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**ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
MIRANT AMERICAS GENERATION, LLC**

**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 |) | |
| |) | Hearing Date and Time: To Be Set |

**APPLICATION FOR APPROVAL OF THE EMPLOYMENT AND RETENTION
OF HOULIHAN LOKEY HOWARD & ZUKIN, EFFECTIVE AS OF
JULY 25, 2003, AS FINANCIAL ADVISOR FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS OF MIRANT AMERICAS GENERATION, LLC**

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

The Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (the "MAGI Committee"), hereby files this Application for entry of an order under Sections 328(a) and 1103 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Employment and Retention of Houlihan Lokey Howard & Zukin ("Houlihan"), effective as of July 25, 2003, as financial advisor to the MAGI Committee in connection with the above-captioned case (the "Application"). In support of this Application, the MAGI Committee respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested in the Application is authorized under 11 U.S.C. §§ 328, 330 and 1103 and may be implemented in accordance with Rule 2014 of the Bankruptcy Rules.

Background

2. On July 14, 2003 (the "Petition Date"), Mirant Corporation ("Mirant") and its affiliated debtors (collectively the "Debtors"), each filed a voluntary petition for relief under §§ 101, et seq. of 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. On July 25, 2003 (the "Committee Formation Date"), the MAGI Committee was appointed in these cases by the United States Trustee. The members of the MAGI Committee are California Public Employees Retirement System ("CalPERS"), Elliott Associates, L.P., JPMorgan Chase, Lehman Brothers Inc., Mackay Shields Financial, The Royal Bank of Scotland and Wells Fargo Bank, as Indenture Trustee.

Relief Requested

4. By this Application, the MAGI Committee seeks authority to employ and retain Houlihan as its financial advisor pursuant to Bankruptcy Code sections 328 and 1103(a), and on the terms and conditions set forth in the engagement agreement letter (the "Engagement Letter"), effective as of July 25, 2003 (the "Effective Date"), to render financial advisory services with respect to all phases of these chapter 11 cases. The Engagement Letter is attached hereto as Exhibit A.

5. Section 1103(a) of the Bankruptcy Code provides that a committee may select and authorize the employment of one or more attorneys, accountants or other agents, to represent or perform services for such committee. 11 U.S.C. § 1103(a). Further, Bankruptcy Code section 328(a) allows a committee, with the Court's approval, to employ a professional person under Bankruptcy Code section 1103 on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. 11 U.S.C. § 328(a). Pursuant to this authority, the MAGI Committee seeks to retain Houlihan on the terms and conditions detailed below.

Houlihan's Qualifications

6. Houlihan is a nationally recognized investment banking and financial advisory firm, with 9 offices worldwide and more than 275 professionals. Houlihan's financial restructuring group, which has more than 75 professionals, is one of the leading advisors of and investment banks to debtors, bondholder groups, secured and unsecured creditors, acquirers and other parties in interest involved in financially troubled companies, both in and outside of bankruptcy. In this role, Houlihan has been, and is involved in, some of the largest restructuring matters in the United States including serving as the financial advisor to the debtors in the chapter 11 proceedings of *XO Communications, Inc.*, *NII Holdings, Inc. (Nextel International)*, *Covad Communications, Inc.*, *Worldtex, Inc.*, *Dairy Mart Convenience Stores, Inc.*, *Stage Stores, Inc.*, and *AmeriServe Food Distribution, Inc.* Houlihan has also served as the financial advisor to the official creditors' committees in the chapter 11 proceedings of *Enron Corporation*, *NRG Energy Inc.*, *PG&E NEG, Inc.*, *Conseco, Inc.*, *Worldcom, Inc.*, *Armstrong Holdings, Inc.*, *Pillowtex Corp.*, *Williams Communications Group, Inc.*, *Laidlaw, Inc.*, *AMF Worldwide, Inc.*, and *The Loewen Group, Inc.*, to name just a few of its engagements.

7. In addition to these committee retentions, Houlihan has had direct experience with the Debtors and their businesses. Prior to the commencement of these chapter 11 proceedings, an informal group (the “Informal Committee”) of holders of Senior Notes issued by Mirant Americas Generation, LLC (“MAGI”), including certain members on the MAGI Committee, retained Houlihan as financial advisor to represent the interests of the Informal Committee. Houlihan continued to represent the interests of the Informal Committee after the Petition Date up until July 25, 2003, the date the MAGI Committee was appointed. Through this representation, Houlihan has become fully informed about these cases, as well as the Debtors’ businesses and the facts and circumstances relating to the commencement of these chapter 11 cases. This experience, combined with Houlihan’s experience in other chapter 11 cases, means that Houlihan is well qualified to efficiently represent the MAGI Committee.

8. The MAGI Committee has decided to retain Houlihan as its financial advisor because of Houlihan’s extensive experience, expertise and knowledge in the field of investment banking, asset valuation, and business reorganizations under chapter 11 of the Bankruptcy Code. Houlihan also possesses knowledge and familiarity with MAGI’s business, due to Houlihan’s prepetition work for the Informal Committee.

9. The MAGI Committee believes that the retention of Houlihan is in the best interest of the MAGI Committee and all the MAGI unsecured creditors and is necessary at this time to ensure that the value of the assets of MAGI’s estate are maximized and the interests of the MAGI Committee and creditors are fully and adequately represented in connection with these cases. Because of Houlihan’s extensive experience in business reorganizations, the MAGI Committee believes that Houlihan is exceptionally well qualified to serve as its financial advisor in these cases.

Services To Be Provided by Houlihan

10. Pursuant to the Engagement Letter between Houlihan and the MAGI Committee, the professional services that Houlihan will render to the MAGI Committee include, but are not limited to, the following activities:

- (a) Evaluating the assets and liabilities of MAGI, its subsidiaries and the other Debtors;
- (b) Analyzing and reviewing the financial and operating statements of MAGI and the other Debtors;
- (c) Analyzing the business plans and forecasts of MAGI and the other Debtors;
- (d) Evaluating all aspects of debtor-in-possession financing, cash collateral usage and any exit financing in connection with any plan of reorganization and any budgets or forecasts relating thereto;
- (e) Providing such specific valuation or other financial analyses as the MAGI Committee may require under the circumstances;
- (f) Assisting Cadwalader, Wickersham & Taft, LLP, MAGI Committee counsel, with the claim evaluation and resolution process, and distributions relating thereto;
- (g) Assessing the financial issues and options concerning (a) the sale of any assets of MAGI and the other Debtors, either in whole or in part, and (b) the Debtors' plan(s) of reorganization or any other plans(s) of reorganization (the "Plan") and (c) assisting the MAGI Committee in negotiating the terms of any of the foregoing;
- (h) Preparation, analysis and explanation of the Plan to various MAGI Committee constituencies;
- (i) Providing testimony in court on behalf of the MAGI Committee; and
- (j) Providing litigation support to Cadwalader, Wickersham & Taft, LLP in any contested matter before the Court.

11. Houlihan has stated its willingness to serve in these cases and render the necessary professional services as financial advisor to the MAGI Committee. The MAGI Committee requires knowledgeable financial advisors to render these essential professional services. As noted above, Houlihan has substantial experience in all these areas, and as a result, Houlihan is well qualified perform these services and represent the MAGI Committee's interest in these chapter 11 cases.

Consideration to Houlihan and the Terms of the Engagement

12. The MAGI Committee firmly believes that Houlihan is well qualified to represent its interests in these cases and that the compensation sought under the Engagement Letter is consistent with the market for similar financial advisor services. Subject to this Court's approval in accordance with section 328(a) of the Bankruptcy Code, Houlihan will be entitled to the following consideration¹ for its services pursuant to the Engagement Letter:

(i) Monthly Fee: MAGI shall pay Houlihan a monthly fee in advance of \$175,000 per month for the first 24 months and \$125,000 per month thereafter (the "Monthly Fee") beginning from July 25, 2003. The Monthly Fees shall be considered fully earned when due and are non-refundable regardless of whether any Transaction (as defined in the Engagement Letter) is consummated.

(ii) Transaction Fee: Upon the closing or the consummation of a Transaction (as defined in the Engagement Letter), Houlihan will be entitled to an additional fee (the "Transaction Fee") based upon the aggregate gross consideration ("AGC"), as calculated pursuant to the Engagement Letter, received by the unsecured creditors of the Debtors. The

¹ The following information is only a summary of the terms of Houlihan's engagement by the MAGI Committee. The parties are referred to the Engagement Letter, as modified herein, specifically, for the specific terms of Houlihan's proposed engagement.

Transaction Fee will be determined as follows: (a) for cumulative AGC up to 1.960 billion a \$2,000,000 flat base fee; and (b) for cumulative AGC above \$1.960 billion a 0.50% incentive fee of such incremental AGC.

(iii) Reimbursement of Expenses: In addition to any other payments and regardless of whether any Transaction is consummated, Houlihan shall be reimbursed for all reasonably incurred out-of-pocket expenses in connection with the rendering of services under the Engagement Letter. Such fees and expenses shall include, but not be limited to, travel expenses communications charges, database charges, copying expenses and delivery and distribution charges. Houlihan will charge for expenses in a manner and at rates consistent with the applicable U.S. Trustee guidelines and the Orders of this Court.

13. The terms of the Engagement Letter were heavily negotiated between the MAGI Committee and MAGI Committee counsel on behalf of the MAGI Committee, and reflect the MAGI Committee's evaluation of the extensive work that will be performed by Houlihan and Houlihan's expertise.

Modifications of the Engagement Letter Pursuant to the Court's Direction

14. Consistent with the directions of the Court, certain terms of Houlihan's proposed engagement have been modified from those provided for in the Engagement Letter attached hereto. The terms of the proposed Order attached hereto as Exhibit C reflect these modifications made to the Engagement Letter. The MAGI Committee has approved each of these modifications to the terms of Houlihan's engagement.

15. Specifically, these modifications to the Engagement Letter are as follows:

(i) Indemnification Provisions: This Court's Order Restricting Pursuit of Certain Persons, dated August 5, 2003 (as the same has subsequently been extended or amended,

including by the Court's September 29, 2003 Order Extending Order Restricting Pursuit of Certain Persons, the "Protected Persons Order"), provides reasonable protections to Houlihan that accomplish the legitimate purposes that otherwise would be accomplished through the Indemnification provisions that are provided for in Paragraph 12 of the Engagement Letter (the "Indemnification Provisions"). Accordingly, Houlihan does not, at this time, seek the approval of the Indemnification Provisions as set forth in the Engagement Letter. Houlihan, however, reserves its rights to seek the Court's approval of the Indemnification Provisions (for losses, claims, damages and/or expenses arising from and after July 25, 2003) if the Protected Persons Order is terminated, violated, expires or otherwise does not provide the protections it is expected to provide.

(ii) Transaction Fee/Tail Period. Paragraph 4 of the Engagement Letter provides that the Transaction Fee shall be payable upon the consummation of a Transaction, as defined in the Engagement Letter, either (a) during the term of the Engagement Letter or (b) within nine months of the effective date of termination of the Engagement Letter (the "Tail Period") and that MAGI will be entitled to a credit against any Transaction Fee payable under the Engagement Letter (with such credit being applied first to the Incentive Fee, if any, and then to the Base Fee) in an amount equal to 50% of all Monthly Fees paid after the twelfth month following July 25, 2003. Paragraph 4 of the Engagement Letter shall be modified to replace the definition of Tail Period to mean a two month period or such later time as is found reasonable by the Court, following the termination of the Engagement Letter, in lieu of the nine month period specified in the Engagement Letter.

16. Other than these modifications, all other provisions of the Engagement Letter remain the same.

**The Terms of the Engagement Letter are Consistent
with Similar Restructuring Engagements**

17. The terms of this engagement are similar to and entirely consistent with the terms agreed to by Houlihan in similar restructuring engagements. Specifically, in connection with Houlihan's recent energy creditors' committee engagements, the terms of Houlihan's retention are summarized below:

(i) *NRG Energy Inc.*: With estimated unsecured creditor claims of \$5.45 billion, Houlihan is receiving \$200,000 in monthly fees, and a transaction fee reflecting 0.4% of noteholder recoveries;

(ii) *PG&E NEG, Inc.*: With estimated unsecured creditor claims at \$3.5 billion, Houlihan is receiving \$175,000 monthly fee and a base transaction fee of at least \$750,000 and a percentage of recoveries for noteholders over 30%; and

(iii) *Enron Corp.*: With estimated unsecured creditor claims of \$60 billion, Houlihan is receiving a \$350,000 monthly fee and a \$9.5 million transaction fee.

18. The compensation sought by Houlihan in the Engagement Letter also is consistent with the fees paid to Houlihan in non-energy representations. A summary of the terms of engagement for Houlihan's other recent creditors' committee engagements follows:

(i) *Conseco*: \$175,000 monthly fee and a transaction fee of .5% of unsecured noteholder recovery;

(ii) *Worldcom, Inc.*: \$350,000 monthly fee and a transaction fee calculated as a percentage of the enterprise value of the reorganized debtors;

(iii) *AT&T Canada*: \$175,000 monthly fee and a transaction fee of .75% of unsecured noteholder recovery; and

(iv) *Magellan Health Services, Inc.*: \$150,000 monthly fee and a transaction fee of .75% of unsecured noteholder recovery.

19. Based upon these cases, and as described in the William H. Hardie, III Affidavit (the "Hardie Affidavit"), the Monthly Fee and Transaction Fee in the Engagement Letter are consistent with both the rates generally charged by Houlihan, and those within the relevant market as a whole. Accordingly, the MAGI Committee believes that the compensation, including the indemnification provisions, as set forth in the Engagement Letter, is fair and reasonable and should be approved under section 328 of the Bankruptcy Code.

**Houlihan's Application Should Be Approved
Pursuant to Section 328(a) of the Bankruptcy Code**

20. Section 328 of the Bankruptcy Code provides, in relevant part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 . . . on any reasonable terms and conditions of employment, including on a retainer, or an hourly basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

21. At the outset, Bankruptcy Code Section 328(a) effected a significant departure from prior practice under the former Bankruptcy Act in which professionals were entitled to reasonable compensation determined solely on a quantum meruit basis. In rejecting what commentators have called the "spirit of economy" practice, and replacing it with one based upon "market rates," the drafters recognized the critical importance of insuring that the most capable professionals be drawn to increasingly complex bankruptcy engagements and that, where appropriate, flexible compensation fee arrangements be encouraged. *See In re Busy Beaver Bldg. Ctr., Inc.*, 19 F.3d 833, 852 (3d Cir. 1993) (noting that reasonableness of fees for professional in chapter 11 proceeding should be determined based upon "market approach"). Indeed, the flexible nature of Section 328 is perhaps best evidenced by the section's inclusion of a non-exclusive list of acceptable fee arrangements. As the court in *In re Niover Bagels, Inc.*, 214 B.R. 291 (Bankr. E.D.N.Y. 1997) aptly noted, "the flexibility written into [section 328(a)]

encourages bankruptcy judges to approve compensation agreements that reflect market conditions and to fashion arrangements suitable to the circumstances before it." *Id.* at 294.

22. As the Fifth Circuit Court of Appeals recognized in *In re National Gypsum Co.*, 123 F.3d 861 (5th Cir. 1997):

Prior to 1978, the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present §330 of the Bankruptcy Code, which provides that the court award to professional consultants reasonable compensation based on relevant factors of time and comparable costs, etc. Under present §328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

Id. at 862 (citations omitted); *see also In re Dividend Development Corp.*, 145 B.R. 651, 655 (Bankr. C.D. Cal. 1992) (section 328 contemplates that the court is to "make a determination as to the reasonableness of a fee arrangement at the beginning of the case"). Based upon these very considerations, upon a showing of reasonableness, investment bankers such as Houlihan are ordinarily retained pursuant to Section 328(a) of the Bankruptcy Code.

23. Based upon these standards, there is no question but that the compensation structure agreed to in these cases – a Monthly Fee and a Transaction Fee – is reasonable. At the outset, the compensation structure recognizes the extensive work that was, and will continue to be, required of Houlihan during this complex engagement. Moreover, as noted in the Hardie Affidavit, the structure embodied in the Engagement Letter (both the Monthly Fee and the Transaction Fee) is comparable to those fees charged by Houlihan in similar engagements. Thus,

Houlihan has established that its compensation in these cases is "reasonable." Houlihan and the MAGI Committee have negotiated a compensation arrangement that was reflective not only of market conditions, but of the considerable efforts that will be required of Houlihan in this engagement.

Disclosure Concerning Conflicts of Interest

24. To the best of the MAGI Committee's knowledge, and except as disclosed herein and in the Hardie Affidavit, attached hereto as Exhibit B, Houlihan has not otherwise represented and has no relationship with (i) the Debtors; (ii) the Debtors' fifty largest creditors (on a consolidated basis) as filed with the Petition; (iii) the Debtors' principals; (iv) other parties-in-interest, or their respective attorneys and accountants; and (v) the Office of the United States Trustee or any person employed in the Office of the United States Trustee, in any matters relating to the Debtors or their estates. Houlihan may in the future represent, in matters unrelated to these chapter 11 cases, parties who are or who may become creditors in these chapter 11 cases.

25. As set forth in the Hardie Affidavit, the principals and professionals of Houlihan (i) do not have any connection with the Debtors, their creditors, or any party in interest, or their respective attorneys; (b) do not hold or represent an interest adverse to the estates; and (c) are "disinterested persons" within the meaning of the Bankruptcy Code section 101(14). Accordingly, the MAGI Committee believes that Houlihan's employment is appropriate and in the best interests of the MAGI Committee and MAGI's estate.

26. As described previously herein and in the Hardie Affidavit, prior to the Petition Date and up until the formation of the MAGI Committee, Houlihan represented the interests of the Informal Committee in connection with these matters. The members of the Informal

Committee consisted of AIG Global Investment Corp., Elliott Associates, L.P., DKR Saturn Management, LP, Mackay Shields, LLC, California Public Employees' Retirement System (CALPers), PPM America, Inc., Wexford Capital LLC, Contrarian Capital Advisors and Perry Capital. Prior to the Petition Date, the Debtors had agreed to compensate Houlihan for its fees and reimburse Houlihan for the expenses it incurred in representing the Informal Committee. In connection with this representation, Houlihan received payment in full in the amount of \$525,000 from the Debtors for the work that Houlihan had performed for the Informal Committee during the period from March, 2003 through July 24, 2003. As a condition to the acceptance of employment as financial advisor for the MAGI Committee, Houlihan will cease to represent any individual bondholder or creditor of any of the Debtors. Accordingly, Houlihan is not a prepetition creditor in these cases.

27. As set forth in the Hardie Affidavit, counsel to the MAGI Committee, Cadwalader, Wickersham & Taft LLP, is one of several law firms which are engaged as special counsel to Enron Corp. and its affiliated debtors in their chapter 11 bankruptcy proceedings. Houlihan provides financial advisory services to the official committee of unsecured creditors of Enron Corp. As explained in the Hardie Affidavit, this representation will not impact or conflict with or be adverse to the rights of the Debtors in this proceeding and will not compromise Houlihan's ability to continue providing services to the MAGI Committee.

Fee Applications and Interim Payments

28. Pursuant to section 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and Orders of this Court, including the *Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members* entered by the Court on August 1, 2003, and the *Memorandum Order Regarding Compensation*

of Professionals entered by the Court on August 27, 2003, Houlihan will apply to the Court for the interim and final allowance of compensation and reimbursement of expenses. Because Houlihan will be compensated on a fixed monthly fee, together with certain transaction fees, Houlihan requests that it should not be required to submit detailed time records to the Court in connection with its fee applications.

Notice

29. Notice of this Application has been given to the Debtors, the United States Trustee for the Northern District of Texas, the creditors holding the fifty (50) largest unsecured claims against the Debtors' and those parties that have filed requests for notices in these cases pursuant to Bankruptcy Rule 2002. Based upon the facts and circumstances of these cases, the MAGI Committee submits that no further notice need be given.

Conclusion

WHEREFORE, the MAGI Committee respectfully requests this Court (i) enter an order, in the form annexed hereto as Exhibit C, authorizing the MAGI Committee to retain and employ Houlihan upon the terms set forth herein, and (ii) grant such other and further relief as the Court may deem just and proper.

Dated: December 12, 2003

Respectfully submitted,

The Official Committee of Unsecured Creditors of
Mirant Americas Generation, LLC

By: /s/ Charles Greer
Charles Greer, Co-Chairperson

By: /s/ Dan Gropper
Dan Gropper, Co-Chairperson

AND

Cox & Smith Incorporated
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By: /s/ Thomas Rice
Deborah D. Williamson
Texas Bar No. 21617500
Thomas Rice
Texas Bar No. 24025613

AND

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Facsimile: (212) 504-6666

**ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS
OF MIRANT AMERICAS GENERATION, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2003, a true and correct copy of the *Application for Approval of the Employment and Retention of Houlihan Lokey Howard & Zukin, Effective as of July 25, 2003, as Financial Advisor for the Official committee of Unsecured Creditors of Mirant Americas Generation, LLC*, was sent via electronic mail to the parties listed below and via First Class U.S. Mail to the parties listed on the Official Shortened Service List November 24, 2003.

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/s/ Thomas Rice
Thomas Rice



HOULIHAN LOKEY HOWARD & ZUKIN

FINANCIAL ADVISORS

www.hlh.com

July 25, 2003

To: The Official Committee of Unsecured Creditors (the "Committee") of Mirant Americas Generation, LCC (together with its subsidiaries, the "Company" or the "Debtors").

Committee Chairs

Elliot Associates, L.P.
712 Fifth Avenue, 36th Floor
New York, NY 10019

Attn: Dan Gropper

Committee Counsel

Cadwalader, Wickersham & Taft, LLP
100 Maiden Lane
New York, NY 10036

Attn: Bruce Zirinsky

The Royal Bank of Scotland
101 Park Avenue
New York, NY 10175

Attn: Charles Greer

Gentleman:

This letter confirms the terms of the agreement between Houlihan Lokey Howard & Zukin Financial Advisors ("Houlihan Lokey" or the "Firm"), and the Committee concerning the Committee's engagement of Houlihan Lokey to provide financial advisory and related services to the Committee in connection with the Debtors' pending Chapter 11 cases (the "Cases").

1. **Scope of Engagement.** In connection with Houlihan Lokey's representation of the Committee it will carry-out and advise the Committee on the following:

- (a) Evaluating the assets and liabilities of Mirant Corporation and its subsidiaries other than the Debtors (the "Parent") and the Debtors;
- (b) Analyzing and reviewing the financial and operating statements of the Parent and the Debtors;
- (c) Analyzing the business plans and forecasts of the Parent and the Debtors;
- (d) Evaluating all aspects of debtor-in-possession financing, cash collateral usage and any exit financing in connection with any plan of reorganization and any budgets or forecasts relating thereto;

- (e) Providing such specific valuation or other financial analyses as the Committee may require under the circumstances;
- (f) Assisting Committee Counsel with the claim resolution process and distributions relating thereto;
- (g) Assessing the financial issues and options concerning (a) the sale of any assets of the Debtors, either in whole or in part, (b) the Debtors' plan(s) of reorganization or any other plans(s) of reorganization (the "Plan"), and (c) any plans of reorganization filed by, or with respect to, the Parent and assisting the Committee in negotiating the terms of any of the foregoing;
- (h) Preparation, analysis and explanation of the Plan to various Debtor constituencies;
- (i) Providing testimony in court on behalf of the Committee; and
- (j) Providing litigation support to Cadwalader, Wickersham & Taft, LLP ("Committee Counsel") in any contested matter before the Court (as defined below).

2. **Committee Engagement.** Neither the Committee, the members thereof, their constituents, nor any of their advisors or professionals (including, but not limited to, Committee Counsel), shall be liable for the fees, expenses or other amounts payable to Houlihan Lokey hereunder whether arising under the indemnification provisions hereunder or otherwise. Notwithstanding such arrangement, Houlihan Lokey's duties hereunder run solely to the Committee, and Houlihan Lokey is not authorized to be, and will not purport to be, acting on behalf of, or at the direction of the Parent or the Company for any purpose unless otherwise agreed to by the Committee and the Parent or the Company. All financial advice, written or oral, provided by Houlihan Lokey to the Committee pursuant to this Agreement is intended solely for the use and benefit of the Committee and shall be maintained as confidential information by Houlihan Lokey, and the Committee agrees that such advice may not be disclosed publicly or made available to third-parties without the prior consent of Houlihan Lokey, which consent shall not be unreasonably withheld. At the direction of Committee Counsel, certain communication and correspondence between Houlihan Lokey and the Committee, and work product and analyses prepared by Houlihan Lokey for the Committee in connection with this matter, will be considered in preparation for litigation, and accordingly, will be subject to the attorney-client privilege and work-product privilege between Committee Counsel, Houlihan Lokey and the Committee.

3. **Advisor.** Houlihan Lokey's services are limited to those specifically provided in this Agreement or subsequently agreed-upon by the parties hereto, and Houlihan Lokey shall have no obligation or responsibility for any other services. Houlihan Lokey is providing its services

hereunder as an independent contractor, and the parties agree that this Agreement does not create an agency or fiduciary relationship between Houlihan Lokey and the parties to this Agreement.

4. **Consideration.** Subject to the approval by the United States Bankruptcy Court (the "Court") presiding over the Debtors' cases in accordance with the order approving Houlihan Lokey's retention, as consideration for the services being provided by Houlihan Lokey to assist the Committee, the Company agrees to pay Houlihan Lokey a monthly fee in advance of \$175,000 per month for the first 24 months and \$125,000 per month thereafter (the "Monthly Fee") beginning on July 25, 2003. Payment shall be made to Houlihan Lokey at the address above no later than the 25th of each month, Attention: P. Eric Siegert. In addition, the Company agrees to promptly reimburse Houlihan Lokey, upon request from time to time, for all out-of-pocket expenses reasonably incurred by Houlihan Lokey before termination (or related to Houlihan Lokey's pre-termination services) in connection with the matters contemplated by this Agreement. Out-of-pocket expenses shall include, but are not limited to, all reasonable travel expenses, duplicating charges, on-line service charges, messenger services, delivery services, meeting services, long distance telephone and facsimile charges incurred by Houlihan Lokey.

In addition, upon the consummation of the Transaction (as defined below), the Company agrees that Houlihan Lokey shall be paid an additional fee (a "Transaction Fee") based on the Aggregate Gross Consideration ("AGC") received by the unsecured creditors of the Debtors. The Transaction Fee shall be determined as follows:⁽¹⁾

- | | |
|--|---|
| • For cumulative AGC up to \$1.960 billion | \$2,000,000 flat fee (the "Base Fee") |
| • For cumulative AGC above \$1.960 billion | 0.50% of such incremental AGC (the "Incentive Fee") |

The Base Fee portion of the Transaction Fee shall be paid in cash and the Incentive Fee portion of the Transaction Fee shall be paid in the form of consideration received by the unsecured

¹ AGC shall include all distributions made pursuant to a Transaction, including, but not limited to, all funded debt obligations of the Company, whether newly issued or reinstated pursuant to the Transaction. AGC shall not include any setoffs, administrative expense claims or the repayment of any debtor-in-possession financing facilities. Any equity or debt securities will be valued at the time of the closing of the Transaction (without regard to any restrictions on transferability) as follows: (i) if such securities are traded on a stock exchange, the securities will be valued at the average last sale or closing price for the ten trading days that begins 60 days following consummation of the Transaction; (ii) if such securities are traded primarily in over-the-counter transactions, the securities will be valued at the mean of the closing bid and asked quotations similarly averaged over a ten trading day period that begins 60 days following the closing of the Transaction; and (iii) if neither clause (i) or (ii) are applicable, Houlihan Lokey will prepare a valuation of the securities, and Houlihan Lokey and the Committee will negotiate in good faith to agree on a fair valuation thereof for the purposes of calculating a Transaction Fee, which may take into account the value of such securities as disclosed in a court approved disclosure statement in support of a plan that is confirmed. Any other property distributed pursuant to the Transaction will be valued as follows: Houlihan Lokey will prepare a valuation of such property and, together with the Committee, will seek to agree on a mutually acceptable fair valuation of such property for the purposes of calculating the Transaction Fee, which may take into account the value of such property as disclosed in a court approved disclosure statement in support of a plan that is confirmed. In the event that Houlihan Lokey and the Committee are unable to agree on the value of any property distributed in connection with a Transaction for purposes of calculating AGC, such value shall be determined by the Court.

creditors of the Debtors pursuant to the Transaction. The Transaction Fee shall be paid upon the consummation of a Transaction either (y) during the term of this Agreement or (z) within nine months of the effective date of termination of this Agreement (such nine-month period being referred to herein as the "Tail Period."). The Company shall be entitled to a credit against any Transaction Fee payable hereunder (with such credit being applied first to the Incentive Fee, if any, and then to the Base Fee) in an amount equal to 50% of all Monthly Fees paid after the twelfth month following July 25, 2003.

For purposes of calculating the Transaction Fee, the Aggregate Gross Consideration shall be the cumulative total proceeds and other consideration paid to or received by, or to be paid or received by, the unsecured creditors of the Debtors in connection with a Transaction.

As used herein, the term "Transaction" shall include (i) the sale, transfer or other disposition of all or substantially all of the assets or operations of the Debtors (including by one or a series of transactions, provided that in such case the "closing" of a Transaction as used herein with respect to and regardless of whether such transaction takes the form of a sale of assets or the sale of stock of the Debtors or their subsidiaries, the payment of the Transaction Fee shall mean the closing of the final Transaction in such series) and the effectiveness of a Chapter 11 plan providing for the distribution of the proceeds of such Transaction(s) or (ii) the effectiveness of any other Chapter 11 plan of reorganization or liquidation, the terms of any such Transaction described in (i) or (ii) above being approved by the Committee (by a majority vote).

The parties acknowledge that a substantial professional commitment of time and effort will be required by Houlihan Lokey and its professionals hereunder, and that such commitment may foreclose other opportunities for the Firm. Moreover, the actual time and commitment required for the engagement may vary substantially from week to week or month to month, creating "peak load" issues for the Firm. Given the numerous issues which may arise in these cases, the Firm's commitment to the variable level of time and effort necessary to address such issues, the expertise and capabilities of Houlihan Lokey that will be required in this engagement, and the market rate for Houlihan Lokey's services of this nature, the parties agree that the fee arrangement hereunder, pursuant to 11 U.S.C. Section 328(a), is reasonable, fairly compensates Houlihan Lokey and provides certainty to the Debtors and the Committee.

5. **Bankruptcy Court:** The Committee shall use its reasonable best efforts to obtain prompt authorization of the retention of Houlihan Lokey pursuant to section 328(a) of the Bankruptcy Code on the terms and provisions in this Agreement. The employment application and the court order approving the Agreement and authorizing the retention shall be reasonably acceptable to Houlihan Lokey.

6. **Termination.** This Agreement is terminable upon thirty (30) days written notice by the Committee or Houlihan Lokey, provided, however, that (a) if the Agreement is terminated during the first three (3) months of the engagement, Houlihan Lokey shall immediately be paid the unpaid portion of those Monthly Fees for the first three (3) months of the engagement, and (b) if the Agreement is terminated thereafter, Houlihan Lokey shall be paid all previously unpaid Monthly Fees and the pro-rata portion of the Monthly Fee for the month in which the Agreement

is terminated. The termination of this Agreement will not affect (a) the indemnification, reimbursement, contribution and other obligations of Parent and the Company set forth in this Agreement and (b) Houlihan Lokey's right to receive (i) any and all fees and expenses accrued as of the effective date of termination of this Agreement, and (ii) those fees earned for a Transaction that is consummated during the Tail Period as described in this Agreement.

7. **Information.** The Parent and the Company acknowledge and agree that, in rendering its services hereunder, Houlihan Lokey will be using and relying on information made available to it by the Company and their advisors (the "Information") (and information available from public sources and other sources deemed reliable by Houlihan Lokey) without independent verification thereof by Houlihan Lokey or independent appraisal by Houlihan Lokey. Houlihan Lokey does not assume responsibility for the accuracy or completeness of the Information or any other information regarding the Parent and the Company.

8. **CHOICE OF LAW; JURISDICTION.** THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN NEW YORK, NEW YORK. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

9. **Counterparts.** For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

10. **Severability.** If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

11. **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understanding relating to the matters provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each party.

12. **Indemnification.** As a material part of the consideration for Houlihan Lokey to furnish its services under this Agreement, the Debtors shall indemnify Houlihan Lokey shall hold harmless Houlihan Lokey and its affiliates, and their respective past, present and future directors, officers, shareholders, employees, agents and controlling persons within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively, the "Indemnified Parties"), to the fullest extent lawful, from and against any and all losses, claims, damages or liabilities (or actions in respect thereof),

joint or several, arising out of or related to the Agreement, any actions taken or omitted to be taken by an Indemnified Party in connection with Houlihan Lokey's provision of services to the Committee, or any Transaction (as defined herein) or proposed Transaction contemplated thereby. In addition, the Debtors shall reimburse the Indemnified Parties for any legal or other expenses reasonably incurred by them in respect thereof at the time such expenses are incurred; provided, however, there shall be no liability under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined to have resulted primarily from the willful misconduct, gross negligence, bad faith or self-dealing of any Indemnified Party.

If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold it harmless, the Debtors shall contribute to the amount paid or payable by the Indemnified Party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by the Committee and the Debtors, on the one hand, and Houlihan Lokey, on the other hand, in connection with a Transaction and/or the services rendered by Houlihan Lokey. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or otherwise, then the Debtors shall contribute to such amount paid or payable by any Indemnified Party in such proportion as is appropriate to reflect not only such relative benefits, but also the relative fault of the Committee and the Debtors, on the one hand, and Houlihan Lokey, on the other hand, in connection therewith, as well as any other relevant equitable considerations. Notwithstanding the foregoing, the aggregate contribution of all Indemnified Parties to any such losses, claims, damages, liabilities and expenses shall not exceed the amount of fees actually received by Houlihan Lokey pursuant to the Agreement.

The Debtors shall not effect any settlement or release from liability in connection with any matter for which an Indemnified Party would be entitled to indemnification from the Debtors unless, such settlement or release contains a release of the Indemnified Parties reasonably satisfactory in form and substance to Houlihan Lokey. The Debtors shall not be required to indemnify any Indemnified Party for any amount paid or payable by such party in the settlement or compromise of any claim or action without the prior written consent of the Debtors.

Prior to entering into any agreement or arrangement with respect to, or effecting, any (i) merger, statutory exchange or other business combination or proposed sale, exchange, dividend or other distribution or liquidation of all or a significant proportion of its assets, or (ii) significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Debtors set forth in this Agreement, the Debtors will notify Houlihan Lokey in writing thereof (if not previously so notified) and, if requested by Houlihan Lokey, shall arrange in connection therewith alternative means of providing for the obligations of the Debtors set forth herein, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions reasonably satisfactory to Houlihan Lokey.

The Debtors further agree that neither Houlihan Lokey nor any other Indemnified Party shall have any liability, regardless of the legal theory advanced, to the Committee, the Debtors or any

other person or entity (including the Parent's equity holders and the Parent or the Company's creditors) related to or arising out of Houlihan Lokey's engagement, except for any liability for losses, claims, damages, liabilities or expenses incurred by the Parent and/or the Company which are finally judicially determined to have resulted primarily from the willful misconduct, gross negligence, bad faith or self-dealing of any Indemnified Party. The indemnity, reimbursement, contribution and other obligations and agreements of the Debtors set forth herein shall apply to any modifications of this Agreement, shall be in addition to any liability which these parties may otherwise have, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of these parties and each Indemnified Party. The foregoing indemnification provisions shall survive the consummation of any Transaction and/or any termination of the relationship established by this Agreement.

The obligations of Houlihan Lokey are solely corporate obligations, and no officer, director, employee, agent, shareholder or controlling person of Houlihan Lokey shall be subjected to any personal liability whatsoever to any person, nor will any such claim be asserted by or on behalf of any other party to this Agreement or any person relying on the services provided hereunder. The Debtors' obligations with respect to any and all payments owing to Houlihan Lokey and the indemnification, reimbursement, contribution and other similar obligations of the Debtors' under this Agreement shall survive any termination of this Agreement.

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF MIRANT AMERICAS GENERATION, LLC**

/s/ Dan Gropper

By: Dan Gropper
Co-Chairperson of the Official Committee of
Unsecured Creditors of Mirant Americas Generation, LLC

/s/ Charles Greer

By: Charles Greer
Co-Chairperson of the Official Committee of
Unsecured Creditors of Mirant Americas Generation, LLC

HOULIHAN LOKEY HOWARD & ZUKIN FINANCIAL ADVISORS

/s/ P. Eric Siegert

By: P. Eric Siegert
Managing Director

Bruce R. Zirinsky
Gregory M. Petrick
Cadwalader, Wickersham & Taft LLP
100 Maiden Lane
New York, New York 10038
Telephone: (212) 504-6000
Facsimile: (212) 504-6666

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San Antonio, Texas 78205
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Facsimile: (210) 226-8395

**ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
MIRANT AMERICAS GENERATION, LLC**

**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 |) | |
| |) | Hearing Date and Time: To Be Set |

**AFFIDAVIT OF WILLIAM H. HARDIE, III IN SUPPORT OF THE
APPLICATION FOR THE EMPLOYMENT AND RETENTION OF HOULIHAN
LOKEY HOWARD & ZUKIN, EFFECTIVE AS OF JULY 25, 2003 AS
FINANCIAL ADVISOR FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF MIRANT AMERICAS GENERATION, LLC**

I, WILLIAM H. HARDIE, III, being duly sworn, deposes and says:

1. I am a Director in the professional services firm of Houlihan Lokey Howard & Zukin (“Houlihan”). I am duly authorized to make this Affidavit on behalf of Houlihan in support of the Application of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (“MAGI”) (the “MAGI Committee”) for an order authorizing the employment and retention of Houlihan as financial advisors to the MAGI Committee (the “Application”). The facts set forth in this Affidavit are personally known to me, and if called as a witness, I could and would testify thereto.

2. Houlihan is a nationally recognized investment banking and financial advisory firm, with 9 offices worldwide and more than 275 professionals. Houlihan's financial restructuring group, which has more than 75 professionals, is one of the leading advisors of and investment banks to debtors, bondholder groups, secured and unsecured creditors, acquirers and other parties in interest involved in financially troubled companies, both in and outside of bankruptcy. In this role, Houlihan has been, and is involved in, some of the largest restructuring matters in the United States including serving as the financial advisor to the debtors in the chapter 11 proceedings of *XO Communications, Inc.*, *NII Holdings, Inc. (Nextel International)*, *Covad Communications, Inc.*, *Worldtex, Inc.*, *Dairy Mart Convenience Stores, Inc.*, *Stage Stores, Inc.*, and *AmeriServe Food Distribution, Inc.* Houlihan has also served as the financial advisor to the official creditors' committees in the chapter 11 proceedings of *Enron Corporation*, *NRG Energy Inc.*, *PG&E NEG, Inc.*, *Conseco, Inc.*, *Worldcom, Inc.*, *Armstrong Holdings, Inc.*, *Pillowtex Corp.*, *Williams Communications Group, Inc.*, *Laidlaw, Inc.*, *AMF Worldwide, Inc.*, and *The Loewen Group, Inc.*, to name just a few of its engagements.

3. Houlihan has agreed to provide financial advisory services to the MAGI Committee pursuant to the terms of the Engagement Letter between Houlihan and the MAGI Committee, effective as of July 25, 2003 (the "Engagement Letter"). A copy of the Engagement Letter is attached as Exhibit A to the Application. No agreement exists to share with any person or firm any compensation received by Houlihan for its services to the MAGI Committee.

4. The terms and conditions of the Engagement Letter were heavily negotiated by the MAGI Committee, its legal counsel and Houlihan, and reflects the parties' mutual agreement as to the substantial efforts that will be required in this engagement.

5. As is customary in similar engagements, both in and outside of bankruptcy, the Engagement Letter provides for Houlihan to receive a Monthly Fee and a Transaction Fee, as defined in the Engagement Letter. The terms of this engagement are entirely consistent with and similar to the terms agreed to by Houlihan in similar restructuring engagements. Specifically, as set forth in the Application, the terms of Houlihan's recent energy creditors' committee engagements, retention are summarized below:

(i) *NRG Energy Inc.*: With estimated unsecured creditors claims of \$5.45 billion, Houlihan is receiving \$200,000 in monthly fees, and a transaction fee reflecting 0.4% of noteholder recoveries;

(ii) *PG&E NEG, Inc.*: With estimated unsecured creditors claims at \$3.5 billion, Houlihan is receiving \$175,000 monthly fee and a base transaction fee of at least \$750,000 and a percentage of recoveries for noteholders over 30%; and

(iii) *Enron Corp.*: With estimated unsecured claims of \$60 billion, Houlihan is receiving a \$350,000 monthly fee and a \$9.5 million flat transaction fee.

6. Further, the terms of the Engagement Letter are comparable to Houlihan's other recent creditors' committee engagements, which are summarized below:

(i) *Conseco*: \$175,000 monthly fee and a transaction fee of .5% of unsecured noteholder recovery;

(ii) *Worldcom, Inc.*: \$350,000 monthly fee and a transaction fee calculated as a percentage of the enterprise value of the reorganized debtors;

(iii) *AT&T Canada*: \$175,000 monthly fee and a transaction fee of .75% of unsecured noteholder recovery; and

(iv) *Magellan Health Services, Inc.*: \$150,000 monthly fee and a transaction fee of .75% of unsecured noteholder recovery.

7. While the terms of the Engagement Letter, as attached to the Application as Exhibit A, also specifically provide for the indemnification of Houlihan under certain circumstances, and although the inclusion of such indemnification provisions are standard in Houlihan's retention agreements in both bankruptcy and non-bankruptcy cases, given that this Court's Order Restricting Pursuit of Certain Persons, dated August 5, 2003 (as the same has subsequently been extended or amended, including by the Court's September 29, 2003 Order Extending Order Restricting Pursuit of Certain Persons, the "Protected Persons Order"), provides reasonable protections to Houlihan that accomplish the legitimate purposes that otherwise would be accomplished through the Indemnification provisions that are provided for in Paragraph 12 of the Engagement Letter (the "Indemnification Provisions"), Houlihan is not seeking the approval of the Indemnification Provisions as set forth in the Engagement Letter at this time. In the absence of the protections provided for in the Protected Persons Order, Houlihan would have required the approval of the Indemnification Provisions as a condition to Houlihan's agreement to provide services to the MAGI Committee. As set forth in the Application, Houlihan reserves its rights to renew its request for the Court's approval of the Indemnification Provisions (for losses, claims, damages and/or expenses arising from and after July 25, 2003) if the Protected Persons Order is terminated, violated, expires or otherwise does not provide the protections it is expected to provide.

8. Further, as set forth in the Application, paragraph 4 of the Engagement Letter is modified to replace the definition of Tail Period (as defined in the Engagement Letter) to mean a two month period or such later time as is found reasonable by the Court, following the termination of the Engagement Letter, in lieu of the nine month period specified in the Engagement Letter.

9. Houlihan is a “disinterested person” as that term is defined in Section 101(14) of the Bankruptcy Code in that Houlihan is not a creditor, equity security holder or insider of the Debtors and is not and was not an investment banker for any outstanding security of the Debtors.

10. To the best of my knowledge, information and belief formed after reasonable inquiry, other than in connection with these cases and as set forth below, neither I, nor Houlihan and its affiliates, nor any of our professionals or employees: (i) have any connection with the Debtors, their creditors, or any other party with an actual or potential interest in these chapter 11 cases, the Debtors’ respective attorneys, accountants or other professionals, the United States Trustee or the United States Bankruptcy Court or (ii) pursuant to 11 U.S.C. §1103(b), represent any other entity having an adverse interest in connection with these cases. Specifically:

- a. Houlihan is not, and has not been employed by the Debtors or any other entity in matters related to these Chapter 11 cases;
- b. From time to time, Houlihan has provided services, and likely will continue to provide services, to certain creditors of the Debtors and various other parties adverse to the Debtors in matters unrelated to these Chapter 11 cases. As described below, however, Houlihan has undertaken a detailed search to determine, and to disclose, whether it has been employed by any significant creditors (including banks), equity security holders, insiders or other parties-in-interest in such unrelated matters;
- c. Houlihan provides services in connection with numerous cases, proceedings and transactions unrelated to these Chapter 11 cases, including representing debtors and creditors’ committees in Chapter 11 proceedings and in out-of-court restructurings. These unrelated matters involve numerous attorneys, professionals and creditors, some of whom are attorneys, professionals and creditors of the Debtors in these Chapter 11 cases;
- d. Houlihan personnel may have business associations with certain creditors of the Debtors unrelated to these Chapter 11 cases. In addition, in the ordinary course of its business, Houlihan will work with and engage counsel or other professionals in unrelated matters who now represent, or in the future may represent, creditors or other interested parties in these Chapter 11 cases;

- e. Houlihan has thousands of clients, past and present, who are located throughout the United States, Asia and Europe, in a variety of industries, including certain parties who are identified as creditors of the Debtors. As far as I have been able to determine, however, Houlihan has not advised any of these parties, or any other party-in-interest in connection with these Chapter 11 cases; and
- f. Houlihan is affiliated with two investment funds, Sunrise Capital Partners, LP and Century Park Capital Partners, LP. While neither of these funds have any investments in the Debtors, it is possible that they may have made, or currently hold investments in certain of the creditors in these Chapter 11 cases. Houlihan will continue its review of any potential investments in such creditors, and will supplement this Affidavit if necessary.

11. To determine its relationship with the parties in interest in these cases, Houlihan researched its client databases to determine whether it has any relationships with the following entities (collectively, the “Interested Parties”), that were identified to Houlihan on a list supplied by Cadwalader, Wickersham & Taft LLP, counsel to the MAGI Committee.

- a. the Debtors and their non-debtor affiliates;
- b. the directors and officers of the Debtors;
- c. the 50 largest creditors of the Debtors on a consolidated basis;
- d. the attorneys and other professionals of the Debtors;
- e. the prepetition lenders of the Debtors; and
- f. other potentially adverse parties.

To the extent that Houlihan’s research of its relationships with the Interested Parties indicated that Houlihan has provided or is providing services, or has any relationship to any of these entities in matters unrelated to these chapter 11 cases, Houlihan has so indicated on the attached Schedule 1.

12. As described in the Application, in March, 2003, Houlihan was retained by holders of Senior Notes issued under an indenture, dated as of May 1, 2001, by and between Mirant Americas Generation, Inc., (now known as Mirant Americas Generation LLC) and Wells Fargo Minnesota, NA, as successor indenture trustee, as supplemented by the First through Fifth Supplemental Indentures, including certain members of the MAGI Committee (collectively, the “Informal Committee”), to represent the Informal Committee with respect to a possible restructuring of the Debtors’ obligations. Houlihan continued to represent the interests of the Informal Committee after the filing of these chapter 11 cases up until the date the MAGI Committee was appointed. The members of the Informal Committee consisted of AIG Global Investment Corp., Elliott Associates, L.P., DKR Saturn Management, LP, Mackay Shields, LLC, California Public Employees’ Retirement System (CALPers), PPM America, Inc., Wexford Capital LLC, Contrarian Capital Advisors and Perry Capital. Prior to the Petition Date, the Debtors had agreed to compensate Houlihan for its fees and reimburse it for the expenses it incurred in representing the Informal Committee. In connection with this representation, Houlihan received payment in full in the amount of \$525,000 from the Debtors for the work that Houlihan had performed for the Informal Committee during the period from March, 2003 through July 24, 2003. Accordingly, Houlihan is not a prepetition creditor in these cases. As a condition to the acceptance of employment as financial advisor for the MAGI Committee, Houlihan will cease to represent any individual bondholder or creditor of any of the Debtors.

13. Cadwalader, Wickersham & Taft LLP, counsel to the MAGI Committee, is one of several law firms which are engaged as special counsel to Enron Corp. and its affiliate debtors in its chapter 11 bankruptcy proceeding. Houlihan provides financial advisory services to the official committee of unsecured creditors of Enron Corp. This representation will not impact or

conflict with or be adverse to the rights of the Debtors in this proceeding and will not compromise Houlihan's ability to continue providing services to the MAGI Committee. Therefore, I believe that Houlihan is a disinterested person as defined in section 101(14) of the Bankruptcy Code.

14. Accordingly, to the best of my knowledge, information and belief, Houlihan is disinterested and holds no materially adverse interest as to the matters upon which Houlihan is to be retained. To the extent I discover any facts bearing on the matters described herein during the period of Houlihan's retention, I will supplement the information contained in this Affidavit.

15. Houlihan will apply to the Court for payment of compensation and reimbursement of expenses in accordance with the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members entered by the Court on August 1, 2003, and the Memorandum Order Regarding Compensation of Professionals entered by the Court on August 27, 2003. Because Houlihan will be compensated on a fixed monthly basis together with certain transaction fees, and Houlihan does not bill for its restructuring services on an hourly basis, Houlihan requests in the Application that it should not be required to maintain or provide detailed time records in connection with any of its fee applications.

/s/ William H. Hardie, III
William H. Hardie, III
Director

Sworn to before me this
4th day of December, 2003

/s/ Anita C. Morell
Anita C. Morell
Notary Public, State of New York
No. 01M0502359
Qualified in Nassau County
Commission Expires 02/07/06

Schedule 1

Parties to Whom Houlihan Lokey Has Provided Unrelated Advisory Services

| <u>Party</u> | <u>Services Provided</u> |
|--------------------------|--------------------------|
| Citibank, N.A. | Creditor Advisory |
| JP Morgan Chase | Creditor Advisory |
| Royal Bank of Scotland | Creditor Advisory |
| CALPERS | Creditor Advisory |
| Elliott Associates | Creditor Advisory |
| MacKay Shields | Creditor Advisory |
| Lehman Brothers | Creditor Advisory |
| Wells Fargo Bank | Creditor Advisory |
| HSBC Bank | Creditor Advisory |
| Appaloosa Management | Creditor Advisory |
| The Bank of New York | Creditor Advisory |
| Goldman Sachs | Creditor Advisory |
| Deutsche Bank AG | Creditor Advisory |
| Barclays Bank plc | Creditor Advisory |
| Credit Lyonnais Americas | Creditor Advisory |
| Westdeutsche Landesbank | Creditor Advisory |

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

| | | |
|--|---|---------------------------------|
| In re: |) | Chapter 11 |
| MIRANT CORPORATION, <u>et al.</u> |) | Case No. 03-46590-DML-11 |
| Debtors. |) | Jointly Administered |

**ORDER PURSUANT TO 11 U.S.C. §§ 328(a) AND 1103(a) AND
FED. R. BANKR. P. 2014 AUTHORIZING THE EMPLOYMENT AND RETENTION
OF HOULIHAN LOKEY HOWARD & ZUKIN AS FINANCIAL ADVISORS
AND INVESTMENT BANKERS FOR THE OFFICIAL COMMITTEE OF CREDITORS
OF MIRANT AMERICAS GENERATION, LLC**

Upon consideration of the Application dated December 12, 2003 (the "Application"), filed by the Official Committee of Creditors of Mirant Americas Generation, LLC, et al. (the "MAGI Committee"), seeking an order authorizing the retention by the MAGI Committee of Houlihan Lokey Howard & Zukin ("Houlihan") as financial advisors and investment bankers; and upon the engagement letter dated as of July 25, 2003 between the MAGI Committee and Houlihan (the "Engagement Letter") and the Affidavit of William H. Hardie, III (the "Hardie Affidavit"), which were attached to the Application; and capitalized terms used and not otherwise defined herein having the meanings set forth in the Application and the Hardie Affidavit; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY FOUND THAT:

A. This Court has jurisdiction over these cases and over the Application pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the Application has been given in accordance with the statements made in the Application and the associated certificate of service, and no other or further notice is necessary.

C. Houlihan and each of its officers, directors and employees represent no interest adverse to the Debtors or to the Debtors' estates such that would disqualify Houlihan from representation of the MAGI Committee in these chapter 11 cases.

D. Houlihan and each of its officers, directors and employees is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required by section 327(a) of the Bankruptcy Code.

E. The retention of Houlihan as the MAGI Committee's financial advisor and investment banker, on the terms set forth in the Engagement Letter (as modified by this Order), is in the best interests of the MAGI Committee and the persons whose interest the MAGI Committee represents.

E. The Monthly Fee of \$175,000 per month for the first 24 months of the engagement and the \$125,000 per month thereafter provided for in Paragraph 4 of the Engagement Letter constitutes a "reasonable term and condition of employment" pursuant to section 328(a) of the Bankruptcy Code.

F. This Court's Order Restricting Pursuit of Certain Persons, dated August 5, 2003 (as the same has subsequently been extended or amended, including by the Court's September 29, 2003 Order Extending Order Restricting Pursuit of Certain Persons, the "Protected Persons Order"), which is made applicable to Houlihan by the terms of this Order, provides reasonable protections to Houlihan that accomplish the legitimate purposes that otherwise would be accomplished through the Indemnification provisions that are provided for in Paragraph 12 of the Engagement Letter (the "Indemnification Provisions"), and make it unnecessary for this Court to consider or approve the Indemnification Provisions.

G. In agreeing to act as the MAGI Committee's financial advisor and investment banker on the terms set forth in the Engagement Letter and herein, Houlihan is relying on the protections afforded by the Protected Persons Order. In the absence of those protections, Houlihan would have required the approval of the Indemnification Provisions as a condition to Houlihan's agreement to provide services to the MAGI Committee.

IT IS THEREFORE ORDERED THAT:

1. The MAGI Committee's employment and retention of Houlihan as their financial advisor and investment banker to perform the services described in the Application, effective as of July 25, 2003 and on the terms and conditions set forth in the Application and the Engagement Letter, is approved, provided, however:

(a) The Indemnification Provisions are not approved and shall not be effective, for the reasons stated above (without prejudice to Houlihan's rights to renew its request for the Court's approval of the Indemnification Provisions (for the period from and after July 25, 2003) if the Protected Persons Order is terminated, expires or otherwise does not provide the protections it is expected to provide);

(b) Paragraph 4 of the Engagement Letter is hereby modified to replace the definition of Tail Period to mean a two month period or such later time as is found reasonable by the Court, following the termination of the Engagement Letter, in lieu of the nine month period specified in the Engagement Letter; and

(c) In the event that the Engagement Letter is terminated by the MAGI Committee without cause and without the payment of a Transaction Fee pursuant to the Engagement Letter, Houlihan shall have the right to seek additional compensation, in addition to its Monthly Fees, based on the time spent by Houlihan in its performance of

services for the MAGI Committee and the reasonable value of those services, upon application to and as determined by the Court.

2. The fees payable to Houlihan pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code, except that the Court may deny approval of the Transaction Fee payable under the Engagement Letter, to the extent that such fee is unreasonable when compared to the fees paid to, and results obtained by, other comparable investment banking and financial advisory firms in other Chapter 11 cases involving comparable services.

3. Notwithstanding the foregoing, Houlihan will file applications for allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in §§ 330 and 331 of the Bankruptcy Code, and in accordance with the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members entered by the Court on August 1, 2003, and the Memorandum Order Regarding Compensation of Professionals entered by the Court on August 27, 2003, any applicable Bankruptcy Rules, the applicable local bankruptcy rules, any other orders of this Court, and any procedures as may be fixed by order of this Court; provided, however, that the (a) approval of Houlihan's fees and expenses will be subject to the review standards set forth above and (b) Houlihan shall not be required to maintain time records for services rendered and shall not be required to provide or conform to any schedule of hourly rates.

5. Houlihan and its affiliates, directors, officers and employees hereby are deemed to be "Protected Professionals" who are entitled to the protections set forth in the Protected Persons Order.

6. The retention of Houlihan shall be subject to review for continuation at the Court's discretion.

7. To the extent that the Engagement Letter is inconsistent with the Application, the terms of the Engagement Letter shall govern, and to the extent that this Order is inconsistent with any prior order or the Engagement Letter, the terms of this Order shall govern.

8. This Order shall be effective from July 25, 2003 through and including the date of the Final Order on the Application.

9. This Order shall become a Final Order on the twenty-seventh (27th) day after entry of the Order without further notice or hearing unless an objection to the Order is timely filed with the Court and served on Houlihan on or before twenty-six (26) days after entry of the Order.

Dated: December _____, 2003

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE