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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	<b>Hearing Date: April 14, 2004</b>
_____	)	<b>Hearing Time: 10:30 a.m.</b>

**MOTION TO APPROVE STIPULATION AND ORDER REGARDING  
PREPAYMENT OF RENT DUE UNDER THE DICKERSON AND  
MORGANTOWN LEASE DOCUMENTS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), debtors and debtors-in-possession herein, hereby file this Motion to Approve Stipulation and Order Regarding Prepayment of Rent Due Under the Dickerson and Morgantown Lease Documents (the "Motion") and respectfully show the following:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **PROCEDURAL BACKGROUND**

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), the Debtors filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

## **RELIEF REQUESTED**

4. The Debtors have agreed to the terms of a stipulation with U.S. Bank National Association, as successor by purchase to State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Lease Indenture Trustee and Pass Through Trustee (defined herein as the “Trustee”) regarding prepayment of rent in connection with certain facility lease agreements entered into by Mirant Mid-Atlantic, LLC, formerly known as Southern Energy Mid-Atlantic, LLC, (“MIRMA”). The terms of the stipulation are set forth in the Stipulation and Order Regarding Prepayment of Rent Due Under the Dickerson and Morgantown Lease Documents attached hereto as Exhibit “A” (the “Stipulation”).

5. The Debtors submit that entry of the Stipulation substantially in the form of Exhibit “A” hereto is necessary and appropriate, is in the best interests of the Debtors’ estates and should be approved.

WHEREFORE, the Debtors request that this Court enter an order pursuant to 11 U.S.C. § 105 approving the Stipulation and granting the Debtors such other and further relief to which they are entitled.

**RESPECTFULLY SUBMITTED THIS 17TH DAY OF MARCH, 2004.**

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By /s/ Ian T. Peck

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**ATTORNEYS FOR THE DEBTORS AND  
DEBTORS-IN-POSSESSION**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing upon all parties listed below and all parties on the Limited Service List via regular United States first class mail, postage prepaid on the 17th day of March, 2004 in accordance with the Federal Rules of Bankruptcy Procedure:

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/s/ Ian T. Peck

# **EXHIBIT “A”**

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

<b>In re:</b>  <b>MIRANT CORPORATION, <i>et al.</i>,</b>  <p style="text-align: center;"><b>Debtors.</b></p>	<b>x</b> ) ) ) ) ) ) <b>x</b>	<b>Chapter 11</b>  <b>Case No. 03-46590-DML</b>  <b>(Jointly Administered)</b>
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**STIPULATION AND ORDER REGARDING PREPAYMENT OF RENT  
DUE UNDER THE DICKERSON AND MORGANTOWN LEASE DOCUMENTS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) and U.S. Bank National Association, as successor by purchase to State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Lease Indenture Trustee and Pass Through Trustee (defined herein as the “Trustee”), by and through their respective counsel, hereby agree and stipulate as follows:

WHEREAS, on July 14, 2003 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief in this Court under Chapter 11 of the Bankruptcy Code;

WHEREAS, the Debtors continue to operate and manage their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on or about December 18, 2000 and December 19, 2000, two complex leveraged lease transactions were consummated whereby (among other things), one of the Debtors, Mirant Mid-Atlantic, LLC, formerly known as Southern Energy Mid-Atlantic, LLC, (“MIRMA”) executed 11 “Facility Lease Agreements” (the “Leases”), each with a distinct “Owner Lessor,” four of which Leases related to an electric generating facility referred to as the Dickerson Base-Load Units 1, 2, and 3 (the “Dickerson Facility”) located in Montgomery County, Maryland and were executed on or about December 19, 2000, and seven of which Leases relate to an electric generating facility referred to as the Morgantown Base-Load Units 1

and 2 (the “Morgantown Facility”) located in Charles County, Maryland and were executed on or about December 18, 2000. The documents executed concurrently with or pursuant to the Facility Lease Agreements, including, without limitation, certain Participation Agreements, certain Lease Indentures and certain Pass Through Trust Agreements are commonly referred to as the “Lease Documents.”<sup>1</sup> The Lease Documents that relate to the Dickerson Facility are referred to as the “Dickerson Lease Documents” and the Lease Documents that relate to the Morgantown Facility are referred to as the “Morgantown Lease Documents.”

WHEREAS, under certain of the Lease Documents, U.S. Bank National Association, as successor by purchase to State Street Bank and Trust Company of Connecticut, National Association acts as both the lease indenture trustee (the “Lease Indenture Trustee”) and the pass through trustee (the “Pass Through Trustee”); and collectively with the Lease Indenture Trustee, the “Trustee”) in connection with certain promissory notes (the “Lessor Notes”) that were issued by the various Owner Lessors under the Lease Indentures to three pass through trusts which then issued pass through certificates to the “Pass Through Certificate Holders” or “PTC’s”;

WHEREAS, under the Lease Documents, MIRMA is required, among other obligations, to make semi-annual payments in June and December of each year which are referred to in the Lease Documents as “Rent”;

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<sup>1</sup> In describing the documents that were signed concurrently with or pursuant to the Facility Lease Agreements as “Lease Documents”, MIRMA and the other Debtors do not admit or imply that the Facility Lease Agreements and related “Lease Documents” necessarily document a “true lease” and any lease-related nomenclature used in this Stipulation is used for convenience and is not in any way waiving or abridging the ability of the Debtors or any party in interest to contend or demonstrate that the leveraged lease transaction documented by the Lease Documents is, in truth, a financing arrangement and not a “true lease.” The Trustee reserves all rights regarding the foregoing and the nature and characterization of the leveraged lease transactions.

WHEREAS, under the Lease Documents, the amount of the Rent fluctuates from payment to payment in accordance with the terms of the Lease Documents;

WHEREAS, under Section 5.13 of each of the Participation Agreements included among the Lease Documents, MIRMA is required to provide the Trustee with “Qualifying Credit Support”<sup>2</sup> in an amount essentially equal to the greater of (a) the “Rent” to be paid in the next six months or (b) the average of the next two “Rent” payments;

WHEREAS, the amount of the Qualifying Credit Support required under the Lease Documents for the prior period ending as of December 30, 2003, was approximately \$61,286,920.21 for all eleven Leases in the aggregate, and was provided by MIRMA pursuant to existing irrevocable letters of credit, which irrevocable letters of credit presently expire on June 30, 2004;

WHEREAS, per the terms of the Lease Documents, the level of Qualifying Credit Support that MIRMA is required to provide to the Trustee through June 30, 2004 increased to approximately \$74,558,064.49 for all eleven Leases in the aggregate due to increased rent obligations on four of the eleven leases, leaving a shortfall between the existing Qualifying Credit Support and the Rent due to be paid by June 30, 2004 of approximately \$13,271,144.27 in the aggregate;

WHEREAS, as of December 30, 2003 MIRMA had no authority to obtain uncollateralized letters of credit or surety bonds because, among other things, its access to letters of credit was limited to the letters of credit available under the debtor-in-possession financing (the “DIP Financing”) that was obtained by the Debtors post-petition, and those letters of credit

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<sup>2</sup> Under the various Participation Agreements included among the Lease Documents, the term “Qualifying Credit Support” is defined to mean “an irrevocable, unconditional, uncollateralized, standby letter of credit, surety bond or guaranty substantially in the form of [certain Exhibits] to the Participation Agreement, issued in favor of the Owner Lessor by a Qualifying Credit Support Issuer (and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture shall not have been discharged, assigned to the Lease Indenture Trustee) . . . .”

were secured by certain assets of the Debtors, including MIRMA, making the letters of credit available under the DIP Financing arguably ineligible to serve as “Qualifying Credit Support”;

WHEREAS, rather than increase the amount of Qualifying Credit Support over the existing uncollateralized letters of credit currently outstanding in the aggregate amount of approximately \$61,286,920.21, MIRMA determined that nothing in the Lease Documents prevented MIRMA from reducing the amount of Rent due to be paid on June 30, 2004 (and thereby reducing the amount of Qualifying Credit Support required) by pre-paying the Rent in an amount sufficient that the remaining Rent payable on June 30, 2004 after application of such pre-payment, would equal the amount of the existing Qualifying Credit Support of \$61,286,920.21. Therefore, on or about December 30, 2003, MIRMA unilaterally paid to the Trustee \$13,271,144.27 in cash as a partial pre-payment of Rent (the “\$13.2 Million Prepayment”);

WHEREAS, there is no express provision authorizing or prohibiting the pre-payment of rent in the Lease Documents; and

WHEREAS, the Trustee requested an order confirming that (a) the Trustee would not violate the stay by accepting the \$13.2 Million Prepayment, (b) the prepayment was an irrevocable payment not subject to disgorgement, and (c) the Trustee reserves its rights and remedies under the Lease Documents, excepting only that the Trustee is not reserving any right inconsistent with the recitals in this Stipulation,

NOW, THEREFORE, the parties hereby stipulate and agree as follows and request that this Court ORDER that:

1. The \$13.2 Million Prepayment paid by MIRMA to the Trustee is a partial prepayment by MIRMA of its rental obligations under the Lease Documents, and was made voluntarily by MIRMA and was made at MIRMA’s sole initiative and request;
2. The \$13.2 Million Prepayment is hereby approved as an irrevocable and absolute prepayment of Rent and cannot be later challenged, reversed, recouped, set-off or recovered;
3. The Trustee is entitled to retain and apply the \$13.2 Million Prepayment to the Rent owing under the Lease Documents and thereafter disburse such monies and the automatic

stay imposed pursuant to Section 362 of the Bankruptcy Code does not prohibit, apply to, or limit same;

4. Notwithstanding the \$13.2 Million Prepayment, all terms and provisions of the Lease Documents, including, without limitation, (i) the amounts of rental payments set forth in the Lease Documents and the last day on which an amount of rent can be paid under the Lease Documents without interest, penalty and without giving rise to remedies for nonpayment, (ii) the allocation of rental payments to calendar years pursuant to the terms of the Lease Documents, and (iii) the Debtors' ongoing obligation to provide Qualifying Credit Support in relation to all future rental payments, in the amounts, and as per the terms, provided by the Lease Documents, remain in full force and effect to the same extent as the same were enforceable prior to the making of the \$13.2 Million Prepayment and are not waived, modified or amended by the \$13.2 Million Prepayment;

5. At the Debtors' direction, the \$13.2 Million Prepayment is to be allocated as follows:

(i) \$6,279,768.58 as a partial prepayment of the Rent payable on June 30, 2004, in relation to that certain Facility Lease Agreement dated as of December 19, 2000 entered into by Morgantown OL1 LLC and Mirant Mid-Atlantic LLC (f/k/a Southern Energy Mid-Atlantic, LLC), consistent with the terms of the Lease Documents;

(ii) \$5,083,622.19 as a partial prepayment of the Rent payable on June 30, 2004, in relation to that certain Facility Lease Agreement dated as of December 19, 2000 entered into by Morgantown OL2 LLC and Mirant Mid-Atlantic LLC (f/k/a Southern Energy Mid-Atlantic, LLC), consistent with the terms of the Lease Documents;

(iii) \$953,876.75 as a partial prepayment of the Rent payable on June 30, 2004, in relation to that certain Facility Lease Agreement dated as of December 19, 2000 entered into by Morgantown OL3 LLC and Mirant Mid-Atlantic LLC (f/k/a Southern Energy Mid-Atlantic, LLC), consistent with the terms of the Lease Documents; and

(iv) \$953,876.75 as a partial prepayment of the Rent payable on June 30, 2004, in relation to that certain Facility Lease Agreement dated as of December 19, 2000 entered into by Morgantown OL4 LLC and Mirant Mid-Atlantic LLC (f/k/a Southern Energy Mid-Atlantic, LLC), consistent with the terms of the Lease Documents; and

6. The act of the Debtors entering into and performing this Stipulation does not in and of itself constitute a default or defined "Event of Default" under the Lease Documents..

7. The Trustee reserves its rights and remedies under the Lease Documents, excepting only that the Trustee is not reserving the right to assert any right, remedy or claim based on a contention inconsistent with this Stipulation or the recitals contained herein.

**SO AGREED TO:**

New York, New York  
March \_\_\_\_, 2004

**THE DEBTORS:**

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*Attorneys For the Debtors*

New York, New York  
February \_\_\_\_, 2004

THE LEASE INDENTURE  
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*Attorneys For the Lease Indenture Trustee  
and the Pass Through Trustee*

**SO ORDERED:     March \_\_, 2004.**

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**THE HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE**