fired Electric Generating Units
Located in
Charles County, Maryland

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF THE OWNER LESSOR IN AND TO THIS LEASE AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS LEASE INDENTURE TRUSTEE UNDER AN INDENTURE OF TRUST, MORTGAGE AND SECURITY AGREEMENT, DATED AS OF DECEMBER 19, 2000 BETWEEN SAID LEASE INDENTURE TRUSTEE, AS SECURED PARTY, FOR THE BENEFIT OF THE HOLDERS THEREUNDER, AND THE OWNER LESSOR, AS DEBTOR. SEE SECTION 22 HEREOF FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

MORGANTOWN FACILITY LEASE (L1)

Section 3.3. Supplemental Lease Rent. The Facility Lessee also agrees to pay, on an After-Tax Basis, to the Owner Lessor, or to any other Person entitled thereto as expressly provided herein or in any other Operative Document, as appropriate, any and all Supplemental Lease Rent, promptly as the same shall become due and owing, or where no due date is specified, promptly after demand by the Person entitled thereto, and in the event of any failure on the part of the Facility Lessee to pay any Supplemental Lease Rent, the Owner Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise for the failure to pay Periodic Lease Rent. The Facility Lessee agrees to pay, on an After-Tax Basis, as Supplemental Lease Rent, when due any and all Make-Whole Premiums due under the Lease Indenture or the Lessor Notes. The Facility Lessee will also pay as Supplemental Lease Rent, unless prohibited by any Requirement of Law, an amount equal to interest at the applicable Overdue Rate (computed on the basis of a 360-day year of twelve 30-day months) on any part of any payment of Periodic Lease Rent not paid when due for any period for which the same shall be overdue and on any Supplemental Lease Rent not paid when due (whether on demand or otherwise) for the period from such due date until the same shall be paid. All Supplemental Lease Rent to be paid pursuant to this Section 3.3 shall be payable in the manner set forth in Section 3.5.

Section 3.4. Adjustment of Periodic Lease Rent and Termination Value. (a) The Facility Lessee and the Owner Lessor agree that Periodic Lease Rent, Allocated Rent, Proportional Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor Section 467 Interest, Lessee Section 467 Interest and Termination Value, may be adjusted, either upwards or downwards, at the request of the Facility Lessee in the following situations: to reflect (A) the interest rate on any New Lessor Notes issued pursuant to Section 2.13 of the Lease Indenture in connection with a refinancing or refunding of the Lessor Notes pursuant to Section 12.2 of the Participation Agreement, (B) the principal amount, amortization and interest rate on any Additional Lessor Notes issued pursuant to Section 2.13 of the Lease Indenture in connection with the financing of Improvements to the Facility pursuant to Section 8 hereof and Section 12.1 of the Participation Agreement and (C) the effect of any manifest error in the mathematical computation of the Periodic Lease Rent, Allocated Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Proportional Rent, Lessor Section 467 Interest, Lessee Section 467 Interest and Termination Value.

(b) In the event that (i) either (A) the Exchange Offer has not been consummated or the Shelf Registration Statement has not become effective within 365 days of the initial issuance date of the Certificates or (B) the Shelf Registration Statement has been declared effective by the Commission but thereafter ceases to be effective or the Shelf Registration Statement or the related prospectus ceases to be usable as specified in the Registration Rights Agreement (collectively, the "Registration Delay") or (ii) following the effectiveness of any registration statement pursuant to the Registration Rights Agreement, the Facility Lessee ceases to maintain its status as a reporting company under the Exchange Act (a "Reporting Cessation") (it being understood that no Reporting Cessation shall be deemed to have occurred if the Commission will not accept the information and reports of the Facility Lessee to be filed pursuant to the Exchange Act), the Owner Lessor and the

MORGANTOWN FACILITY LEASE (L1)

Facility Lessee will institute an alternative rent schedule (the “Alternative Rent Schedule”) to replace Schedules 1-1, 1-2 and 1-3 attached hereto and an alternative termination value schedule (the “Alternative Termination Value Schedule”) to replace Schedule 2 attached hereto. The Alternative Rent Schedule will require amounts of Periodic Lease Rent during the Basic Lease Term (“Alternative Rent”) to be paid that equal the sum of (x) the Periodic Lease Rent that would have been paid absent a Registration Delay or Reporting Cessation, as the case may be, and (y) an amount equal to the increased interest paid pursuant to the Lessor Notes because of the Registration Delay or Reporting Cessation, as the case may be (the “Additional Amount”). The Alternative Termination Value Schedule will reflect the increase on any Termination Date of such Additional Amount. The Alternative Rent Schedule will allocate the Additional Amount over the Basic Lease Term in accordance with the rules of Section 467 of the Code then in effect and in a manner that preserves the Owner Participant's Net Economic Return. At the commencement of any Registration Delay or Reporting Cessation, as applicable, the Alternative Rent Schedule and the Alternative Termination Value Schedule will be based on the assumption that the Additional Amount will apply for the term of the Lessor Notes. In the event the Additional Amount terminates prior to the term of the Lessor Notes, such schedules will be revised to reflect the amounts of the Additional Amount actually paid. It is the intent of the Owner Lessor and the Facility Lessee that the options set forth in this Section 3.5(b) constitute alternative rent schedules as contemplated under Treasury Regulation §1.467-1(h)(3)(v).

(c) Any adjustments pursuant to this Section 3.4 shall be calculated, (A) *first*, so as to maintain the Owner Participant's Net Economic Return through the end of the Basic Lease Term (provided, that with respect to GAAP earnings, the Owner Participant shall not be obligated by any such adjustment to record a book loss or reduce book earnings by more than five percent (5%) in the year of adjustment or in any of the succeeding ten (10) years) plus, any increase attributable to the sharing of the net economic benefit of a refinancing of the Lessor Notes pursuant to Section 2.13 of the Lease Indenture, and, (B) *second* at the option of the Facility Lessee (x) to minimize the average annual Periodic Lease Rent over the Basic Lease Term for GAAP accounting purposes of the Facility Lessee and/or (y) to minimize, to the extent possible, the net present value of the Periodic Lease Rent. Adjustments shall be computed by the Owner Participant, using the same method of computation, Tax Assumptions and Pricing Assumptions originally used (other than those that have changed as a result of the event giving rise to the adjustment) in the calculation of Periodic Lease Rent Allocated Rent, Proportional Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor 467 Interest, Lessee 467 Interest and Termination Values set forth in Schedules 1-1, 1-2, 1-3 and Schedule 2 hereto, respectively, but shall be subject to the verification procedure described in Section 3.4(c) and shall be in compliance with Section 467 of the Code except to the extent the original transaction did not comply therewith. Adjustments to Periodic Lease Rent, Allocated Rent or Proportional Rent contemplated by this Section 3.4 shall result in corresponding adjustments to Termination Values.

(d) Anything herein or in any other Operative Document to the contrary notwithstanding, Periodic Lease Rent (excluding any Equity Portion of Periodic Lease Rent included

MORGANTOWN FACILITY LEASE (L1)

in such installment) payable on any Rent Payment Date, whether or not adjusted in accordance with this Section 3.4, shall, in the aggregate, be in an amount at least sufficient to pay in full principal and interest payable on the Lessor Notes on such Rent Payment Date. Anything herein or in any other Operative Document to the contrary notwithstanding, Termination Values (excluding the Equity Portion of Termination Value) payable on any date under this Facility Lease, whether or not adjusted in accordance with this Section 3.4, shall in the aggregate, together with all other Rent due and owing on such date, exclusive of any portion thereof that is an Excepted Payment, be in an amount at least sufficient to pay in full the principal of, premium, if any, and accrued interest on the Lessor Notes payable on such date.

(e) Any adjustment pursuant to this Section 3.4 or Section 14 of the Participation Agreement computed by the Owner Participant pursuant to Section 3.4(a) shall be subject to the verification procedure described in this Section 3.4(e). Once computed, the results of such computation shall promptly be delivered by the Owner Participant to the Facility Lessee. Within 30 days after the receipt of the results of any such adjustment, the Facility Lessee may request that a nationally recognized firm of accountants or lease advisors selected by the Owner Participant and reasonably acceptable to the Facility Lessee (the "Verifier") verify, on a confidential basis, after consultation with the Owner Participant and the Facility Lessee, the accuracy of such adjustment in accordance with this Section 3.4. The Owner Participant hereby agrees, subject to the execution by the Verifier of an appropriate confidentiality agreement, to provide the Verifier with all necessary information and materials (other than the Equity Investor's, the Owner Participant's, the OP Guarantor's or any of their respective Affiliates' income tax returns or accounting records) as shall be necessary in connection with such verification. Each of the Owner Participant, the Equity Investor, the OP Guarantor and the Facility Lessee shall have the right to communicate with the Verifier and to submit supporting information and data to the Verifier. If the Verifier confirms that such adjustment is in accordance with this Section 3.4, and the adjustment to Periodic Lease Rent and Termination Value calculated by the Verifier are the same as those calculated by the Owner Participant, it shall so certify to the Facility Lessee, the Owner Lessor and the Owner Participant and such certification shall be final, binding and conclusive on the Facility Lessee, the Owner Lessor and the Owner Participant. If the Verifier concludes that such adjustment is not in accordance with this Section 3.4, and the adjustments to Periodic Lease Rent and Termination Value calculated by the Verifier are different from those calculated by the Owner Participant, it shall so certify to the Facility Lessee, the Owner Lessor and the Owner Participant, and the Verifier's calculation shall be final, binding and conclusive on the Facility Lessee, the Owner Lessor and the Owner Participant. If the Facility Lessee does not request a verification of any adjustment within the 30 day period specified above in this Section 3.4(e), the computation provided by the Owner Participant shall be final, binding and conclusive on the Facility Lessee, the Owner Lessor and the Owner Participant. The final determination of any adjustment hereunder shall be set forth in an amendment to this Facility Lease, executed and delivered by the Owner Lessor and the Facility Lessee and consented to by the Owner Participant; *provided, however*, that any omission to execute and deliver such amendment shall not affect the validity and effectiveness of any such adjustment. The reasonable costs of the Verifier in verifying an adjustment pursuant to this Section 3.4 shall be paid by the Facility Lessee;

MORGANTOWN FACILITY LEASE (L1)

provided, however, that in the event that such Verifier determines that the present value of the remaining Periodic Lease Rent to be made under this Facility Lease as calculated by the Owner Participant is greater than the present value of the remaining Periodic Lease Rent as certified by the Verifier, in each case, discounted annually at the Discount Rate, by more than ten basis points, then such reasonable costs of the Verifier shall be paid by the Owner Participant. Notwithstanding anything herein to the contrary, the sole responsibility of the Verifier shall be to verify the calculations hereunder and the scope of the Verifier's responsibilities shall not include matters of interpretation of this Facility Lease or any other Operative Document.

Section 3.5. Manner of Payments. All Rent (whether Periodic Lease Rent, Renewal Rent or Supplemental Lease Rent) and all Termination Value payments shall be paid by the Facility Lessee in Dollars in immediately available funds to the recipient not later than 11:00 a.m. (New York City time) on the date due. If any Rent is due on a day which is not a Business Day, payment thereof shall be made on the next succeeding Business Day with the same effect as if made on the date on which such payment was due. All Rent payments payable to the Owner Lessor (other than Excepted Payments) shall be paid by the Facility Lessee to the Owner Lessor at its account at Wilmington Trust Company (Account No. 53573-0)(the "Owner Lessor's Rent Account"), or to such other place as the Owner Lessor shall notify the Facility Lessee in writing; *provided, however*, that so long as the Lessor Notes are outstanding and the Lien created under the Lease Indenture has not been discharged, the Owner Lessor hereby irrevocably directs (it being agreed and understood that such direction shall be deemed to have been revoked after the Lien created under the Lease Indenture shall have been fully discharged in accordance with its terms), and the Facility Lessee agrees, that all payments of Rent (other than Excepted Payments) payable to the Owner Lessor shall be paid by "wire" transfer directly to the Lease Indenture Trustee's Account or to such other place as the Lease Indenture Trustee shall notify the Facility Lessee in writing pursuant to the Participation Agreement. On each Rent Payment Date, Periodic Lease Rent shall be paid by transferring funds in the amount equal to the Periodic Lease Rent payment (in the amount notified by the Facility Lessee to the Owner Lessor and, so long as the Lessor Notes are outstanding and the Lien created under the Lease Indenture has not been discharged, the Lease Indenture Trustee) into the Owner Lessor's Rent Account or, so long as the Lessor Notes are outstanding and the Lien created under the Lease Indenture has not been discharged, the Lease Indenture Trustee's Account. Payments constituting Excepted Payments shall be made to the Person entitled thereto at the address for such Person set forth in the Participation Agreement, or to such other place as such Person shall notify the Facility Lessee in writing.

SECTION 4. DISCLAIMER OF WARRANTIES; RIGHT OF QUIET ENJOYMENT

Section 4.1. Disclaimer of Warranties. (a) Without waiving any claim the Facility Lessee may have against any manufacturer, vendor or contractor, THE FACILITY LESSEE ACKNOWLEDGES AND AGREES SOLELY FOR THE BENEFIT OF THE OWNER LESSOR AND THE OWNER PARTICIPANT THAT (i) THE FACILITY AND EACH COMPONENT ARE OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE ACCEPTABLE TO THE FACILITY

MORGANTOWN FACILITY LEASE (L1)

COPY

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE SUCH A REGISTRATION IS IN EFFECT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT

DICKERSON OL1 LLC,
as Owner Lessor

SERIES A LESSOR NOTE DUE JUNE 30, 2012

\$150,502,987.39

December 19, 2000

Dickerson OL1 LLC (herein called the "Owner Lessor", which term includes any successor person under the Indenture hereinafter referred to), a Delaware limited liability company and wholly owned subsidiary of SEMA OP3 LLC, a Delaware limited liability company (the "Owner Participant") acting pursuant to that certain LLC Agreement (L1) effective as of December 15, 2000 (as the same may from time to time be amended, amended and restated, supplemented or otherwise modified in accordance with the terms thereof and, where applicable, the terms of the other Operative Documents, the "Lessor LLC Agreement") between the Owner Participant and Wilmington Trust Company (the "Trust Company"), hereby promises to pay to State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, or its registered assigns, the principal sum of **One Hundred Fifty Million Five Hundred Two Thousand Nine Hundred Eighty-Seven and 39/100 Dollars**, which is due and payable in a series of installments of principal on the Payment Dates and in the amounts set forth in Annex A hereto; provided, however, that the final principal payment hereon shall in any and all events equal the then outstanding principal balance hereof. Interest shall be due and payable in arrears on each Interest Payment Date and on the date the Lessor Note is paid in full at the rate of 8.625% per annum (subject to the second following paragraph, with respect to a Registration Default or a Reporting Cessation, as defined below) on the unpaid principal amount hereof from time to time outstanding from and including the date hereof until such principal amount is paid in full. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. This Lessor Note shall bear interest, to the maximum extent permitted by Requirements of Law, at the Overdue Rate on any part of the principal amount hereof, and on any interest or other amounts due hereunder, not paid when due (whether at stated maturity, by acceleration or otherwise), for the period the same is past due, payable on demand of the holder hereof.

Capitalized terms used in this Lessor Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000 (as the same may from time to time be amended, amended and restated, supplemented or otherwise modified in accordance with the terms thereof and, where applicable, the terms of the other Operative Documents, the "Indenture"), between the Owner Lessor and State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity but solely as trustee (the "Lease Indenture Trustee").

COPY

COPY

The Facility Lessee has entered into a Registration Rights Agreement dated December 18, 2000 (as the same may from time to time be amended, amended and restated, supplemented or otherwise modified in accordance with the terms thereof and, where applicable, the terms of the other Operative Documents, the "Registration Rights Agreement") with the Initial Purchasers described therein. Pursuant to the Registration Rights Agreement, if an Exchange Offer is not consummated or, if applicable, a Shelf Registration Statement (as each such term is defined in the Registration Rights Agreement) does not become effective on or prior to the date which is 365 days after the Closing Date (each, a "Registration Default"), additional interest (in addition to the interest otherwise payable with respect to this Lessor Note) shall accrue on this Lessor Note until but not including the date on which the Exchange Offer is consummated or the Shelf Registration Statement becomes effective, at the rate of 0.50% per annum, which additional interest shall be payable hereon at the times, in the manner and subject to the same terms and conditions set forth herein and in the Indenture, as nearly as may be, as though the interest rate set forth above had been increased by 0.50% per annum. In the event that the Facility Lessee ceases to maintain its status as a reporting company under the Securities Exchange Act of 1934, as amended (such Act, the "Exchange Act" and such cessation, a "Reporting Cessation") (it being understood that no Reporting Cessation shall be deemed to occur if the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or any successor body will not accept the information and reports of the Facility Lessee to be filed pursuant to the Exchange Act), additional interest (in addition to the interest otherwise payable with respect to this Lessor Note) shall thereafter accrue on this Lessor Note until but not including the date on which such Reporting Cessation shall cease to exist (and provided no other Reporting Cessation shall then be continuing) at a rate of 0.50% per annum, which additional interest shall be payable hereon at the times, in the manner and subject to the same terms and conditions set forth herein and in the Indenture, as nearly as may be, as though the interest rate set forth above had been increased by 0.50% per annum. Anything in the foregoing to the contrary notwithstanding, in the event that a Registration Default and a Reporting Cessation shall have occurred and be continuing at the same time, the maximum amount of additional interest to accrue on this Lessor Note as set forth above shall be 0.50% per annum.

All payments of principal and interest and all other amounts to be made by the Owner Lessor hereunder or under the Indenture shall be made only from the income and proceeds from the Indenture Estate and the Owner Lessor and Lease Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Lease Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to enable such payments to be made in accordance with the terms of the Indenture. Each holder hereof, by its acceptance of this Lessor Note, agrees that (a) it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the holder hereof as above provided, (b) none of the Lease Indenture Trustee, Owner Participant, the Equity Investor, any OP Guarantor, the Owner Manager or the Trust Company, or any Affiliate of any thereof, is, or shall be, personally liable to the holder hereof for any amounts payable under this Lessor Note or under the Indenture or for any liability under the Indenture, except as expressly provided in the Indenture and (c) any such amounts shall be non-recourse to the assets of each of the Lease Indenture Trustee, the Owner Participant, the Equity Investor, any OP Guarantor, the Owner Manager or the Trust Company, or any Affiliate of any thereof.

COPY

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