

Thomas E Lauria  
 State Bar No. 11998025  
 Craig H. Averch  
 State Bar No. 01451020  
**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

U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF TEXAS  
 FORT WORTH  
 CLERK  
 THE DATE OF ENTRY IS  
 ON THE COURT'S DOCKET

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)
Debtors.	)	Jointly Administered

**STIPULATION AND AGREED ORDER EXTENDING THE PERIOD TO ASSUME OR REJECT CERTAIN LEASES PURSUANT TO 11 U.S.C. § 365(d)(4)**

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, “Mirant” or the “Debtors”), as debtors-in-possession, together with the undersigned parties (collectively with the Debtors, the “Parties”) enter into this Stipulation and Agreed Order (the “Stipulation”) in order to provide for the following:

- (i) an adjournment of the pending hearing on the Debtors’ “Motion of the Debtors for an Order Pursuant to 11 U.S.C. § 365(d)(4) Extending Time Within Which the Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property” (the “Extension Motion”) from March 3, 2004 to March 24, 2004 but only to the extent that such Extension Motion

pertains to any leases and subleases (the “MIRMA Leases”) of real property that relate to two power plants located in Maryland and operated or controlled by Mirant Mid-Atlantic, LLC, formerly known as Southern Energy Mid-Atlantic, LLC, (“MIRMA”) and which power plants are referred to herein (and are often identified) as the “Morgantown Plant” and the “Dickerson Plant” (each as defined herein);

(ii) an extension of the time period specified by section 365(d)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) within which the Debtors must assume or reject the MIRMA Leases such that the current deadline of March 10, 2004 is extended until March 31, 2004, subject to any further extension by the Court with regard to the pending Extension Motion as it pertains to the MIRMA Leases; and

(iii) an agreed upon discovery and briefing schedule with respect to the adjourned portion of the Extension Motion as set forth below.

### **BACKGROUND**

1. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.<sup>1</sup> The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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<sup>1</sup> 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 Judicial District of Calgary (the “Canadian Court”) pursuant to the Companies’ Creditors Arrangement Act (the “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

2. On or about December 18, 2000 and December 19, 2000, two complex leveraged lease transactions were consummated whereby (among other things), one of the Debtors, MIRMA, executed 11 “Facility Lease Agreements”, each with a distinct “Owner Lessor,” four of which Facility Lease Agreements related to an electric generating facility referred to as the Dickerson Base-Load Units 1, 2, and 3 (the “Dickerson Facility”) located in Montgomery County, Maryland and were executed on or about December 19, 2000, and seven of which Facility Lease Agreements relate to an electric generating facility referred to as the Morgantown Base-Load Units 1 and 2 (the “Morgantown Facility”) located in Charles County, Maryland and were executed on or about December 18, 2000. The documents executed concurrently with or pursuant to the Facility Lease Agreements, include, without limitation, eleven subleases of the ground that underlies each of the Morgantown Facility and the Dickerson Facility, certain Participation Agreements, certain Lease Indentures and certain Pass Through Trust Agreements, which are referred to herein as the “Lease Documents.”<sup>2</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.”

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<sup>2</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,” nor that any particular documents comprise part of any “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” or to contend that a particular document is not part of any “lease.” The Trustee and the Owner Lessors reserve all rights regarding the foregoing and the nature and characterization of the leveraged lease transactions and the documents relating thereto.

3. 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 to three pass through trusts which then issued pass through certificates to the "Pass Through Certificate Holders" or "PTC's".

4. Pursuant to the existing "Order Pursuant to 11 U.S.C. § 365(d)(4) Extending Time Within Which the Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property" dated September 10, 2003, the time within which MIRMA (and the other Debtors) must assume or reject the MIRMA Leases will expire on March 10, 2004. Therefore, the Debtors filed the Extension Motion with regard to the MIRMA Leases and other leases of nonresidential real property under which any Debtor was a lessee.

5. Counsel for the Trustee and counsel for the Owner Lessors (collectively, "Opposing Counsel") have indicated to counsel for the Debtors that their clients intend to oppose the Extension Motion as it relates to the MIRMA Leases. Opposing Counsel also indicated that they would like to conduct discovery concerning the need of the Debtors and MIRMA for a further extension of the deadline within which to assume or reject the MIRMA Leases.

6. In order to accommodate the requests of Opposing Counsel and in order to develop an adequate record, the parties are entering into this Stipulation and are seeking an order approving the same.

### **STIPULATION AND AGREEMENT**

BASED ON THE FOREGOING, the Parties hereto stipulate and agree as follows:

A. That good cause exists to extend the deadline within which MIRMA (or any Debtor) must move to assume or reject the MIRMA Leases, pursuant to section 365(d)(4) of the Bankruptcy Code, from March 10, 2004 to and including March 31, 2004.

B. That the hearing on the Extension Motion as it pertains to the MIRMA Leases (which term includes all leases of real property that pertain to the Morgantown Plant and/or the Dickerson Plant) shall be adjourned and continued until March 24, 2004.

C. That Opposing Counsel served and faxed deposition notices and document requests upon counsel to the Debtors on or before 12:00 p.m. EST on February 27, 2004.

D. That MIRMA shall have until March 5, 2004 to respond and until March 8, 2004 to produce (by sending responsive documents via overnight mail to counsel to the Trustee and Owner Lessors) documents responsive to the document requests referenced above, provided that in no event shall this obligation to respond and produce documents be deemed a waiver of the right of MIRMA (or any other Debtor) to object to such document requests based on applicable law, including without limitation based on privilege, nor shall the Debtors be obligated to produce any documents to which they object.

E. That the parties shall act in good faith to schedule those depositions noticed by Opposing Counsel for March 10, 2004 and/or March 11, 2004 at a mutually convenient location.

F. That Opposing Counsel (or their clients) shall identify to Debtors' counsel and Debtor's counsel shall identify to Opposing Counsel the witnesses they intend to call at the hearing on March 24, 2004 on or before March 12, 2004 such that the parties shall have a reasonable opportunity to depose such witnesses and Opposing Counsel and Debtors' counsel shall act in good faith to schedule and hold such depositions at mutually convenient times and locations.

G. That any documents produced by any of the Debtors pursuant to any of the activities undertaken pursuant to this Stipulation and the uses thereof shall be governed by the provisions of that certain Order of the Bankruptcy Court entitled "Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors' Securities, Bank Debt, Purchase Or Sale Of Trade Debt And Issuing Of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003" entered on August 18, 2003, as though each of the Owner Lessors, the Pass Through Trustee, the Lease Indenture Trustee, the pass through certificate holders and their respective agents and counsel are "Permitted Persons" and any documents produced by the Debtors pursuant to the discovery anticipated by this Stipulation (as the same may be modified) are "Subject Material," as those terms are used in such Order and in Appendix A attached thereto.

H. That if and to the extent Opposing Counsel (or their clients) or any other party in interest desires to oppose the Extension Motion as it pertains to the MIRMA Leases, any such objection must be filed and served by facsimile on counsel for the Debtors on or before 5:00 p.m. EST on March 17, 2004.

I. That if and to the extent the Debtors wish to file a reply to any objection filed to the Extension Motion with respect to the MIRMA Leases, or any supplemental declarations, such reply and supplemental declarations shall be filed with the Court and served by facsimile upon counsel for the objecting parties on or before 5:00 p.m. EST on March 22, 2004.

J. That counsel for the Owner Lessors of the Morganton Plant and the Dickerson Plant, may serve additional deposition notices and/or requests for production (in either case, to the extent the same may be reasonable under the circumstances) on MIRMA in connection with the issues presented in the Extension Motion after February 27, 2004. MIRMA agrees to negotiate

the dates for any such depositions and the deadline for producing documents responsive to any such requests in good faith. All interested parties reserve the right to seek court intervention to the extent necessary to compel and/or limit such discovery.

K. That this Stipulation shall be without prejudice to any legal position or argument of, or any claim, demand, action or cause of action of the Parties, and all such legal positions, arguments, claims and disputes, and all rights and defenses in respect thereof, are expressly preserved, except to the extent inconsistent with this Stipulation.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

I. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A) and venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. The aforementioned stipulations and agreements, including the discovery and briefing schedule, are hereby adopted and approved by this Court, and shall be incorporated into this Order.

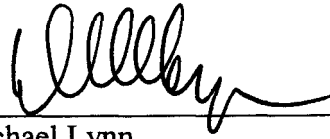
III. Pursuant to the aforementioned stipulations and agreements adopted hereby, good cause exists to extend the time period of section 365(d)(4) of the Bankruptcy Code such that MIRMA (or any other Debtor as may be applicable) shall have until March 31, 2004 to file a motion to assume or reject the MIRMA Leases and that the deadline to assume or reject the MIRMA Leases shall be extended until 30 days after the filing of that motion,<sup>3</sup> provided that if

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<sup>3</sup> Provided however that, in the event that the Debtors seek to reject any or all of the Lease Documents, nothing contained herein shall be deemed to prejudice the ability of the Trustee and/or Owner Lessors to request that the Court provide for an appropriate transition period prior to the effective date of the rejection.

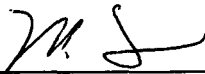
at the hearing on the Extension Motion that is scheduled for March 24, 2004 the Court grants other relief, such relief shall control.

SIGNED THIS 3<sup>rd</sup> DAY OF MARCH 2004.



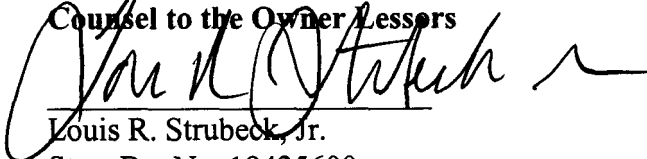
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D. Michael Lynn  
United States Bankruptcy Judge

**Stipulated and Agreed to:  
Counsel to the Debtors**



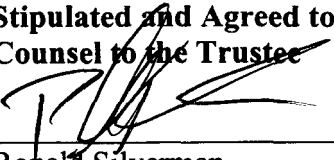
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Michelle Campbell  
State Bar No. 24001828  
White & Case LLP  
633 West Fifth Street  
Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 620-7700

**Stipulated and Agreed to:  
Counsel to the Owner/Lessors**



\_\_\_\_\_  
Louis R. Strubeck, Jr.  
State Bar No. 19425600  
Fulbright & Jaworski  
2200 Ross Avenue  
Suite 2800  
Dallas, TX 75201  
Telephone: (214) 855-8000

**Stipulated and Agreed to:  
Counsel to the Trustee**



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Ronald Silverman  
New York Bar No. 3946944  
Bingham McCutchen LLP  
399 Park Avenue  
New York, NY 10022  
Telephone: (212) 705-7700

and

Phillip Lamberson  
State Bar No. 00794134  
Winstead Sechrest & Minick P.C.  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, TX 75202  
Telephone: (214) 745-5180