

Thomas E Lauria
State Bar No. 11998025
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

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.)	
_____)	

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE
AND FED. R. BANKR. P. 9019 FOR APPROVAL OF A COMPROMISE
AND SETTLEMENT WITH MASSEY UTILITY SALES COMPANY
PURSUANT TO A COAL TRANSACTION CONFIRMATION**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 22, 2003 AT 10:30 A.M. IN COURTROOM NO. 128, UNITED STATES BANKRUPTCY COURT, 501 WEST 10TH STREET, FORT WORTH, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

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

Mirant Corporation (“Mirant”) and Mirant Americas Development, Inc., as general partner of Mirant Americas Energy Marketing, LP (“MAEM”), along with their affiliated debtors (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving that certain Coal Transaction Confirmation between MAEM and Massey Utility Sales Company (“Massey”), which embodies a compromise and settlement of claims arising from the termination of a Master Agreement (as described below) between MAEM and Massey, and in support of the Motion, respectfully represent as follows:

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. Chapter 11 Filing. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).¹ On

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta

August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. Joint Administration. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the original Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors.

4. Creditors’ Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors’ committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC (collectively, the “Creditors’ Committees”). The appointment lists of members of the Creditors’ Committees were filed in their respective chapter 11 cases on July 25, 2003.

5. Equity Committee. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the official committee of equity security holders for Mirant Corporation (the “Equity Committee,” together with the Creditors’ Committees, the “Committees”). The appointment list of the members of the Equity Committee was filed in the chapter 11 case of Mirant Corporation on September 18, 2003.

Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

FACTUAL BACKGROUND

A. The Debtors' Business Operations

6. Mirant and its direct and indirect subsidiaries, including the New Debtors, comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

7. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. The Coal Transaction Confirmation

8. Prior to the Petition Date, MAEM and Massey entered into the Master Coal Purchase and Sale Agreement, dated as of November 19, 2001, including all amendments, thereto, transactions and confirmations thereunder (the "Master Agreement"). Pursuant to the

Master Agreement, Massey agreed to supply coal to MAEM upon the terms and conditions set forth in the Master Agreement. A copy of the Master Agreement is attached hereto as *Exhibit A*.

9. Shortly after the Petition Date, MAEM determined in the exercise of its business judgment that the Master Agreement was burdensome as its pricing for the supply of coal was above current market conditions. Under the Master Agreement, the price of coal was \$42.60 per net ton (or \$1.638/mmbtu).² Accordingly, MAEM began negotiations with Massey in an effort to reach an agreement that would reflect mutually beneficial terms while eliminating MAEM's exposure to damages resulting from a rejection of the Master Agreement under section 365 of the Bankruptcy Code.

10. As a result of arms' length negotiations between MAEM and Massey, the parties have agreed to terminate the Master Agreement and executed the Coal Transaction Confirmation, dated September 18, 2003, a copy of which is attached hereto as *Exhibit B*. Under the terms of the Coal Transaction Confirmation, Massey agrees to, among other things, (i) supply approximately 200,000 tons of coal at a contract price of \$32.60 per net ton (or \$1.2835/mmbtu), subject to adjustment based upon actual calorific value³ received, from September 1, 2003 through December 31, 2003 (the "Contract Term"),⁴ and (ii) the termination of the Master Agreement.

² The term "mmbtu" is short for "million British Thermal Units." A British Thermal Unit ("btu") is used as a quantity of measure of heat.

³ Calorific value is the measurable quantity of heat produced by the complete combustion of a given mass of a fuel. Under the terms of the Coal Transaction Confirmation, the contract price will be adjusted, on a monthly basis, to reflect the actual calorific value of the coal received.

⁴ The Contract Term encompasses the remaining term of the Master Agreement.

11. The Debtors believe that the pricing under the Coal Transaction Confirmation reflects current market conditions. In exchange for the reduced pricing under the Coal Transaction Confirmation, MAEM has agreed to take delivery of the coal at a different time and to take delivery of coal with a lower calorific value. The Debtors believe that the lower calorific value coal has no effect on MAEM's ability to use the coal.

12. Pursuant to the terms of the Coal Transaction Confirmation, neither party will attempt to effect any right of setoff with respect to postpetition transactions or prepetition obligations arising under the Master Agreement. Additionally, under the Coal Transaction Confirmation, Massey and its successors, assigns, affiliated agencies, agents, and employees agree to forever release and discharge MAEM and its successors, assigns, affiliated agencies, agents, and employees from any and all claims, obligations, and liabilities arising under or related to the Master Agreement and other related agreements.

13. Except for the requirement of Court approval and the releases granted to MAEM, the terms of the Coal Transaction Confirmation are usual and customary. MAEM believes that the compromise and settlement embodied in the Coal Transaction Confirmation is in the best interest of its estate as it will reduce the price risk associated with scheduling and receiving coal supplies from Massey under the Master Agreement and eliminate damages associated with any potential rejection of the Master Agreement.

RELIEF REQUESTED

14. By this Motion, MAEM respectfully requests entry of an order pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 authorizing MAEM, effective as of September 1, 2003, to (i) enter into, and perform under, the Coal Transaction

Confirmation, and (ii) terminate the Master Agreement.

APPLICABLE AUTHORITY

15. This Court is authorized to approve MAEM's entry into the Coal Transaction Confirmation in settlement of all claims arising from the termination of the Master Agreement. Section 105 of the Bankruptcy Code provides, in pertinent part, that "[t]he court may issue an order . . . necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). In turn, Bankruptcy Rule 9019 provides, in part, that "[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019(a). This rule empowers the Bankruptcy Court to approve compromises and settlements if they are "fair and equitable and in the best interest of the estate." Official Committee of Unsecured Creditors v. Cajun Electric Power Cooperation, Inc. (In re Cajun Electric Power Cooperative, Inc.), 119 F.3d 349, 355 (5th Cir. 1997); see also, Feld v. Zale Corporation (In re Zale Corp.), 62 F.3d 746, 754 (5th Cir. 1995) (stating that "the 'fair and equitable' determination does not give the bankruptcy court jurisdiction over settlement conditions that do not bear on the court's duties to preserve the estate and protect creditors."). A decision to accept or to reject a compromise or settlement is within the sound discretion of the Court. See 9 Collier on Bankruptcy ¶ 9019.02 (15th ed. Rev. 2001). "Compromises are favored in bankruptcy" because they minimize the costs of litigation and further the parties' interest in expediting administration of a bankruptcy estate. Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) (citing 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. Rev. 2001)). The settlement need not result in the best possible outcome for the debtor, but must not "fall beneath the lowest point in the range of reasonableness." Vaughn v. Drexel

Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

16. In deciding whether to approve a settlement, a bankruptcy court does not conduct a mini-trial on the merits or engage in an independent investigation into the reasonableness of the proposed settlement, but instead “relies heavily on the trustee” and the court generally defers to the trustee’s judgment provided there is “a legitimate business justification” for the settlement. Martin, 91 F.3d at 395. Basic to the process of evaluating proposed settlements, then, is “the need to compare the terms of the compromise with the likely rewards of litigation.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 425 (1968). Courts will approve a debtor’s settlement if the settlement is in the best interests of the estate. See In re Marvel Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998).

17. Bankruptcy courts have applied the following factors in determining whether a settlement should be approved: (1) the probability of success in litigation, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expenses, inconvenience and delay; (3) the proportion of creditors who do not object to, or who affirmatively support the proposed settlement; and (4) the extent to which the settlement is truly the product of arms’ length bargaining and not the product of fraud or collusion. See In re Cajun Electric Power Cooperative, Inc., 119 F.3d at 356.

18. MAEM and Massey propose to terminate the Master Agreement and resolve all issues thereunder, including any damage claims without litigation, since the probability of success of achieving comparable results as the settlement with Massey for the

Debtors is uncertain. If MAEM and Massey cannot resolve their dispute by entry into the Coal Transaction Confirmation, it is possible that future litigation could result in additional, unnecessary expense for MAEM. Moreover, the Debtors believe that the settlement is in the best interest of the creditors and will be supported by the creditors constituencies. Lastly, the agreement to terminate the Master Agreement and to enter into the Coal Transaction Confirmation was the product of arms' length negotiations, and not the product of fraud or collusion. Accordingly, MAEM believes that the entry into the Coal Transaction Confirmation is appropriate in light of the relevant factors and should be approved by this Court.

19. The Debtors believe that they are authorized to enter into agreements similar to the Coal Transaction Confirmation in the ordinary course of their business. By this Motion, the Debtors are seeking specific authority to enter into the Coal Transaction Confirmation for the purpose of settling any potential claims arising from the termination of the Master Agreement.

20. MAEM believes that the termination of the Master Agreement and entry into the Coal Transaction Confirmation is in the best interests of its estate and constitutes a sound exercise of business judgment because it allows for the continued supply of coal to MAEM at a more favorable price, and it enables MAEM to eliminate or avoid associated price risks, potential litigation, and any disputes regarding the parties' setoff rights or claims, if any, arising under the Master Agreement.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (i) approving the Coal Transaction Confirmation and the compromise and settlement of claims embodied therein and (ii) granting such other and further relief as the Court may deem just and proper.

Dated: Fort Worth, Texas
September 26, 2003

HAYNES and BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By: Robin Phelan
Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
(305) 371-2700

ATTORNEYS TO 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 Motion upon all parties on the Limited Service List and the parties listed below via United States first class mail, postage prepaid, on the 26th day of September 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Robin Phelan

Massey Utility Sales Company
Attn: Thomas P. Dougherty, Jr., Vice President
P.O. Box 26765
Richmond, Virginia 23219

EXHIBIT A

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MASTER COAL PURCHASE AND SALE AGREEMENT

This Master Coal Purchase and Sale Agreement ("Master Agreement") is entered into this day of _____, 2001 (the "Effective Date") by and between Mirant Americas Energy Marketing, LP ("Mirant") and Massey Utility Sales Company ("Massey"). Mirant and Massey (each a "Party" and collectively, the "Parties") may, but shall not be required to, enter into Transactions which will be governed by this Master Agreement. Any capitalized term used herein and not defined in the Article in which it appears shall have the meaning set forth in Article 11 hereof. Mirant and Massey hereby agree as follows:

Article 1: Transactions

1.1. Procedures. A Transaction shall be entered into by means of an offer to buy or sell Coal by either Party to the other Party in writing and the acceptance of such offer by the offeree in writing. Any such Transaction shall be evidenced by a written confirmation agreement memorializing the Transaction (a "Confirmation"). Each Party agrees that it is legally bound by the terms of a Transaction, as supplemented by this Master Agreement, from the moment on a particular date ("Trade Date") those terms are agreed in writing. As a material part of the consideration for entering into this Master Agreement, each of the Parties agrees not to contest or assert (and hereby releases any right to) any defense to the authority of any employee or representative. Notwithstanding the foregoing sentence, Massey shall give Mirant a written list of the Massey employees who are authorized to enter into Transactions hereunder, and Massey may assert a defense relating to the authority of any employee who is not on such list. Facsimile signatures shall be considered as original signatures for all purposes under this Master Agreement. In connection with business conversations between the Parties, each Party hereby consents to such recording of such conversations without any further notice. A sample Confirmation is attached hereto as Exhibit A.

1.2 Confirmations.

(a) Except as otherwise provided in this Master Agreement, in the event of any inconsistency between the provisions of the Master Agreement and the terms and conditions set forth in a Confirmation, such Confirmation will prevail for the purposes of the relevant Transaction.

(b) Each Confirmation shall supplement and form a part of this Master Agreement and shall be read and construed together with this Master Agreement and all other applicable Annexes and Exhibits, which constitute a single integrated agreement between the Parties, and all the Transactions contemplated in Confirmations shall be integral parts of this Master Agreement. All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the Parties.

(c) Only those Transactions entered into between the Parties after the Effective Date of this Master Agreement shall be governed by this Master Agreement.

1.3 Representations. On the Effective Date hereof and on the Trade Date of each Transaction, each Party represents and warrants to the other that:

(a) The execution, delivery and performance of this Master Agreement and the relevant Transaction have been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;

(b) Its obligations under this Master Agreement and each Transaction are legally valid and binding obligations, enforceable in accordance with their terms;

(c) It has any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Master Agreement and any Transaction; and

(d) There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

(e) To its knowledge, other than pending lawsuits seeking to enjoin issuance of permits in West Virginia (e.g. valley fill, bonding, and cumulative hydrologic impact assessment suits), there are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction.

(f) It is a "forward contract merchant" with in the meaning of the United States Bankruptcy Code;

(g) With respect to each Transaction (including any Confirmation accepted in accordance with Article 1.2) involving the purchase or sale of Coal, it is a producer, processor, commercial user or merchant handling Coal, as the case may be, and it is entering into such Transaction for purposes related to its business as such.

Article 2: Term

The term of this Master Agreement (the "Master Agreement Term") shall commence on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days prior written notice; provided, however, that such termination shall not affect or excuse the performance of any Party under any provision of this Master Agreement that by its terms survives any such termination, and this Master Agreement and any relevant Confirmations shall remain in effect with respect to any Transaction(s) entered into on or prior to the date of the termination until each Party has fulfilled all of its obligations with respect to all such Transaction(s).

Article 3: Obligations

3.1 Obligations for Purchase and Sale of Coal. During the Term of each Transaction, Seller agrees to sell and deliver to the Buyer, and Buyer agrees to purchase, receive or cause to be received, and pay for from Seller, the Contract Quantity of Coal to be delivered at the Delivery Point as provided for in the relevant Confirmation.

3.2 Scheduling.

(a) **Barge or Vessel Scheduling.** Except as otherwise provided in the relevant Confirmation, Buyer and Seller shall work in good faith to agree to schedule the number of barges Buyer desires to load during the succeeding month to fulfill the Transaction volume and Buyer's desired loading dates, no later than fifteen (15) days prior to the month of delivery. Notwithstanding the forgoing, Buyer may, with sufficient notice to Seller and to Transporter, schedule intramonth deliveries of Coal from the Source; provided, however, that any intramonth Transaction must be approved by the Seller. Unless otherwise specifically set forth in the relevant Confirmation, all deliveries will occur in approximate ratable amounts over the Term of a Transaction.

(b) Rail or Truck Scheduling. Except as otherwise provided in the relevant Confirmation, Buyer and Seller shall work together in good faith to agree to the scheduled shipments of the number of Unit Trains or trucks Buyer desires to load during the succeeding month to fulfill the Transaction volume and Buyer's desired loading dates and delivery schedule ("Delivery Schedule") no later than fifteen (15) days prior to the month of delivery. Seller will advise Buyer at least fifteen (15) days prior to the month of shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). Unless otherwise specifically set forth in the relevant Confirmation, all deliveries will occur in approximate ratable amounts over the Term of a Transaction.

3.3 Delivery.

(a) Barge or Vessel Deliveries. For barge or vessel deliveries, the Coal shall be delivered to Buyer FOB barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon the loading of each barge or vessel as the coal is progressively loaded. Buyer or its Transporter shall furnish suitable barges or vessels for delivery of the Coal. Such barges or vessels shall be compatible with the Source's coal loading facilities to be utilized by Seller and shall be properly prepared to receive coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into barges or vessels to the proper draft and proper distribution in such barges or vessels. Buyer shall arrange for and pay all costs for transporting the Coal by barge or vessel from and after the Delivery Point to its destination. If the Delivery Point at a Source is such that the Coal will have been transported by barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the barge(s) or vessel(s) to Buyer or Buyer's Transporter.

(b) Rail or Truck Deliveries. Unless otherwise specifically provided in the Confirmation, for rail or truck deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) or FOB truck(s) at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to the railroad. When Coal is delivered by truck, title to and risk of loss of the Coal will pass to Buyer upon the delivery of Coal to the Delivery Point. Buyer shall furnish suitable Unit Trains or trucks for loading and delivery of the Coal. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by the Seller and shall be properly prepared to receive coal. If the Delivery Point is at a Source such that the Coal will have been transported by Unit Train or truck prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper placement of the Unit Trains or trucks at the Delivery Point or (ii) other transfer of the custody and control of the Unit Trains or trucks to Buyer or Buyer's Transporter.

(c) Seller's Shipping Notices. For each delivery by vessel, barge, truck, or rail, Seller shall supply Buyer with a shipping notice which shall include the vessel name, train or barge or truck number, Source from which coal is supplied, tonnage shipped, shipping date, destination, time loading commenced and finished, along with the analysis information required under Article 4.1. Seller shall within forty-eight (48) hours of loading or prior to arrival of the vessel, barge, truck or train (as applicable) at the Delivery Point following loading of such shipment (whichever comes first), send the shipping notice to Buyer by telecopy or other means as agreed to between Buyer and Seller. Notwithstanding the obligations to send shipping notices as provided in the previous sentence, Seller shall also provide Buyer a Bill of Lading for each delivery which shall include the name of Seller,

contract number or purchase order number, train, truck or barge number, date loaded and Seller's delivered weights. Seller shall, as soon as is reasonably possible, notify Buyer of any loading deficiencies or delays in loading via telephone or other electronic means with confirmation in writing.

(d) Buyer's Shipping Notices. The Parties agree that some of Buyer's obligations hereunder may be performed by Buyer's Customer; nevertheless; Buyer shall remain liable for all of Buyer's obligations hereunder and Buyer shall indemnify and hold Seller harmless from and against any and all claims made by Buyer's Customer against Seller. Buyer agrees to the following: (i) Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, barge or vessel at the Source's mine/loadout of the identification number of the Unit Train truck, barge or vessel, identification of Buyer's Customer, and destination of such Unit Train truck, barge or vessel. (ii) The loading of such Unit Train shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with general operating parameters in the mine's/loadout's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller. (iii) All information to be supplied by Seller to Buyer under this Master Agreement including but not limited to analysis, weights, train manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

(e) Transportation Penalties. If a Party involved in a Transaction is charged for any increased transportation charges, penalties or other costs, including demurrage, attributable to the other Party's failure to timely and appropriately load or unload the Coal or to make available suitable barges or other vessels for loading in accordance with the terms of the Transaction or the timing and tonnage requirements of the Transportation Specification, and if such failure is not due to Force Majeure, failure of the other Party or the other Party's railcars or transportation carrier, such failing Party shall promptly reimburse the other for such actual charges, if such charges are usual and customary, after written notice thereof. Upon request by either Buyer or Seller, such Transportation Specifications shall be made available for review by the requesting party, provided that the disclosing Party shall not be required to disclose pricing information. The requesting Party shall sign an appropriate Confidentiality Agreement if requested by the disclosing Party.

(f) Freeze Control Agents. Seller shall, using good faith efforts, treat the Coal with freeze control agents or other additives (e.g. dust suppressant) as directed by Buyer, or if required by the rail carrier or applicable law. By November 1 of each year during the Master Agreement Term, Seller shall notify Buyer of the cost associated with the application of freeze control agents or other additives. Buyer shall thereafter reimburse Seller for the actual cost of materials, including reasonable application costs as charged by the Source mine for application of the freeze control agents, or other additives. The cost of applying freeze control agents or other additives shall be included in the itemized list of expenses provided to Seller by Buyer each month.

3.4 Title and Indemnity. Seller warrants that at the time of delivery it will have title to the Coal, and will deliver the Coal to Buyer, free and clear of all liens, claims and encumbrances arising prior to the transfer of title to Buyer. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any Claims arising from failure of title or loss of the Coal while title to and risk of loss of the Coal is vested in the indemnifying Party.

3.5 Substitute Coal. Unless otherwise restricted by the subject Confirmation, Seller shall, by giving timely notice as provided in Article 3.2 above, have the option to provide the Coal from any alternate source Seller may select. Any such substituted Coal must comply with all Specifications for the Coal to be replaced and be subject to an acceptable test burn performed by Buyer. Subject to the

foregoing, should Seller's substitute Coal cause verifiable problems at Buyer's facility, Buyer shall have the right to reject future Shipments from such alternate Source until such time as Seller demonstrates that such substitute coal can be utilized at Buyer's facility. Seller shall cooperate with Buyer in Buyer's arranging for alternative transportation to allow the Coal shipped from the alternate source to be delivered to Buyer at the Delivery Point at the same time and at the same Contract Price on an equivalent \$/mmBtu and SO₂ adjusted basis (if SO₂ adjustment is provided in the relevant Confirmations) as if delivery had been made to Buyer from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and any other costs, if any, incurred by Buyer directly resulting from Seller's provision of substitute Coal.

3.6 Taxes and Other Liabilities. Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law. Seller shall be solely responsible as to any Transaction for all assessments, fees, costs, expenses and taxes (including without limitation, New Taxes, but not including income taxes) imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, processing, production, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. The risk of any change in such Third Party Impositions shall be borne solely by Seller unless a specific Transaction Confirmation expressly allows for pass through of such items. Buyer shall be solely responsible as to any Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable.

Article 4: Specifications, Weighing, Sampling and Analysis

4.1 Specifications. Seller shall cause all Coal delivered to Buyer pursuant to any Transaction to comply with the Specifications set forth in the relevant Confirmation. Coal shall be substantially free of extraneous material affecting Coal quantity including but not limited to mining debris, bone, slate, scrap iron, steel, earth, rock, pyrite, wood or blasting wire.

4.2 Unit Train or Truck Weighing. Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered into Unit Trains or trucks shall be weighed at Seller's expense by means of a certified batch weighing system or certified track or truck scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. The weights determined thereby (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder.

(a) Seller shall cause the Source to test, calibrate, and certify its scales at the Source annually. Seller shall use Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of Source's scales (at Buyer's sole expense). Seller shall notify Buyer if Seller causes the Source to test, calibrate, and certify its scales at any other time than annually.

(b) If the scales at the Source are determined to be inoperative, the weight of such coal delivered shall be determined by railroad weights at Seller's expense.

(c) Buyer and Seller shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the coal. If either Party should at any time question the accuracy of the scales at the Source, such Party may request a prompt test and

adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

4.3 Barge and Vessel Weighing. Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered by barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading) or if not available by draft survey taken at the Delivery Point prior to the departure of the barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected by mutual agreement of the Parties, or failing agreement, by Seller unless otherwise stated in the relevant Confirmation.

4.4 Sampling and Analysis.

(a) The Sampling Person, which shall be Seller, the Source or the Source's agent unless otherwise specified in the relevant Confirmation, shall cause a representative coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. If non-biased tested equipment is specifically authorized in a Confirmation, and in such event the Sampling Person is not able to obtain a sample with biased tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-received" basis and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM standards.

(b) The Sampling Person's samples of Coal representing each Shipment and the analysis thereof as set forth above, shall be used to determine quality adjustments pursuant to Article 5.1 and any rejection or suspension rights pursuant to Article 5.2 or 5.3. Each sample taken shall be divided into three (3) splits in accordance with ASTM standards and placed into suitable airtight containers. Two (2) of the splits shall be made available to the Buyer or forwarded to the Buyer's agent (the "Analysis Person"), in accordance with Buyer's instructions within twenty-four (24) hours upon completion of loading. One split will be analyzed by the Analysis Person at Buyer's expense and shall be considered the governing analysis. One split shall be retained by the Analysis Person for a period of forty-five (45) days to be used for a referee analysis, if necessary; one split shall be retained by the Sampling Person.

(c) The Analysis Person shall perform analyses on an "as-received" basis, which shall include, but not be limited to, total moisture, ash, Btu, sulfur, volatile matter and Hardgrove grindability and, other data as required by the applicable Confirmation. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. Using Commercially Reasonable Efforts, the Sampling Person shall cause the results of the analysis to be reported to the Buyer and Seller, along with train I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (but excluding Holidays and Sundays) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours (but excluding Holidays and Sundays) after delivery of the Shipping Report and in any event prior to unloading of the coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Analysis Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis.

If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original and any other specification as required in the applicable Confirmation shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

4.5 Representative Presence. Each Party has the right to have a representative present, at such Party's expense, at the Delivery Point during the loading, weighing and sampling of the Coal, except as provided herein. Buyer reserves the right, at Buyer's expense, to have samples taken at the Delivery Point, in accordance with ASTM standards.

Article 5: Quality Adjustments; Rejection and Suspension Rights

5.1 Quality Adjustments. If Coal delivered under a Transaction varies from the Specifications in the Confirmation for such Transaction and Buyer does not exercise its rejection rights under Article 5.2, quality adjustments shall be calculated pursuant to the formulas set forth in Exhibit B (unless otherwise provided for in the Confirmation), and for any other specification(s) according to formula(s) set forth in the Confirmation, if any.

5.2 Buyer's Rejection Rights. Unless otherwise specified in the relevant Confirmation, if any Shipment of Coal triggers any of the Rejection Limits specified in the Confirmation for a Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by written or verbal notice to Seller within twenty-four (24) hours of Buyer's receipt of the Sampling Person's analysis and additional analysis, if any, of the Coal provided pursuant to Article 4.4, of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment equal to an amount mutually agreed to by Buyer and Seller. If Buyer fails to timely exercise its rejection rights under this Article 5.2 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. Buyer's failure to timely exercise such notice does not, however, constitute a waiver of its right to any penalty adjustment provided for herein or in the relevant confirmation with respect to such Non-Conforming Shipment. If Buyer timely rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall replace the rejected coal within a reasonable period of time

5.3 Suspension Rights. If there are four (4) Non-Conforming Shipments, whether rejected or not, under a Transaction in any three (3) month period or if three (3) out of five (5) consecutive Shipments under a Transaction (with respect to barge coal the preceding test shall be determined by one (1) or more rejectable barges being loaded in each of two (2) days of sequential Shipments under a given Transaction whether or not there are any intervening days without Shipments) are Non-Conforming Shipments or should Seller fail to meet one or more Coal quality Specifications as set forth in Schedule 1 to a Confirmation, as the case may be, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under such Transaction. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under such Transaction will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at

Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten (10) day period, or (ii) after such assurances are provided and for a period of three (3) months thereafter, any Shipments of Coal trigger any of Buyer's rejection rights under Article 5.2 with respect to such specification(s) for the Rejection Limit parameter for which there was a prior suspension under such Transaction or should Seller fail to meet one (1) or more Schedule 2 Coal quality Specifications as set forth in a Schedule 2 to a Confirmation, which give rise to the prior suspension as the case may be, then such failure shall constitute an Event of Default (as hereinafter defined) with respect to such Transaction.

Article 6: Settlements; Security

6.1 Billing and Payment.

(a) Unless otherwise agreed by the Parties, after the end of each shipment, but no later than the tenth (10th) day of the month after month of Shipment, during the Term for each Transaction, Seller shall provide Buyer, with an invoice, setting forth, the net amount owed Seller, including, without limitation, (i) the aggregate Contract Price owed to Seller for the Coal actually delivered to Buyer at each Delivery Point during the applicable month; (ii) any quality adjustments due and supporting calculations determined pursuant to Article 5.1; (iii) any transportation or other charges owed by Buyer or Seller to the other pursuant to this Master Agreement; and (iv) any liquidated damages payments pursuant to Article 8.2b. If presentation of an invoice by Seller is delayed after the 10th day of the month, then the time of payment shall be extended accordingly. If the final date for payment for any month shall fall on a Saturday, Sunday or Holiday, observed by Buyer or its primary banking institution ("Bank"), then such payment date shall be extended to the next business day for Buyer or Bank thereafter. No later than ten (10) days after receipt of a Party's invoice (or if such day is not a Business Day, the immediately following Business Day), the receiving party shall pay, by wire transfer in immediately available United States funds, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address provided in Appendix A.

(b) If the receiving Party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed by the receiving Party is subsequently determined to be due, it shall be paid within five (5) days along with interest accrued at the Interest Rate from the original due date until the date paid. If after such determination any Party fails to pay amounts under this Master Agreement when due, in addition to the rights and remedies provided in this Master Agreement, the aggrieved Party shall have the right to: (i) suspend performance under this Master Agreement until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate.

6.2 Netting and Setoff. If, under any Transaction under this Master Agreement, the Parties are required to pay any amount on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Master Agreement and/or any Transaction may be offset against each other, set off or recouped therefrom.

6.3 Audit. Each Party shall maintain accurate records relating to coal sales and purchases made pursuant to this Master Agreement or any Transactions hereunder. Such records shall be retained for a period of at least two (2) years after completion or termination of the relevant Transaction. Each Party (and its representatives) has the right, at its sole expense during normal working hours and upon reasonable advance notice, to examine such records of the other Party, but only to the extent reasonably necessary to verify the accuracy of any invoice, written statement, charge or computation made pursuant to this Master Agreement or a Transaction. If requested, a Party shall provide to the requesting Party statements evidencing the quantities of Coal delivered or received at the Delivery Point. Examination of records hereunder shall be limited to one examination per year for each Transaction, unless compelled through legal action. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing, in reference hereto, prior to the lapse of two (2) years from the rendition thereof; and provided further, that for the purpose of such statement and payment objections, this Article will survive any termination of a Transaction or this Master Agreement. If a Party claims Force Majeure, the Party not claiming Force Majeure reserves the right, at its own expense and during normal working hours and upon reasonable advance written notice to the Party claiming Force Majeure, to have a representative or a third party representative review such claim of Force Majeure.

6.4 Periodically a Party shall have the right to request updated financial information from the other Party. Promptly upon the requesting Party executing Confidentiality undertakings requested by the other Party, the other Party shall promptly furnish financial information required in order to verify credit worthiness.

Article 7: Force Majeure

7.1 If a Party to a Transaction is delayed in or prevented from performing, in whole or in part, any of its obligations under a Transaction(s) due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, breakdown of or damage to necessary facilities or equipment, transportation delays, governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction, or other causes or events which were not anticipated as of the date that the Transaction(s) was agreed, which is beyond the reasonable control and without the fault or negligence of the Party affected thereby and which, by the exercise of due diligence, the Party claiming such events or circumstances herein as "Force Majeure" is unable to overcome or avoid or cause to be avoided, and such Party gives written notice (including reasonable detail) of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure, then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties under such affected Transaction (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. Force Majeure shall not include (i) any event or circumstance, other than a formal strike or lockout, that could have been prevented, overcome, or cured by the expenditure of money; (ii) a change in market conditions, including without limitation, the ability of either Party to buy or sell the coal at a more advantageous price; (iii) loss of Buyer's markets; and (iv) the loss or failure of Seller's supply, including without limitation a change in Seller's recovery rates.

7.2 If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon ten (10) days' prior written notice, to terminate the affected Transaction to the extent affected and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller.

7.3 If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Transaction and any other of its coal sales agreements involving coal of a similar type and quality and found within the same general rail road district, or within the same mile markers on a river, or in the same mile haulage area as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Transaction and any other of its coal purchase agreements involving coal of a similar type and quality found within the same general rail road district, or within the same mile markers on a river, or in the same mile haulage area as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected Transaction(s) and such other coal supply or purchase agreements involving coal of the same type and quality as the Coal to the extent contractually permitted by such Transaction and agreements. If coal of a similar type and quality is available from the same area as the Coal and purchased by Buyer from Seller, Buyer will compensate Seller for any increase in transportation costs.

7.4 It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be attempted to be remedied with all reasonable dispatch shall not require significant capital expenditure or settlement of strikes and lockouts by acceding to the demands of the opposing Party when such course is inadvisable in the discretion of the Party having difficulty.

Article 8: Events of Default, Remedies and Limitation of Liability

8.1 Events of Default.

(a) An event of default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean any of the following:

(i) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof (provided the payment is not subject to a good faith dispute as described in Article 6.1(b)), provided, however, that such good faith dispute shall not relieve a party's obligation to timely pay such portion of a payment that is not in dispute;

(ii) the failure of the Defaulting Party to comply with its other material obligations under a Transaction covered by this Master Agreement (other than events that are otherwise specifically covered in this Article 8.1 as a separate Event of Default) and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure;

(iii) the Defaulting Party shall be subject to a Bankruptcy Proceeding;

(iv) an event described in the last sentence of Article 5.3 has occurred with respect to a Transaction;

(v) any representation or warranty made by a Party herein shall prove to be untrue in any material respect when made.

(vi) the Defaulting Party fails to establish, maintain, extend or increase Performance Assurance when required pursuant to this Master Agreement; or

(vii) the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party establishes and maintains, for so long as the Material Adverse Change is continuing, Performance Assurance with the Non-Defaulting Party in the following amount (in each case rounding upwards for any fractional amount to the next \$10,000.00):

(viii) if Massey is the Defaulting Party, an amount equal to the Early Termination Payment that would be owed to the Non-Defaulting Party; or

(ix) if Mirant is the Defaulting Party, an amount equal to the greater of (1) any amounts owed by Mirant to Massey for Shipments under any Transaction preceding the Material Adverse Change or (2) the Early Termination Payment that would be owed to the Non-defaulting Party.

(x) the failure of the Defaulting Party to comply with its other material obligations under this Master Agreement (other than events that are otherwise specifically covered in this Article 8.1 as a separate Event of Default) and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.

8.2 Early Termination. Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion, (a) establish, by notifying the Defaulting Party of, an early termination date (which shall be no earlier than twenty (20) days after the date of such notice) on which this Master Agreement and all Transactions shall terminate ("Early Termination Date"), and/or (b) suspend performance of its obligations under this Master Agreement and any Transactions (except for payments of amounts not in dispute) until such Event of Default is cured. Notwithstanding the immediately preceding sentence, if the "Event of Default" is one described in Article 8.1(a) clause (i) or (iv), or (vi) through (ix) above, and the Non-Defaulting Party has elected to establish an Early Termination Date, the Non-Defaulting Party may, in its sole discretion, choose to terminate (a) all Transactions or (b) only the Transaction(s) which gave rise to such Event(s) of Default (in which latter case, this Master Agreement shall remain in effect as to all Transactions not then terminated, without prejudice to the Non-Defaulting Party's rights under this Article 8.2 to declare upon a subsequent Event of Default an Early Termination Date as to any remaining Transaction(s)). Notwithstanding the second preceding sentence, if the "Event of Default" is one described in Article 8.1(a) (ii) or (v) above and the Non-Defaulting Party has elected to establish an Early Termination Date, the Non-Defaulting Party may, in its sole discretion, choose to terminate only the Transaction(s) which gave rise to such Event(s) of Default (in which case, this

Master Agreement shall remain in effect as to all Transactions not then terminated, without prejudice to the Non-Defaulting Party's rights under this Article 8.2 to declare upon a subsequent Event of Default an Early Termination Date as to any remaining Transactions(s)). If the Event of Default is one described in Article 8.1 (a) clause (iii), this Master Agreement and all Transactions under it shall automatically terminate and the Early Termination Date shall be established by the Non-Defaulting Party. If notice of an Early Termination Date is given under this Article 8.2, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing. Any rights of a Non-Defaulting Party under this Article 8.2 shall be in addition to such Non-Defaulting Party's other rights under this Article 8.

8.3 Early Termination Payment. If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs, resulting from the termination of the terminated Transaction(s), aggregate such Gains or Losses, and Costs, with respect to all terminated Transactions into a single net amount, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) days of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (under this Master Agreement) against any or all amounts which the Non-Defaulting party owes to the Defaulting Party (under this Master Agreement). The Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate any costs and damages that it is entitled to hereunder and act at all times in a commercially reasonable manner. The Non-Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the Parties) the calculation of all such gains, losses and costs.

8.4 Remedies. The remedies set forth in this Article 8.4 shall be the Non-Defaulting Party's exclusive monetary remedies for the Defaulting Party's failure to perform under a Transaction prior to the Non-Defaulting Party's early termination of such Transaction due to an Event of Default pursuant to Article 8.1:

(a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the Non-Defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the damages provision of this Article shall apply.

(b) Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver the quantity of coal in accordance with the applicable Transaction and this Master Agreement Seller shall pay to Buyer an amount for each ton of coal of such deficiency equal to (i) the lowest reasonable market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of coal of comparable quality on an equivalent \$/mmBtu, SO₂ adjusted basis ("Replacement Price") minus (ii) the Contract Price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept delivery of the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Buyer shall pay to Seller an amount for each ton of coal of such deficiency equal to (i) the Contract Price agreed to for the specific Transaction minus (ii) the highest reasonable market price at

which Seller is able, or would be able (FOB Delivery Point), to sell or otherwise dispose of the coal at the time of Buyer's breach ("Sales Price"); except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

(e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Article 8.4 shall be made in accordance with Article 6.1. All such determinations shall be made in a commercially reasonable manner.

(f) Notwithstanding anything to the contrary herein, if a Party obligated to make a payment under this Article 8.3 timely makes such payment to the other Party, no failure to perform as described in this Article 8.3 shall constitute an Event of Default pursuant to Article 8.1.

8.5 Damages Stipulation. Each Party stipulates that the payment obligations set forth in this Article 8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

8.6 Expenses. The Defaulting Party will, on demand, indemnify and hold harmless the Non-Defaulting Party for and against all reasonable out-of-pocket expenses, including Legal Costs, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights under this Master Agreement or any Transaction by reason of an Event of Default or an early termination of a Transaction, including, but not limited to, costs of collection.

8.7 Limitation of Liability. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS MASTER AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS OTHERWISE PROVIDED IN THIS MASTER AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS MASTER AGREEMENT OR IN ANY TRANSACTION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER THIS MASTER AGREEMENT, ANY TRANSACTION, ANY INDEMNITY PROVISION OR OTHERWISE.

Article 9: Arbitration

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. WITH RESPECT TO ANY ARBITRATION, THE NUMBER OF ARBITRATORS SHALL BE THREE, EACH PARTY HAVING THE RIGHT TO APPOINT ONE

ARBITRATOR WHO SHALL TOGETHER THEN APPOINT A THIRD NEUTRAL ARBITRATOR WITHIN THIRTY (30) DAYS IN ACCORDANCE WITH THE RULES. THE THIRD ARBITRATOR SHALL BE A PERSON WHO HAS FIVE YEARS OR MORE EXPERIENCE IN THE COAL INDUSTRY. THE PLACE OF ARBITRATION HEARINGS SHALL ALTERNATE BETWEEN THE OFFICE OF BUYER AND SELLER, THE FIRST BEING HELD AT SELLER'S OFFICE. IT IS EXPRESSLY AGREED THAT THE ARBITRATORS SHALL HAVE NO AUTHORITY TO AWARD CONSEQUENTIAL, SPECIAL, INDIRECT, OR EXEMPLARY, OR PUNITIVE DAMAGES OF ANY TYPE UNDER ANY CIRCUMSTANCES REGARDLESS OF WHETHER SUCH DAMAGES MAY BE AVAILABLE UNDER APPLICABLE LAW, OR FEDERAL LAW, OR UNDER THE FEDERAL ARBITRATION ACT, THE PARTIES HEREBY WAIVING THEIR RIGHTS, IF ANY, TO RECOVER CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, AND PUNITIVE DAMAGES WITH RESPECT TO THIS MASTER AGREEMENT. THE PARTIES AGREE THAT ALL ABRBITRATION PROCEEDINGS CONDUCTED HEREUNDER AND THE DECISION OF THE ARBITRATORS SHALL BE KEPT CONFIDENTIAL AND NOT DISCLOSED, EXCEPT TO PARTIES, AFFILIATES, ACCOUNTANTS, LAWYERS AND REGULATORY BODIES TO THE EXTENT NECESSARY TO ENFORCE THE DECISION.

Article 10: Miscellaneous

10.1 Successors and Assigns; Assignment. This Master Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. However, no Party shall assign this Master Agreement or any Transaction or any of its rights or obligations hereunder or under any Transaction without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, any Party may, without the need for consent from the other Parties (and without relieving itself from liability hereunder and under any Transaction), (a) transfer, sell, pledge, encumber or assign this Master Agreement and/or any Transaction or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements; (b) transfer or assign this Master Agreement and/or any Transaction to an Affiliate of such Party; or (c) transfer or assign this Master Agreement and/or any Transaction to any person or entity succeeding to all or substantially all of the assets of such Party by way of merger, reorganization or otherwise; provided, however, that no such assignment shall in any way relieve the assignor from liability for full performance under this Master Agreement and the Transactions. Any such assignee shall assume and agree to be bound by the terms and conditions of this Master Agreement and such Transactions.

10.2 Warranties. OTHER THAN THOSE EXPRESSLY PROVIDED IN ARTICLE 3.4 AND 4.1 OR IN A CONFIRMATION, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN ANY FACILITIES.

10.3 Notices. All notices, requests, statements or payments shall be made to the addresses specified in Appendix A hereto. Unless expressly provided otherwise, notices shall be in writing and delivered by certified mail, return receipt requested, facsimile, electronically or nationally recognized overnight delivery service. Notice by facsimile, electronic means or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of the Business Day, in which case it shall be deemed

received at the close of the next Business Day), subject to confirmation of receipt. A Party may change its address by providing notice thereof in accordance with this Article 10.3.

10.4 Confidentiality. No Party shall disclose, without the prior written consent of the other Party, the terms of any Transaction to a third party (other than a Party's and its Affiliates' employees, lenders, counsel, accountants or prospective permitted purchasers, directly or indirectly, of a Party or all or substantially all of a Party's assets or of any rights under this Master Agreement or any Transactions, in each case who have agreed to keep such terms confidential) except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use Commercially Reasonable Efforts to prevent or limit the disclosure.

10.5 Governing Law. THIS MASTER AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING HEREFROM AND THEREFROM SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

10.6 Entire Agreement; Amendments; Interpretation. This Master Agreement, the Schedules, Annexes, Exhibits and Appendices hereto and made a part hereof, if any, and each Transaction, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Master Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter except as set out in Exhibit C. No amendment, modification or change to this Master Agreement shall be enforceable unless reduced to a writing executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing this Master Agreement. The Parties acknowledge that each Party and its counsel have reviewed and revised this Master Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Master Agreement.

10.7 Counterparts; Severability; Survival. This Master Agreement and each Confirmation may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Except as may otherwise be stated herein, any provision or Article hereof that is declared or rendered unlawful by any applicable court of law or regulatory agency, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Master Agreement or a Transaction. In the event any provision of this Master Agreement is declared unlawful, the Parties will promptly renegotiate to restore this Master Agreement or such Transaction as nearly as possible to its original intent and effect. All indemnity and audit rights shall survive the termination of this Master Agreement in full for a period of two (2) years (except with respect to audit rights as to Third Party Impositions which shall survive for the applicable statute of limitations, including any extensions thereof).

10.8 Non-Waiver; Duty to Mitigate; No Partnership or Third Party Beneficiaries. No waiver by any Party of any of its rights with respect to any other Party or with respect to any matter or default arising in connection with this Master Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. Except as otherwise set forth in the Preamble to this Master Agreement, nothing contained in this Master Agreement or in any Transaction shall be construed or constitute any Party as the employee, agent, partner, joint venturer or contractor of any other Party. This Master Agreement and each Transaction is made and entered into for the sole protection and legal benefit of the Parties, and their permitted

successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Master Agreement or any Transaction.

Article 11: Definitions

"Affiliate" means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person. For this purpose, **"control"** means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Analysis Person" means the person or entity chosen by good faith agreement of parties specified in the relevant Confirmation that will perform, or cause to be performed, analysis of the Coal pursuant to a Transaction.

"ASTM" means the American Society for Testing and Materials.

"Bankruptcy Proceeding" means with respect to a Party or entity, such Party or entity (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (c) has such a petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (d) otherwise becomes bankrupt or insolvent (however evidenced), or (e) is unable to pay its debts as they fall due.

"Bill of Lading" means with respect to a truck delivery, a certified truck scale weight, and with respect to a train delivery, a certified rail weight certificate.

"Btu" means the amount of energy required to raise the temperature of one (1) pound of pure water one (1) degree Fahrenheit from 59.5° Fahrenheit to 60.5° Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

"Buyer" means the Party to a Transaction who is obligated to purchase and receive, or cause to be received, Coal during the Term of the Transaction.

"Buyer's Customer" means the party to which Buyer has contracted to sell the Coal purchased from Seller under a Transaction.

"Claims" means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such Claims or actions are threatened or filed prior to or after the termination of this Master Agreement.

"Coal" means any and all of the coal to be sold by Seller and purchased by Buyer, the quality of which conforms to the Specifications and which does not trigger Buyer's rejection rights under Article 5.2, or is otherwise accepted by Buyer under this Master Agreement or any Transaction, and which

contains no synthetic fuels, and is substantially free from any extraneous materials (including, but not limited to mining debris, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire).

"Commercially Reasonable Efforts" means the taking by a Person of such action as would be in accordance with reasonable commercial practices as applied to the particular matter in question to achieve the result as expeditiously as practicable; provided, however, that such action shall not require that such Person incur unreasonable expense.

"Confirmation" means a written notice confirming the specific terms of a Transaction which may be in any form adequate at law; an example of a Confirmation which may be utilized hereunder is shown in Exhibit A hereto.

"Contract Price" means the price in \$U.S. per Ton (unless otherwise specified in the Confirmation) to be paid by Buyer to Seller for the purchase of Coal and any other proper charges pursuant to a Transaction.

"Contract Quantity" means the quantity of Coal that Seller agrees to sell to, or cause to be delivered to, Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, pursuant to a Transaction, as specified in a Confirmation.

"Costs" means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated Transaction(s), and Legal Costs incurred by the Non-Defaulting Party.

"Defaulting Party" shall have the meaning defined in Article 8.1.

"Delivery Point" means the agreed point(s) of delivery and receipt of the Coal pursuant to a Transaction. Title to and risk of loss of the Coal pass to Buyer as set forth in Article 3.3.

"Early Termination Date" shall have the meaning defined in Article 8.2(a).

"Early Termination Payment" means the payment due upon establishing the Early Termination Date as calculated pursuant to Article 8.3.

"Eastern Prevailing Time" means Eastern Standard Time or Eastern Daylight Savings Time in effect in Atlanta, Georgia, as the case may be.

"FOB" shall have the meaning given to such term in the Uniform Commercial Code of the State of New York.

"Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner.

"Holiday" means a day recognized as a holiday in the State in which the Delivery Point is located.

"Interest Rate" means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under "Money Rates;" provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

"Legal Costs" means, with respect to a Party, the reasonable out-of-pocket expenses incurred by it, including legal fees, by reason of the enforcement and protection of its rights under this Master

Agreement or any Transaction.

"Legal Proceedings" means any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

"Losses" means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner.

"Material Adverse Change" means an event or occurrence that constitutes or would result in a material adverse effect on the results of operations, financial condition or business of a Party's business taken as a whole, other than as a result of seasonal changes, general economic conditions or other conditions affecting the industry in which the Party or its customers operate, including but not limited to, fluctuations in coal prices and legislative or regulatory conditions.

"Moody's" means Moody's Investor Services, Inc. or its successor.

"New Taxes" means (a) any taxes, fees or assessments enacted and effective after the Trade Date of the relevant Transaction, including, without limitation, that portion of any taxes or New Taxes that constitutes an increase.

"Nomination Period" shall mean the agreed calendar term for scheduling Coal within the applicable Term pursuant to a Transaction.

"Performance Assurance" means collateral in the form of (i) a cash prepayment; (ii) a Letter of Credit in a form and from an issuer reasonably acceptable to a Beneficiary; (iii) a guaranty in a form and from an issuer that is rated at least BBB from S&P, or Baa3 Moody's and is reasonably acceptable to the Beneficiary.

"Rejection Limits" means the quality characteristics for the Coal pursuant to a Transaction as specified in the relevant Confirmation that give rise to a rejection right of Buyer pursuant to Article 5.2 of this Master Agreement.

"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Sampling Person" means the person or entity specified in the relevant Confirmation that will pay for and perform, or cause to be performed, sampling and analysis of the Coal pursuant to a Transaction.

"Seller" means the Party to a Transaction who is obligated to sell and deliver or cause to be delivered Coal during the Term of the Transaction.

"Shipment" means, as applicable, one Unit Train load, one barge or vessel load, or the aggregate of the truckloads that are loaded on any one day in accordance with the applicable Transportation Specifications.

"SO₂" means sulfur dioxide and lbs. of SO₂ per mmBtu means sulfur dioxide per million Btu.

"Source" means the mine(s) mining complexes loadout river dock(s) or other point(s) or origin that Seller and Buyer agree are acceptable origins for the Coal for a Transaction as specified in the Confirmation.

"Specifications" means the quality characteristics for the Coal subject to a Transaction on an "as received" basis, using ASTM standards, specified in a Schedule 1 or a Schedule 2 of the relevant

Confirmation.

"Taxes" means any or all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

"Term" means the period of time from the date a Transaction is to commence to the date a Transaction is to terminate or expire.

"Ton" means 2,000 pounds.

"Tonnage Deficiency" means that portion of the Contract Quantity required at the Delivery Point during any nomination period that either Seller has failed to deliver or Buyer has failed to receive, as applicable.

"Transaction" means a particular transaction agreed to by the Parties relating to the purchase, sale or exchange(s) of Coal subject to this Master Agreement.

"Transportation Specifications" means the agreement(s) made by Seller, Buyer or any Party's designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement and shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point.

"Transporter" means the entity or entities transporting Coal on behalf of Seller to and at the Delivery Point or on behalf of Buyer or Buyer's designee from the Delivery Point.

"Unit Train" means a train with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) as specified in the relevant Confirmation.

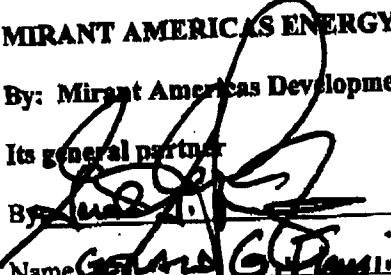
"Unpaid Amounts" shall mean any other amounts that became payable (or that would have become payable on or prior to the Early Termination Date) to such Party under the terms of this Agreement or in respect of any Transaction and which remain unpaid as of such Early Termination Date.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Master Agreement effective as of the Effective Date. This Master Agreement shall not become effective as to either Party unless and until executed by both Parties.

MIRANT AMERICAS ENERGY MARKETING, LP

By: **Mirant Americas Development, Inc.**

Its general partner

By: 
Name: Gerald G. Downing K28
Title: Vice President

MASSEY UTILITY SALES COMPANY

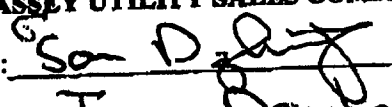
By: 
Name: Tom Dougherty
Title: Vice President 11/19/01

Exhibit A

Pro Forma
Coal Transaction Confirmation

To: Counterparty

Trade Date:

Trade ID #:

The following Coal Transaction Confirmation (the "Confirmation") shall confirm the agreement reached on the Trade Date referenced above between Mirant Americas Energy Marketing, LP ("Mirant") and Counterparty ("Counterparty").

Transaction Buyer:

Transaction Seller:

Trader:

Trader Phone No.:

Confirmation Contact:

Confirmation Phone No.:

Confirmation Fax:

Broker:

Trader:

Trader Phone No.:

Confirmation Contact:

Confirmation Phone No.:

Confirmation Fax:

Transaction Type:

Commodity:

Crushed, bituminous coal, no synthetic fuels, substantially free from any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specification of this Agreement.

Term:

Transaction Price:

BTU Adjusted Price:

The price will be adjusted, on a monthly basis, to reflect actual calorific value received according to the following formula:
BTU Adjusted Price = Price x (1+(Actual BTU - Guaranteed BTU)/Guaranteed BTU)

SO₂ Premium/Penalty

The Contract Price will be adjusted, on a monthly basis, to reflect actual SO₂ value received according to the following formula:

If the weighted average pounds of SO₂ per million Btu ("lbs. SO₂/mmBtu") on an as-received basis of any Shipment accepted by Buyer is other than the Guaranteed SO₂/mmBtu, an adjustment shall be calculated based on each Shipment as follows:
$$\frac{(\text{Guaranteed SO}_2 - \text{Actual SO}_2) \times (\text{Actual Calorific Value}) \times E}{1,000,000}$$

WHERE: E is the average price of SO₂ allowances expressed in dollars per ton of SO₂. The average price of SO₂ allowances is determined by the sum of the monthly SO₂ price indices published in Energy Argus' Air Daily during such calendar month of delivery, divided by the number of Energy Argus' Air Daily price indices published during such month. Price adjustments shall be made to the nearest \$0.001.

Transaction Quantity:

Contract Shipment:

— (-) train(s) per month, each weighing approximately _____ tons for an aggregate of _____ tons per month.

Source/Delivery Point:

_____ loadout in _____ District of the _____ railroad.

Specifications:

See attached Schedule 1.

Master Coal Purchase and Sale Agreement: MASTER COAL PURCHASE AND SALE AGREEMENT DATED -----

Special Provisions: No modifications to this Confirmation or to the Additional Coal Confirmation Terms and Conditions are acceptable unless and until mutually agreed to in writing by Mirant and Counterparty.

Other Special Provisions: No modifications to this Confirmation or to the Additional Coal Confirmation Terms and Conditions are acceptable unless and until mutually agreed to in writing by Mirant and Counterparty.

Other: If the above accurately reflects your understanding of our agreement, please indicate your approval by securing execution of this Confirmation by an authorized representative of Counterparty in the space provided below and returning it via facsimile to Mirant at 678-579-5958. This Confirmation shall not become binding and effective until executed by both Parties below.

**MIRANT AMERICAS ENERGY MARKETING,
LP, BY MIRANT AMERICAS DEVELOPMENT,
INC., ITS GENERAL PARTNER**

MASSEY UTILITY SALES COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Schedule 1 to Confirmation			
Specifications for Deal Number			
The coal delivered hereunder shall conform to the following specifications on an "as received" basis:			
		Shipment Guarantee	Rejection Limits (per shipment)
Specifications			
BTU/LB	Min		<
MOISTURE (% by weight)	Max		>
ASH (% by weight)	Max		>
SO ₂ (% by weight)			
SO ₂ (lb./mmBtu)	Max		>
VOLATILE (%by weight)	Max		>
VOLATILE (%by weight)	Min		<
FIXED CARBON (% by weight)	Max		>
FIXED CARBON (% by weight)	Min		<
GRINDABILITY (HGI)	Min		<
HGI - Hardgrove Grindability Index			
Size:			
Top size (inches)*			>
Fines (% by weight passing Through 1/4" screen)			
ASH FUSIONTEMPERATURE (ASTM 1857)			
ASTM - The American Society for Testing and Materials			
REDUCING ATMOSPHERE			
Initial Deformation (F)	Min		Min
Softening (H=W) (F)	Min		Min
Softening ((H=1/2 W) (F)	Min		Min
Fluid (F)	Min		Min
F - degrees Fahrenheit, W - cone width, H - cone height			
OXIDIZING ATMOSPHERE			
Initial Deformation (F)	Min		Min
Softening (H=W) (F)	Min		Min
Softening ((H=1/2 W) (F)	Min		Min
Fluid (F)	Min		Min
F - degrees Fahrenheit, W - cone width, H - cone height			
*All the coal will be such size that it will pass through a screen having circular perforations three (3) inches in diameter shall not contain more than percent (%) by weight of coal that will pass through a screen having circular perforations quarter (1/4) of an inch in diameter.			
Note: As used herein > means greater than < means less than			

Exhibit B

BTU and SO₂ Adjustment Formulas

Formulas(s) for Quality Adjustments: When noted in a Confirmation, the following formulas shall apply:

1. BTU:
$$\frac{[(\text{Actual Calorific Value}) \text{ minus } (\text{Guaranteed Calorific Value})] \times (\text{Contract Price})}{\text{Guaranteed Caloric Value}}$$

WHERE:

Actual Calorific Value – Actual Shipment Btu/LB

Guaranteed Calorific Value – Guaranteed Btu/LB as agreed by the Parties

2. SO₂: If the weighted average pounds of SO₂ per million Btu (“lbs. SO₂/mmBtu”) on an as-received basis of any Shipment accepted by Buyer is other than the Guaranteed SO₂/mmBtu, an adjustment shall be calculated based on each Shipment as follows:

$$\frac{(\text{Guaranteed SO}_2 - \text{Actual SO}_2) \times (\text{Actual Calorific Value}) \times E}{1,000,000}$$

1,000,000

WHERE:

E is the average price of SO₂ allowances expressed in dollars per ton of SO₂. The average price of SO₂ allowances is determined by the sum of the monthly SO₂ price indices published in Energy Argus’ Air Daily during such calendar month of delivery, divided by the number of Energy Argus’ Air Daily price indices published during such month.

Price adjustments shall be made to the nearest \$0.001.

Exhibit C

**Existing Transactions As of October 31, 2001
By and Between Mirant and Massey**

Transaction Description	Confirmation Trade Date	Conflict Resolution between Confirmation and Master Agreement
Coal Transaction Confirmation SEMA00340109	September 13, 2001	

APPENDIX A
to the
MASTER COAL PURCHASE AND SALE AGREEMENT

To Mirant:**NOTICES AND CORRESPONDANCE:**

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West, Suite 130
Atlanta, GA 30338-5416
Attention: Contract Administration
Phone No.: 678.579.3148
Fax No.: 678.579.5820

INVOICES:

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West, Suite 130
Atlanta, GA 30338-5416
Attention: Accounts Payable
Phone No.: 678.579.5112
Fax No.: 678.579.5765

PAYMENTS:

Bank of America, N.A.
Dallas, Texas
For Credit To: Mirant-Receiveables
Attention: Accounting
ABA No.: 111000012
Account No.: 3751003269
Phone No.: 770.821.7072
Fax No.: 770.821.6146

To Counterparty:

Massey Utility Sales Company
P.O. Box 26765
Richmond, Virginia 23261
Attention: Donna Ford
Phone No.: (804) 788-1873
Fax No.: (804) 788-1811

A.T. Massey Coal Co., Inc.
P.O. Box 26765
Richmond, Virginia 23261
Attention: Donna Ford
Phone No.: (804) 788-1873
Fax No.: (804) 788-1804

SunTrust Bank
919 East Main Street
Richmond, VA 23219
ABA No.: 051000020
Beneficiary: Massey Coal Sales Company
Account No. 201367439

EXHIBIT B

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West Suite 130, Atlanta, Georgia 30338-5416
T 678-579-5000 F 678 579 5958 U www.mirant.com



Coal Transaction Confirmation

Revised: August 25, 2003
Trade Date: August 15, 2003
Trade ID #: SEMA00890309

To: Thomas P. Dougherty, Jr.

The following Coal Transaction Confirmation (the "Confirmation") shall confirm the agreement reached on the Trade Date referenced above between Mirant Americas Energy Marketing, LP (Mirant) and Massey Utility Sales Company ("Counterparty").

Seller:	Massey Utility Sales Company P.O. Box 26765 Richmond, VA 23219	Buyer:	Mirant Americas Energy Marketing, LP 1155 Perimeter Center West Suite 130 Atlanta, GA 30338
Trader:		Trader:	Mark Canon
Trader Phone No.:	804-788-1856	Trader Phone No.:	678-579-3073
Confirmation Contact:	Thomas P. Dougherty, Jr.	Confirmation Contact:	Greg Hanlon
Confirmation Phone No.:	804-788-1856	Confirmation Phone No.:	678-579-6639
Confirmation Fax:	804-788-1811	Confirmation Fax:	678-579-5818
Broker:			

Transaction Type: Physical

Commodity: Crushed, sub-bituminous coal, no synthetic fuels, substantially free from any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specification of this Agreement.

Contract Term: September 1, 2003 through December 31, 2003

Contract Price: \$32.60 per net ton (\$1.2835/ mmbtu)

BTU Adjusted Price: The Contract Price will be adjusted, on a monthly basis, to reflect actual calorific value received according to the following formula:
$$\text{BTU Adjusted Price} = \text{Price} \times (1 + (\text{Actual BTU} - \text{Guaranteed BTU}) / \text{Guaranteed BTU})$$

SO₂ Premium/Penalty The Contract Price will be adjusted, on a monthly basis, to reflect actual SO₂ value received according to the following formula:
$$\text{SO}_2 \text{ Premium/Penalty} = [2.0 - \text{Actual Monthly Weighted Average SO}_2 (\text{lbSO}_2/\text{mmbtu})] \times \text{Monthly Weighted Average Btu/lb}/1,000,000 \times \text{Spot Price of SO}_2 \text{ Emission Allowances.}$$

Where: Spot Price of SO₂ Emission Allowances for any given delivery month would be calculated by averaging the weekly SO₂ indices published in Energy Argus Air Daily (e.g., spot price for allowances for January 2003 would be calculated by averaging the weekly indices published in Energy Argus Air Daily during January 2003.)

Contract Quantity: Approximately 200,000 total tons for the September 1, 2003 through December 31, 2003 Contract Term.

Contract Shipment: Approximately Six (6) trains per month, weighing approximately 8,000 tons each for an aggregate of 48,000 tons per month or as mutually scheduled.

Delivery Point: FOB rail car CSX, New River Freight District, Green Valley #83071

Specifications: See attached Schedule 1

Payment Terms Net Fifteen (15) Days loading

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West Suite 130, Atlanta, Georgia 30338-5416
T 678-579-5000 F 678 579 5958 U www.mirant.com

Massey shall have the option, exercised in its sole discretion upon notice provided to Mirant—via facsimile or electronic mail five (5) business days prior to any loading date for a shipment, to require Mirant to pay for the coal in such shipment in cash in advance of such shipment. Upon Massey's exercise of such option as provided herein, Massey will send an invoice for the prepayment amount a minimum of five (5) business days prior to shipment. One (1) business day in advance of loading date of each such train shipment, Mirant shall issue Massey a wire transfer payment based upon a 2% discount per ton, FOB railcar, from the then current contract price. Massey shall calculate the actual tonnage difference and quality adjustments for each shipment at such time Massey receives the binding weights and quality analysis for such shipment. Quality adjustments will use the discount price for the calculation of premiums and penalties. The cash advance payment terms herein shall remain in effect for each shipment after such notice until Seller notifies Buyer in writing at least five (5) business days prior to a shipment that the previous contract payment terms shall be reinstated.

Massey shall send an invoice to Mirant after receiving the binding weights and quality analysis, which states the cost adjustment for the tonnage adjustment and quality adjustment for each shipment. If Mirant owes Massey additional payment, then the payment will be made fifteen (15) days after date of invoice. If Massey owes Mirant a payment, the payment will be made fifteen (15) days after the invoice or may be netted out against a payment from Mirant to Massey.

Other:

If the above accurately reflects your understanding of our agreement, please indicate your approval by securing execution of this Confirmation by an authorized representative of Counterparty in the space provided below and returning it via facsimile to Mirant at 678-579-5958. Failure to object to the terms of this Confirmation or respond with any objections thereto within two (2) Business Days of receipt by Counterparty shall be deemed acceptance thereof absent manifest error.

*9/18/03
2:25 PM*

MIRANT AMERICAS ENERGY
MARKETING, LP, BY MIRANT AMERICAS
DEVELOPMENT, INC., ITS GENERAL
PARTNER

By:

Michelle P Minor

Name:

Michelle P Minor

Title:

*Director, Trading Control
9/18/03*

MASSEY UTILITY SALES COMPANY

By:

Tom Dayholy

Name:

Tom Dayholy

Title:

Vice President

SEP 18 2003

Schedule 1 to Confirmation				
Specifications for Deal Number SEMA00890309				
The coal delivered hereunder shall conform to the following specifications on an "as received" basis:				
Specifications	Typical	Stated Shipment		Rejection Limits
		Weighted Average		(per shipment)
BTU/LB	12700	Min		12500
MOISTURE (% by weight)	7.0	Max		9.0
ASH (% by weight)	12.0	Max		14.0
SO ₂ (lb./mmBtu)	2.0	Max		2.0
VOLATILE (%by weight)		Max		
VOLATILE (%by weight)	28	Min		25
FIXED CARBON (% by weight)		Max		
FIXED CARBON (% by weight)		Min		
GRINDABILITY (HGI)	60	Min		55
<small>HGI - Hardgrove Grindability Index</small>				
Size:				
Top size (inches)*	2 x 0			
Fines (% by weight passing Through 1/4" screen)	50	Max		60
	No more than 10% minus 8 mesh			No more than 10% minus 8 mesh
ASH FUSION TEMPERATURE (ASTM 1857)	2575	Min		2500
<small>ASTM - The American Society for Testing and Materials</small>				
REDUCING ATMOSPHERE				
Initial Deformation (F)		Min		Min
Softening (H=W) (F)		Min		Min
Softening ((H=1/2 W) (F)		Min		Min
Fluid (F)		Min		Min
<small>F - degrees Fahrenheit, W - cone width, H - cone height</small>				
OXIDIZING ATMOSPHERE				
Initial Deformation (F)		Min		Min
Softening (H=W) (F)		Min		Min
Softening ((H=1/2 W) (F)		Min		Min
Fluid (F)		Min		Min
<small>F - degrees Fahrenheit, W - cone width, H - cone height</small>				
*All the coal will be such size that it will pass through a screen having circular perforations three (3) inches in diameter, but shall not contain more than percent (%) by weight of coal that will pass through a screen having circular perforations one quarter (1/4) of an inch in diameter.				
Guarantee	Premium/Penalty Schedule			
BTU/LB	12,700			
SULFUR	2.0			
ASH				

MOISTURE

Note: As used herein > means greater than < means less than

COAL CONFIRMATION TERMS AND CONDITIONS

1. **Agreement and Termination.** The Buyer and Seller are currently parties to a Master Coal Purchase and Sale Agreement (the "Master Agreement"), executed November 19, 2001, and as amended and restated on June 4, 2002. The parties hereby agree that the Master Agreement is terminated and is no longer of any force or effect, along with any and all amendments, transactions, or confirmations under the Master Agreement. The parties also agree that all other outstanding agreements, transactions, or confirmations, if any, are also terminated and are of no longer any force or effect, regardless as to whether they were executed subject to the terms of the Master Agreement (all of the above collectively are the "Prior Agreements"). Provided, however, the parties do not intend to include as a terminated agreement that certain Restated Coal Purchase and Sale Agreement between Massey Coal Sales Company, Inc. and Orange and Rockland Utilities, Inc., dated April 21, 1999, which remains in full force and effect, and is unaffected by this provision, and nothing herein shall be construed to be an assumption of this agreement pursuant to 11 U.S.C. §365. These Coal Confirmation Terms and Conditions shall govern this Coal Transaction Confirmation (collectively the "Agreement"). No modification or amendment of this Agreement shall be effective or binding unless set forth in writing and executed by authorized signatories for each party.
2. **Bankruptcy.** EACH PARTY ACKNOWLEDGES AND AGREES THAT AS OF THE DATE OF THIS TRANSACTION MIRANT AMERICAS ENERGY MARKETING, LP ("MIRANT") HAS FILED A VOLUNTARY PETITION FOR RELIEF UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE AND SUCH CASE REMAINS PENDING IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS ("BANKRUPTCY COURT"), DOCKET NUMBER 03-46590, AND THAT THIS AGREEMENT IS SUBJECT TO THE APPROVAL OF THE BANKRUPTCY COURT. THEREFORE, THE ISSUANCE OF SUCH APPROVAL IS A CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS AGREEMENT. UNLESS AND UNTIL SUCH APPROVAL IS OBTAINED, NEITHER SELLER NOR BUYER SHALL HAVE ANY OBLIGATION TO THE OTHER UNDER THIS CONTRACT. UPON APPROVAL OF THIS AGREEMENT BY THE BANKRUPTCY COURT, THIS AGREEMENT SHALL BE EFFECTIVE AS IF APPROVAL WAS OBTAINED ON THE DATE OF ENTRY INTO THIS AGREEMENT.
3. **Representations and Warranties:** Each party represents, warrants and covenants that:
 - (a) The parties have negotiated and entered into this post-petition transaction in the ordinary courses of their respective businesses, in good faith, for fair consideration and on an arm's length basis; and
 - (b) Neither party shall attempt to effect any right of set-off with respect to this such post-petition transaction and any pre-petition obligations.
4. **Additional Representations by Mirant:** Mirant further represents and warrants that:
 - (a) One of the purposes of this transaction is to preserve, maintain and enhance its business; and
 - (b) The terms and conditions of this transaction are fair and reasonable and reflect its exercise of prudent business judgment consistent with its fiduciary duties as a debtor-in-possession and are supported by fair consideration and reasonably equivalent value in money or money's worth.
5. **Payment.** The Price specified herein shall be paid in United States dollars. Overdue payments shall accrue interest from the due date at the rate of two percent (2%) over the prime lending rate as published from time to time in the *Wall Street Journal*, under "Money Rates", but in no event to exceed the maximum lawful rate.
6. **Netting.** If Buyer and Seller are each required to pay amounts in respect of purchases/sales hereunder or otherwise in the same month, then, upon notice from one party to the other, such amounts with respect to each party may be aggregated and the parties may discharge their obligations to pay through

netting, in which case, the party, if any, owing the greater aggregate amount shall pay to the other party the difference between the amounts owed.

7. Limitation on Warranty. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY WITH RESPECT TO CONFORMITY TO SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

8. Force Majeure. If, because of Force Majeure, either party (the "Non-Performing Party") is unable to perform any of its obligations, hereunder, and such Non-Performing Party promptly notifies the other party of its inability to perform its obligations thereof, then the obligations of the Non-Performing Party giving such notice shall be suspended to the extent necessary caused by such Force Majeure. During such event of Force Majeure, the Non-Performing Party shall use its reasonable and best efforts to remedy or eliminate such Force Majeure. Any deficiencies in deliveries caused by Force Majeure shall not be restored or reproduced except by mutual agreement between the affected parties. Should the Force Majeure continue for sixty (60) consecutive days, the party not claiming Force Majeure (the "Performing Party") may, at its option, terminate this Agreement upon three (3) days prior written notice to the other party. "Force Majeure" means any cause(s) not reasonably within the control, and without the fault or negligence, of the party affected thereby, which wholly or in part prevents the performance by that party of its obligations hereunder (except the receipt or remittance of funds due and payable), but only if such party is unable, in good faith, to obtain a commercially reasonable substitute therefor. In no event shall a Force Majeure be construed to relieve a party of any obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred by such party through performance of such obligations.

9. Damages.

(a) Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver all, or a portion thereof, the specified quantity of coal to be delivered hereunder, Seller shall pay Buyer for each ton of such deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the specified price for the deficiency (the "Deficiency Price") from the Replacement Price. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, is obligated to purchase substitute coal for the Deficiency (plus additional transportation or other reasonable charges, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the specified Delivery Point) or, absent such a substitute purchase, the market price for such quantity of coal F.O.B. (Free On Board), or CIF (Cost, Insurance & Freight) if applicable, at the specified Delivery Point, as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall the Replacement Price include any penalties or similar charges. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price. Such payment shall be paid within 10 days after an invoice is received by the party obligated to make the payment.

(b) Unless excused by an event of Force Majeure or Seller's failure to perform, if Buyer fails to accept all or a portion thereof, the specified quantity of coal to be delivered hereunder, Buyer shall pay Seller for each ton of the Deficiency an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Deficiency Price. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (including additional transportation or other reasonable charges, if any, incurred by Seller as a result of delivering coal at a location other than the specified Delivery Point) or, absent such resale, the market price for such quantity of coal F.O.B. (or CIF, if applicable) at the specified Delivery Point, as determined by Seller in a commercially reasonable manner; provided, however, in no event shall the Sales Price include any penalties or similar charges. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price. Such payment shall be paid within 10 days after an invoice is received by the party obligated to make the payment.

(c) Each party hereby stipulates and agrees that the payment obligations set forth in this Paragraph 9. are reasonable due to the complexities of anticipated damages and the difficulty in determining the

Agreement within five (5) days hours after a written request for such assurance is made by the other party ("Y") when Y has commercially reasonable grounds for insecurity (if, on the date Y demands adequate assurance (the "Demand Date"), X has posted the amount it would pay to Y, exclusive of costs that may be incurred as a result of termination, for this transaction if such transaction were being terminated on the Demand Date, Y does not have commercially reasonable grounds for insecurity, and the failure by X to post any additional amount is not an Event of Default hereunder) (each of the events specified in items (i) through (vi) above an "Event of Default"); then, upon the occurrence of an Event of Default, the other party shall have the right to withhold or suspend deliveries or terminate this Agreement upon at least one (1) business day's prior written notice. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from this Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, UNTIL SUCH TIME AS MIRANT EMERGES FROM CHAPTER 11 BANKRUPTCY THROUGH THE CONFIRMATION OF A PLAN OF REORGANIZATION, THIS SECTION 18 (ii), (iii), (iv) and (v) SHALL NOT APPLY TO MIRANT AND SHALL NOT CONSTITUTE AN EVENT OF DEFAULT; PROVIDED, HOWEVER, THAT IN THE EVENT THAT (A) MIRANT FILES A MOTION WHICH CONTEMPLATES THE SALE OF SUBSTANTIALLY ALL OF ITS ASSETS; (B) MIRANT FILES A CHAPTER 11 PLAN WHICH CONTEMPLATES THE SALE OF SUBSTANTIALLY ALL OF ITS ASSETS; (C) MIRANT FILES A MOTION OR REQUEST TO CONVERT ITS CHAPTER 11 CASE TO A CHAPTER 7 PROCEEDING; (D) THE BANKRUPTCY COURT ENTERS AN ORDER CONVERTING MIRANT'S CASE FROM A CHAPTER 11 PROCEEDING TO A CHAPTER 7 PROCEEDING; OR (E) THE BANKRUPTCY COURT ENTERS AN ORDER APPOINTING A TRUSTEE OR EXAMINER (WITH EXPANDED POWERS) IN MIRANT'S BANKRUPTCY CASE, ANY SUCH EVENT (A) THROUGH (E) SHALL CONSTITUTE AN EVENT OF DEFAULT.

20. **Other Terms.** Notwithstanding any other provisions in this Agreement, Mirant acknowledges and agrees that it will not oppose administrative expense treatment under 11 U.S.C. § 503(b)(1)(A) for any unpaid amounts owing by Mirant under this transaction, provided that such unpaid amounts become due and owing prior to the effective date of a confirmed Chapter 11 plan.

21. **Recordings.** Each party consents to the recording of its representatives' telephone conversations without any further notice. All recordings and any other evidence shall be admissible for introduction into evidence and may be used to prove the existence and terms of oral agreements between the parties.

22. **Entire Agreement.** The parties acknowledge that this transaction is being made under this Agreement and that no other agreement applies to this transaction, except as specifically provided herein. As such, this Agreement constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof. Further, this Agreement supercedes and replaces all prior negotiations, offers, promises, representations, warranties, agreements and writings with respect to such subject matter, both written and oral.

**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)
Debtors.)	Jointly Administered
)	

**ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY
CODE AND FED. R. BANKR. P. 9019 APPROVING THE COMPROMISE
AND SETTLEMENT WITH MASSEY UTILITY SALES COMPANY
PURSUANT TO A COAL TRANSACTION CONFIRMATION**

Upon consideration of the motion dated September 26, 2003 (the “Motion”) of Mirant Corporation (“Mirant”) and Mirant Americas Development, Inc., as general partner of Mirant Americas Energy Marketing, LP (“MAEM”), as debtors and debtors-in-possession, for the entry of an order pursuant to sections 105(a) and 363 of the Bankruptcy Code¹ and Bankruptcy Rules 9019, approving that certain Coal Transaction Confirmation between MAEM and Massey Utility Sales Company (“Massey”), dated September 18, 2003, that embodies the compromise and settlement of claims arising from the termination of that certain Master Coal Purchase and Sale Agreement between MAEM and Massey, dated as of November 19, 2001, including all amendments, thereto, transactions and confirmations thereunder (the “Master Agreement”); and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. sections 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best

¹ Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

interests of the Debtors and their estates and creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Coal Transaction Confirmation and compromise and settlement of claims and releases embodied therein is approved effective September 1, 2003; and it is further

ORDERED that the Master Agreement is deemed terminated, effective as of September 1, 2003, pursuant to the terms of the Coal Transaction Confirmation; and it is further

ORDERED that in accordance with the Coal Transaction Confirmation, neither MAEM nor Massey shall attempt to effect a right of setoff with respect to the postpetition transactions or prepetition obligations under the Master Agreement; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters relating to implementation and enforcement of this Order.

SIGNED THIS ____ DAY OF OCTOBER, 2003

D. Michael Lynn
United States Bankruptcy Judge