



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. In the event the Lease Documents are recharacterized as a financing agreement for bankruptcy purposes, the Trustee may retain this payment, provided, however, that the Debtors and the Official Committees of Unsecured Creditors reserve their respective rights to move this Court to order that such payment be applied to the principal balance of the secured claim resulting from any such recharacterization, however, the Trustee and the MirMA Landlords may oppose any such request on any grounds, including that such secured claim is oversecured or that such payments are adequate protection for the use and/or diminution of the Dickerson Facility and Morgantown Facility.

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

SO ORDERED: <sup>MAY 3</sup>  
~~March~~ \_\_, 2004.



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THE HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

**SO AGREED TO:**

May \_\_, 2004

THE DEBTORS:

A handwritten signature in black ink, appearing to read "Robin Phelan", written over a horizontal line.

Robin Phelan

State Bar No. 15903000

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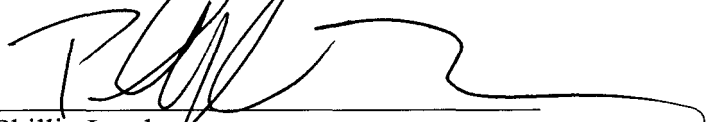
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May 3, 2004

THE LEASE INDENTURE  
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