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**ATTORNEYS FOR OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**

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

-----X  
In re: : Chapter 11  
: Case No. 03-46590 (DML)  
MIRANT CORPORATION, et al., :  
: (Jointly Administered)  
Debtors. :  
: :  
-----X

**APPLICATION FOR APPROVAL OF THE EMPLOYMENT AND  
RETENTION OF PETER J. SOLOMON COMPANY AS  
FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF  
EQUITY SECURITY HOLDERS EFFECTIVE AS OF SEPTEMBER 19, 2003**

The Official Committee of Equity Security Holders (the "Equity Committee") appointed in the chapter 11 cases of Mirant Corporation, et al. (collectively, the "Debtors"), by and through its co-chairs, hereby submits this application (the "Application") for the entry of an order authorizing the retention of Peter J. Solomon Company ("PJSC") as financial advisor to the Equity Committee effective as of September 19, 2003, pursuant to section 1103(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014(a) of the Federal Rules of

Bankruptcy Procedure (the "Bankruptcy Rules"). In support of the Application, the Equity Committee submits the affidavit of Anders Maxwell annexed hereto as Exhibit "A" (the "Maxwell Affidavit") and respectfully represents as follows:

### **BACKGROUND**

1. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003 (the "Petition Date"), the Debtors (collectively, the "Initial Debtors") filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.<sup>1</sup> On August 18, 2003, Mirant EcoElectric Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the "New Debtors") commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investment, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the "Wrightsville Debtors"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested or appointed in any of the Debtors' chapter 11 cases.

2. On September 18, 2003, the United States Trustee for the Northern District of Texas, pursuant to section 1102(a) of the Bankruptcy Code, appointed nine members to the Equity Committee to represent the interests of the Debtors' equity security holders. Thereafter, on September 19, 2003, the Equity Committee selected PJSC as the Equity Committee's financial advisor in these chapter 11 cases.

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<sup>1</sup> Concurrently, Mirant Corporation 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 Company's Creditors Arrangement Act.

### **JURISDICTION**

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

### **RELIEF REQUESTED**

4. Pursuant to this Application, the Equity Committee seeks authority to retain PJSC as its financial advisor regarding all matters related to the Debtors' chapter 11 cases.

5. On September 19, 2003, the Equity Committee selected PJSC because of its experience and knowledge in the field of financial restructuring in chapter 11 bankruptcy matters and its strong background and understanding of the merchant power energy sector. For these reasons, the Equity Committee believes that PJSC is well qualified to act as the Equity Committee's financial advisor in these cases. Since September 19, 2003, PJSC has provided advice, analysis and consulting services to the Equity Committee and its counsel, pending approval of employment.

### **PJSC'S ROLE**

6. Subject to the direction of the Equity Committee and further order of this Court, the professional services to be rendered by PJSC on behalf of the Equity Committee, as set forth in PJSC's retention letter annexed hereto as Exhibit "B" (the "PJSC Retention Letter"), will include, without limitation, the following:

- a. assisting the Equity Committee in assessing the operating and financial performance of and strategies for the Debtors;
- b. reviewing and analyzing the business plan and financial projections prepared by the Debtors, including but not limited to, testing assumptions and comparing those assumptions to historical and industry trends;
- c. advising the Equity Committee regarding evaluating DIP financing, cash collateral and exit financing;

- d. advising the Equity Committee in evaluating the valuation of the Debtors and their assets including valuations proposed by any interested party and providing expert testimony relating to valuation, if required;
- e. assisting the Equity Committee in evaluating the Debtors' assets and liabilities;
- f. assisting the Equity Committee in evaluating contracts and/or agreements that the Debtors are obligated under;
- g. advising the Equity Committee regarding restructuring of the Debtors' existing indebtedness;
- h. assisting the Equity Committee in developing, evaluating, structuring and negotiating the terms and conditions of any potential plans of reorganization (the 'Plan');
- i. assisting and/or participating in negotiations on behalf of the Equity Committee with the Debtors or any constituency involved in the Debtors' chapter 11 cases;
- j. preparing periodic reports as requested to the Equity Committee regarding the relevant operating, financial and other matters related to the Debtors' chapter 11 cases;
- k. estimating the value of any debt or securities, if any that may be issued in conjunction with a Plan including securities which may be issued to equity holders;
- l. providing testimony with regard to the recoveries to equity holders under a Plan;
- m. to the extent requested by the Equity Committee, advising the Equity Committee (including with respect to valuation issues, among other things) in connection with one or more possible transactions, or series or combination of transactions, between the Debtors and a third party, whereby, directly or indirectly, an ownership interest in the Debtors, in its business or in all or any portion of its assets is to be transferred for consideration, including, without limitation, a sale or exchange of capital stock or assets with or without a purchase option, a merger or consolidation, a tender or exchange offer, a leveraged buy-out, the formation of a joint venture or partnership or any other business combination or similar transaction; and
- n. rendering such other financial advisory and investment banking services as may be agreed upon by PJSC and the Equity Committee in connection with the foregoing.

7. The Equity Committee believes that it is necessary to employ a financial advisor to render the professional services to the Equity Committee as described above so that the Equity Committee may properly fulfill its duties under the Bankruptcy Code. Because of potential

conflicts between the various constituencies in this case, the Equity Committee cannot simply rely upon the opinions expressed by financial professionals representing other interests. Further, the Equity Committee believes that PJSC is well qualified to handle the work required in these chapter 11 cases.

### **PJSC’S CONNECTIONS IN THESE CASES**

8. The Equity Committee has reviewed the Maxwell Affidavit including all of the “connections” (as such term is used in Bankruptcy Rule 2014(a)) in these cases as disclosed therein.

9. Notwithstanding any such connections, the Equity Committee believes that PJSC is a disinterested person, and does not hold or represent an interest adverse to the Debtors’ estates with respect to the matters for which PJSC is to be employed, as required by section 328(c) of the Bankruptcy Code.

### **PJSC’S COMPENSATION AND REIMBURSEMENT OF EXPENSES**

#### **A. PJSC’s Compensation Structure**

10. PJSC proposes to render its services on a monthly fee basis. The monthly advisory fee (the “Monthly Fee”) shall be \$150,000 payable in advance on the first business day of each month. Additionally, the Equity Committee proposes that, in addition to the Monthly Fee, the Court consider, at the time of confirmation of a Plan, providing PJSC further compensation in the form of an incentive-based fee (the “Value-Added Fee”) attributable to the efforts of PJSC to enhance the value of the equity interest retained by the stockholders (the “Stockholders”) of Mirant Corporation (“Mirant” or the “Company”) over the pendency of the cases. The Value-Added Fee as contemplated by the Equity Committee, subject to approval by this Court, would be based on the gain over the current value of the Company’s common stock and the average trading price of the Company’s, or its successor’s, stock or other securities or the

average market value of such other assets received under a Plan by the Stockholders, measured during the first thirty (30) trading days after the effective date of a Plan. Subject to approval by this Court, the Value-Added Fee shall be equal to the sum of (a) \$1,000,000 plus (b) 0.40% of the Post Confirmation Equity Distribution Value (as defined in the PJSC Retention Letter) in excess of \$400,000,000. PJSC respectfully requests that, to the extent that the Equity Committee has been dissolved following the effective date of any plan of reorganization, PJSC shall have independent standing to pursue an application with this Court for the payment of the Value-Added Fee.

11. Pursuant to section 328(a) of the Bankruptcy Code, the Equity Committee may retain professional persons pursuant to reasonable terms and conditions. The Equity Committee seeks approval of PJSC's compensation described in paragraph 10 above pursuant to section 328(a) of the Bankruptcy Code. Section 328(a) of the Bankruptcy Code authorizes the employment of professionals "on any reasonable terms and conditions of employment, including a retainer, on an hourly basis or on a contingent fee basis."

12. The Equity Committee believes that the compensation structure to be provided to PJSC, all as specifically described above, in the Maxwell Affidavit and the PJSC Retention Letter, constitutes fair and reasonable terms and conditions for the retention by the Equity Committee of PJSC as its financial advisor in accordance with section 328(a) of the Bankruptcy Code. The Monthly Fee is consistent with fee structures utilized by financial advisors and investment banks which do not bill clients on an hourly basis.

B. Reimbursement of PJSC's Expenses

13. PJSC's policy regarding reimbursement of actual and necessary expenses incurred in connection with its provision of services as financial advisor is to charge its clients for out-of-pocket expenses including, without limitation, fees, disbursements and other charges of PJSC's

counsel, travel and lodging, data processing and communication charges, research and courier services. The Equity Committee has been assured that PJSC will charge the Equity Committee for these expenses at rates consistent with charges made to other PJSC clients, and subject to the guidelines of the United States Trustee.

C. Maintenance of Records

14. PJSC does not charge its clients for services on an hourly basis. Notwithstanding the foregoing, PJSC will maintain detailed records of time spent by its professionals in connection with the nature of the services rendered, and to the extent required, PJSC will make any such time records available (subject to the records being redacted to protect confidential and sensitive information) for review. Moreover, PJSC will maintain records in support of any actual and necessary costs and expenses incurred in connection with rendering of its services in these cases.

D. No Agreement as to Sharing of Compensation

15. As set forth in the Maxwell Affidavit, PJSC has not shared or agreed to share any of its compensation from the Debtors with any other person, other than as permitted pursuant to section 504 of the Bankruptcy Code.

**NO INDEMNIFICATION BY DEBTOR**

16. As set forth in the PJSC Engagement Letter, PJSC does not seek and is not afforded an indemnity by the Debtors. PJSC does, however, seek entry of an order of this Court holding that PJSC is a “Protected Professional” and a “Protected Person” within the meaning and for all purposes of the Order Restricting Pursuit of Certain Persons, entered by the Court on August 5, 2003 (the “Professionals Order”). In furtherance of the foregoing, PJSC states that such relief is warranted pursuant to the terms of the Professionals Order as PJSC’s compensation

is subject to review of the Court and PJSC is not afforded an indemnity by the Debtors or any other entity.

**NOTICE**

17. The Equity Committee has provided notice of this Application to the Office of the United States Trustee, counsel to the Debtors, counsel for the two official Creditors Committees, and all parties who have properly filed a notice of appearance in these chapter 11 cases. The Equity Committee respectfully submits that such dissemination constitutes adequate and proper notice of the Application.

18. No prior application for the relief requested herein has been made to this or any other Court.

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**WHEREFORE**, the Equity Committee respectfully requests that the Court enter the order annexed hereto as Exhibit "C" approving the Equity Committee's retention of PJSC, effective as of September 19, 2003, and that the Court grant the Equity Committee such other and further relief as it deems just and proper.

Dated: November 6, 2003

Respectfully submitted,

THE OFFICIAL COMMITTEE OF EQUITY  
SECURITY HOLDERS FOR MIRANT  
CORPORATION

By: Its Co-Chair

PHAETON INTERNATIONAL/PHOENIX PARTNERS

By: /s/ Joan McNiff  
Name: Joan McNiff  
Title: Designated Representative

- and -

By: Its Co-Chair

TEJAS SECURITIES GROUP, INC.

By: /s/ Morris Weiss  
Name: Morris Weiss  
Title: Designated Representative

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has been served upon the parties listed on the Official Shortened Service List dated 10/31/03 by depositing same in the United States First Class Mail on this 7<sup>th</sup> day of November, 2003.

/s/ Eric J. Taube  
Eric J. Taube

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

-----X  
In re: : Chapter 11  
: Case No. 03-46590 (DML)  
MIRANT CORPORATION, et al., :  
: (Jointly Administered)  
Debtors. :  
: :  
-----X

**AFFIDAVIT OF ANDERS MAXWELL IN SUPPORT OF APPLICATION FOR  
APPROVAL OF THE EMPLOYMENT AND RETENTION OF PETER J. SOLOMON  
COMPANY AS FINANCIAL ADVISORS FOR THE OFFICIAL COMMITTEE OF  
EQUITY SECURITY HOLDERS EFFECTIVE AS OF SEPTEMBER 20, 2003**

ANDERS MAXWELL, being duly sworn, deposes and says:

1. I am a director of Peter J. Solomon Company (“PJSC”), resident in PJSC’s New York City office at 767 Fifth Avenue, 26<sup>th</sup> Floor, New York, New York 10153. This affidavit (the “Maxwell Affidavit”) is submitted on behalf of PJSC pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) in connection with the application (the “Application”) by the Official Committee of Equity Security Holders appointed in the above-captioned cases (the “Equity Committee”) for the entry of an order authorizing the retention of PJSC as financial advisors to the Equity Committee. Unless otherwise stated, I have personal knowledge of the facts hereinafter set forth.

2. Since its inception in 1989, PJSC has successfully represented official and unofficial committees of creditors, equityholders, individual creditors, indenture trustees,

**EXHIBIT A**

acquirers, investors, debtors and other significant parties in many prominent and complex bankruptcy cases and out-of-court restructurings.

### **PJSC's Compensation**

3. PJSC proposes to render its services on a monthly fee basis. The monthly advisory fee (the "Monthly Fee") shall be \$150,000.00 payable in advance on the first business day of each month. The Equity Committee will propose that PJSC be considered at the time of confirmation of a Plan of Reorganization (the "Plan") to have earned an incentive-based fee (the "Value-Added Fee") attributable to the efforts of PJSC to enhance the value of the interest retained by the stockholders (the "Stockholders") of Mirant Corporation ("Mirant" or the "Company") over the pendency of the cases. The Value-Added Fee, as more fully set forth in the Application, would be based on the gain over the current value of the Company's common stock and the average trading price of the Company's, or its successor's, stock or other securities or the average market value of such other assets received under a Plan by the Stockholders, measured during the first sixty (60) trading days after the effective date of a Plan. Subject to approval by this Court, the Value-Added Fee shall be equal to the sum of (a) \$1,000,000 plus (b) 0.40% of the Post Confirmation Equity Distribution Value (as defined in the PJSC Retention Letter) in excess of \$400,000,000.

4. Mirant Corporation shall reimburse PJSC for its reasonable out-of-pocket expenses incurred in connection with its provision of services as financial advisor to the Equity Committee, including without limitation the fees, disbursements and other charges of PJSC's counsel. Out-of-pocket expenses also shall include, but not be limited to, travel and lodging, data processing and communication charges, research and courier services. Mirant Corporation

shall reimburse PJSC promptly upon presentation of an invoice or other similar documentation, which invoice will be provided monthly.

5. PJSC has not shared or agreed to share any of its compensation from the Debtors with any other person, other than as permitted pursuant to section 504 of the Bankruptcy Code.

**PJSC's Connections in these Cases**

6. In connection with the Equity Committee's proposed retention of PJSC, an extensive review (the "Connections Check") of PJSC clients, adverse parties and related parties (collectively, the "Related Parties") was performed to ascertain whether PJSC had any "connection" (as such term is used in Bankruptcy Rule 2014(a)) with the Debtors herein, their creditors, any other party in interest herein, or their respective attorneys or accountants, to the extent any such entities were known at such time (the "Case Parties"). Specifically, attached hereto as Exhibit A is a list of the Case Parties which were checked against a database containing the Related Parties and then manually reviewed to identify any matters on which work was performed since January 1, 2001. For the purpose of compiling the list of Case Parties, PJSC utilized the case parties lists filed by the Debtors' counsel in connection with its retention in the Debtors' chapter 11 cases, which case lists were represented to be comprehensive based on information provided by the Debtors and were inclusive of the following categories of parties: Debtors and Affiliates, Officers and Directors of Debtors and Affiliates, Lenders, Bondholders, Indenture Trustees, Contract Counterparties, Other Creditors, Five Percent Shareholders, Professionals, and Other Parties in Interest. PJSC supplemented such case parties lists with the members of the two official committee of unsecured creditors as well as the members of the Equity Committee. The Connections Check also was emailed or otherwise circulated to all PJSC employees for the purpose of identifying connections.

7. To the best of my knowledge after diligent inquiry, neither PJSC, any member of PJSC, nor any employee of PJSC, has any “connection” (as such term is used in Bankruptcy Rule 2014(a)) with the Debtors herein, their creditors, any other party in interest herein, their respective attorneys or accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except to the extent set forth in paragraphs 7 and 8 below, to the best of my knowledge, any “connection” of PJSC to the matched entities are limited to matters unrelated to the Debtors’ chapter 11 cases.

8. In 2001, Clinvest, an investment banking affiliate and wholly-owned subsidiary of Credit Lyonnais Group, entered into a cooperation agreement (the “Agreement”) with PJSC the terms of which provide that PJSC and Clinvest work jointly to represent investment banking clients on cross border merger and acquisition transactions in the US, Canada, France and Belgium. As part of this Agreement, Clinvest acquired a minor interest in PJSC. To PJSC’s knowledge, a separate and otherwise unrelated wholly-owned commercial banking subsidiary of Credit Lyonnais Group, Credit Lyonnais Americas, held as of October [ ] a relatively small participation in the prepetition bank credit facility of Mirant Corporation. Credit Lyonnais Americas is not represented on the Official Committee of Creditors of Mirant Corporation and is not otherwise involved in the chapter 11 cases. PJSC believes it has no conflicts of interest in PJSC’s anticipated role as financial advisor to the Committee given the well defined and limited scope of PJSC’s relationship with Clinvest and the complete separation existing between Clinvest and Credit Lyonnais Americas.

9. PJSC currently acts as financial advisor to the Official Committee of Unsecured Creditors of Galey & Lord, Inc. (the “G&L Committee”) in connection with Case No. 02-40445, a chapter 11 case pending in the United States Bankruptcy Court for the Southern District of

New York. Merrill Lynch Investment Managers is a member of the G&L Committee. Merrill Lynch Professional Clearing Corp., an entity related to Merrill Lynch Investment Managers, is a general unsecured creditor of Mirant Corporation. PJSC's engagement as financial advisor to the G&L Committee is wholly unrelated to its retention in these chapter 11 cases.

10. Furthermore, PJSC has been involved in a number of unrelated cases with various professionals involved in these cases, both in adverse and non-adverse roles.

11. PJSC's reorganization and restructuring practice encompasses the representation of many investors, financial institutions and other persons or entities, some of which may become, creditors or parties in interest including, without limitation, potential acquirers of the Debtors' assets in these chapter 11 cases. Furthermore, as part of its practice, PJSC appears in cases, proceedings, and transactions involving numerous attorneys, accountants, and financial advisors, some of which may represent the Debtors, creditors, or parties in interest, or themselves be creditors or parties in interest in these chapter 11 cases. PJSC has not and will not represent any of these creditors, investors, potential acquirers, parties in interest, attorneys, financial advisors, accountants or any other entity in connection with these chapter 11 cases.

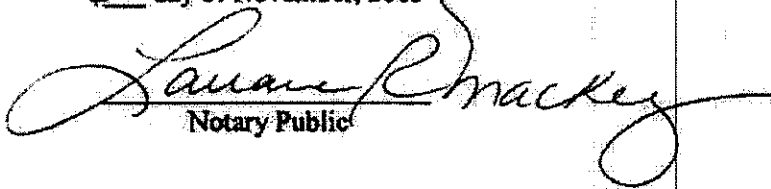
12. PJSC has not, does not, and will not represent any of the entities listed above (or their affiliates) in matters related to the Debtors or their chapter 11 cases.

13. PJSC will file appropriate supplemental disclosure(s) with the Court to the extent that additional information concerning any connections is developed.

14. Notwithstanding the above, I believe that PJSC is a disinterested person, and does not hold or represent an interest adverse to the Debtors' estates with respect to the matters for which PJSC is to be employed, as required by section 328(c) of the Bankruptcy Code. Based upon the foregoing, I respectfully submit that the requirements for the Equity Committee's retention of PJSC have been met.

  
\_\_\_\_\_  
Anders Maxwell

Sworn to before me this  
6 day of November, 2003

  
\_\_\_\_\_  
Notary Public

**LORRAINE R. MACKEY**  
Notary Public, State of New York  
No. 01MA8078288  
Qualified in Nassau County  
Commission Expires March 31, 2007

September 19, 2003

Mr. Morris Weiss  
Ms. Joann McNiff  
Co-Chairpersons  
The Official Committee of Equity Holders of  
Mirant Corporation.  
c/o Brown Rudnick Berlack Israels LLP  
120 West 45<sup>th</sup> Street  
New York, NY 10036

Attention: Edward S. Weisfelner, Esq.

The purpose of this letter is to confirm the understanding and agreement (the "Agreement") among Brown Rudnick Berlack Israels LLP ("BRBI") on behalf of The Official Committee of Equity Holders (the "Committee") and Peter J. Solomon Company Limited ("PJSC") as the Committee's financial advisor in connection with Mirant Corporation's (the "Company") chapter 11 proceedings and reorganization before the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). It is understood that the retention of PJSC and effectiveness of this Agreement is subject to the approval of the Bankruptcy Court.

Section 1. Services to be Rendered. PJSC will perform such services as the Committee may reasonably request including, but not limited to, the following:

- (a) PJSC will assist the Committee in assessing the operating and financial performance of and strategies for the Company;
- (b) PJSC will review and analyze the business plan and financial projections prepared by the Company, including but not limited to testing assumptions and comparing those assumptions to historical Company and industry trends;
- (c) PJSC will advise the Committee regarding evaluating DIP financing, cash collateral and exit financing;
- (d) PJSC will advise the Committee in evaluating the valuation of the Company and its assets including valuations proposed by any interested party and provide expert testimony relating to valuation, if required;
- (e) PJSC will assist the Committee in evaluating the Company's assets and liabilities;
- (f) PJSC will assist the Committee in evaluating contracts and/or agreements that the Committee and PJSC deem necessary and that the Company is obligated under;

(g) PJSC will advise the Committee regarding restructuring of the Company's existing indebtedness;

(h) PJSC will assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of any potential Plans of Reorganization ("POR");

(i) PJSC will assist and/or participate in negotiations on behalf of the Committee with the Company or any constituency involved in the Chapter 11 case;

(j) PJSC will prepare periodic reports as requested to the Committee regarding the relevant operating, financial and other matters related to the Chapter 11 case;

(k) PJSC will estimate the value of any debt or securities, if any that may be issued in conjunction with a POR including securities which may be issued to equity holders;

(l) Appropriate PJSC personnel will provide testimony with regard to the recoveries to equity holders under a POR;

(m) To the extent requested by the Committee, PJSC will advise the Committee (including with respect to valuation issues, among other things) in connection with one or more possible transactions, or series or combination of transactions, between the Company and a third party, whereby, directly or indirectly, an ownership interest in the Company, in its business or in all or any portion of its assets is to be transferred for consideration, including, without limitation, a sale or exchange of capital stock or assets with or without a purchase option, a merger or consolidation, a tender or exchange offer, a leveraged buy-out, the formation of a joint venture or partnership or any other business combination or similar transaction; and,

(n) PJSC will render such other financial advisory and investment banking services as may be agreed upon by PJSC and the Committee in connection with the foregoing.

Section 2. Term. The term of this Agreement shall extend from the date hereof and shall continue thereafter on a month-to-month basis; provided, however, that (a) either the Committee or PJSC may terminate this Agreement at any time by delivery of written notice to the other parties; provided, that PJSC must provide 30 days' prior written notice of termination to the Committee and (b) the Committee may terminate this Agreement, at any time, for Cause. For the purpose of this paragraph, "Cause" means bad faith, gross negligence or willful misconduct by PJSC relating to the performance of its duties hereunder. Notwithstanding any such termination by the Committee without Cause, PJSC shall be entitled to (x) any fees for any monthly period which are due and owing to PJSC upon the effective date of termination; provided, however, that such amounts will be pro-rated for any incomplete monthly period of service, (y) PJSC will be entitled to reimbursement for the out-of-pocket expenses described in Section 4, and (z) any Value-Added Fee (as defined below) that would otherwise have been due within two (2) months of the effective date of PJSC's termination. Termination of PJSC's engagement hereunder shall not affect or impair the Company's continuing obligations under Section 6.

Section 3. Fees. Subject to approval by the Bankruptcy Court, in consideration of the services described in Section 1 above, PJSC shall be paid in cash by the Company, and its successors, if any.

(a) A monthly advisory fee (the "Monthly Fee") pro-rated from September 20, 2003, equal to \$150,000.00, payable in advance on the first business day of each month.

(b) The parties hereto acknowledge and agree that (i) the total value of all of the Company's equity securities on September 19, 2003, the business day on which PJSC began working for the Committee, was approximately \$275,000,000<sup>1</sup> and (ii) PJSC shall be entitled to an incentive-based fee (the "Value-Added Fee") for its efforts on behalf of persons or entities who hold common stock of the Company on the record date or dates established by the Court for purposes of determining the persons and entities holding equity claims or interests entitling them to distributions under the POR (the "Record Date Equity Holders") if the Post-Confirmation Equity Distribution Value (as hereinafter defined) equals or exceeds \$400,000,000 (the "Minimum Threshold"). "Post Confirmation Equity Distribution Value" shall mean the sum of (i) product obtained by multiplying (x) the average closing price of the largest class (in terms of the number of issued shares) of common stock of the Company or its successor on the principal stock exchange or quotation system on which such class of common stock is traded during the 30 trading day period commencing on the first trading day following the effective date of any POR times (y) the total number of issued and outstanding shares of such class of common stock held by the Record Date Equity Holders and (ii) the aggregate Fair Market Value (as hereinafter defined) of (x) all other securities, including without limitation, all other shares of common stock, preferred stock, debt securities, hybrid securities, options, warrants, stock appreciation rights, other derivative securities and other securities convertible into or exchange for any of the foregoing (collectively "Other Securities") and (y) all assets of any kind or nature whatsoever (whether tangible, intangible or otherwise) (collectively "Assets"), in each case distributed to the Record Date Equity Holders of the Company as part of, or in connection with, any POR. "Fair Market Value" shall mean (1) in the case of any Other Securities traded on a stock exchange or quotation system, the average closing price of such class of securities on the principal stock exchange or quotation system on which such class of securities is traded during the 30 trading day period commencing on the first trading day of such class of securities following the effective date of any POR and (2) in the case of (i) all Other Securities not traded on a stock exchange or quotation system and (ii) all Assets, as determined in good faith by the Committee and PJSC. The Value Added Fee shall be equal to the sum of (a) \$1,000,000 plus (b) 0.40% of the Post Confirmation Equity Distribution Value in excess of the Minimum Threshold. If the Post Confirmation Equity Distribution Value exceeds, or in the reasonable judgment of PJSC may exceed, the Minimum Threshold, the Committee shall, as promptly as practicable following the expiration of the 30 day trading period referred to above (or if there is more than one such 30 day trading period, the last of such periods to expire) make an application to the Court for the payment of the Value-Added Fee in the agreed upon amount and shall use their respective reasonable best efforts to pursue its obligations under this section 3(b) to have the Value-Added Fee approved by the Court and paid to PJSC as promptly as practicable. In order to fulfill the intent of this section 3(b) and to the extent that the Committee has been dissolved following the effective date of a POR, PJSC shall have standing to pursue an application for payment of the Value-Added Fee in the stead of the Committee.

Section 4. Expenses. Without in any way reducing or affecting the provisions of Section 3 above, the Company shall reimburse PJSC for its reasonable out-of-pocket expenses incurred in connection with the provision of services hereunder and the execution and delivery of

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<sup>1</sup> This valuation is utilized for illustrative purposes of calculating the Value-Added Fee only and shall be without prejudice to the Committee's assertion of a different valuation of the Company in the Company's chapter 11 cases.

this Agreement, including without limitation the fees, disbursements and other charges of PJSC's counsel. Out-of-pocket expenses also shall include, but not be limited to, travel and lodging, data processing and communication charges, research and courier services. The Company shall promptly reimburse PJSC upon presentation of an invoice or other similar documentation, which invoice will be provided monthly.

Section 5. Protected Persons Order. The Committee hereby agrees to use its reasonable best efforts to ensure that (i) PJSC and each director, officer, employee and affiliate of PJSC is deemed to be, is treated as, and is entitled to all of the benefits of, a Protected Professional and a Protected Person within the meaning and for all purposes of the Order Restricting Pursuit of Certain Persons, entered by the Bankruptcy Court on August 5, 2003 in the Company's chapter 11 cases (the "Order"), (ii) no person or entity is granted relief pursuant to Paragraph 2b of the Order to commence litigation against PJSC or any director, officer, employee or affiliate of PJSC and (iii) as contemplated by the second sentence of Paragraph 2g of the Order, the restraints imposed by the Order are continued by the order of the confirmation regarding the Company's chapter 11 cases. In the event that (x) the Order is terminated for whatever reason and (y) the Bankruptcy Court permits the Company to indemnify professionals such as PJSC for services rendered by such professionals in connection with the Company's chapter 11 cases, the Committee agrees to exercise its reasonable best efforts to obtain from the Company an indemnification of PJSC pursuant to the terms of PJSC's standard form of indemnification.

Section 6. Miscellaneous.

(a) In connection with allowances of compensation and reimbursement of expenses, PJSC shall file appropriate applications for allowance of interim and final compensation and reimbursement of expenses in accordance with Sections 330 and 331 of the United States Bankruptcy Code and applicable rules at such times as directed by the Bankruptcy Court or established by administrative order entered in the bankruptcy cases. The fees detailed in Section 3 above have been agreed upon with the express expectation that they are subject to review by the Bankruptcy Court only as provided by Section 328 of the Bankruptcy Code. In accordance with the guidelines of the Bankruptcy Court, PJSC shall maintain detailed records of time spent working on this assignment, which records shall be available for submission to the Bankruptcy Court subject to appropriate redactions to preserve confidential or sensitive information. Although PJSC is providing such records, it, as an investment bank, does not have hourly rates for its professionals. PJSC will make every effort to coordinate with the other professionals retained by the Company in this bankruptcy in order to eliminate unnecessary duplication or overlap of work.

(b) PJSC's compensation set forth herein and payments made pursuant to reimbursement provisions of this Agreement shall be entitled to priority as expenses of administration under Sections 503(b) (1) (A) and 507(a) (1) of the Bankruptcy Code and shall be entitled to the benefits of any "carve-outs" for professional fees and expenses in effect in the Chapter 11 case pursuant to one or more financing orders now or hereafter in effect.

(c) Sections 2 through 6 shall survive termination or expiration of this Agreement.

(d) PJSC shall be under no obligation to provide formal fairness or solvency opinions with respect to any of the chapter 11 proceedings or any transactions contemplated thereby or incidental hereto. However, PJSC and its affiliates shall be provided the option to do so where such opinions are

necessary and are appropriate. The terms of such engagement shall be customary for such services rendered by investment banking firms at the time of the engagement and shall be subject to one or more separate agreements between the Company and PJSC, and shall be subject to Bankruptcy Court approval.

(e) The advice (oral or written) rendered by PJSC pursuant to this Agreement is intended solely for the benefit and use of the Committee and its professionals in considering the matters to which this Agreement relates, and the Company acknowledges and agrees that such advice may not be relied upon by any other person, used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor shall any public references to PJSC be made by the Company or the Committee, without the prior written consent of PJSC.

(f) The Company acknowledges and agrees that PJSC shall have the right after completion of its engagement to place advertisements in financial and other newspapers and journals at its own expense describing its services hereunder.

(g) This Agreement may not be amended or modified except by a writing executed by each of the parties and this Agreement, including all controversies arising from or relating to performance under this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to such state's rules concerning conflicts of law. The provisions of this Agreement, including, without limitation, the obligation to make the payments set forth in Sections 3 and 4, shall be binding on the Company and its successors and assigns.

(h) Any lawsuits with respect to, in connection with or arising out of this Agreement shall be brought in the federal courts located in the Southern District of New York and the parties hereto consent to the jurisdiction and venue of such court located in the Southern District as the sole and exclusive forum, unless such court is unavailable, for the resolution of claims by the parties arising under or relating to this Agreement. The parties hereto further agree that proper service of process on a party may be made on any agent designated by such party located in the State of New York.

(i) To the extent permitted by applicable law, each of the Company and the Committee hereby waives trial by jury and rights of setoff in any lawsuit with respect to, in connection with or arising out of this Agreement, or any other claim or dispute relating to the engagement of PJSC arising among the parties hereto. Each of the Company and the Committee hereby confirms that the foregoing waivers are informed and freely made.

(j) The relationship of PJSC to the Committee hereunder shall be that of an independent contractor and PJSC shall have no authority to bind, represent or otherwise act as agent for the Committee.

\* \* \*



If the foregoing correctly sets forth the understanding and Agreement among PJSC and the Committee, please so indicate by signing the enclosed copy of this letter, whereupon it shall become a binding Agreement among the parties hereto as of the date first above written.

Very truly yours,

PETER J. SOLOMON COMPANY, L.P.

By: Peter J. Solomon Company Limited

General Partner

By: \_\_\_\_\_

Anders J. Maxwell  
Managing Director

Accepted and Agreed to as of  
the day first written above:

On Behalf of  
THE OFFICIAL COMMITTEE OF EQUITY HOLDERS OF MIRANT CORPORATION

By: Morris D. Weiss  
Morris D. Weiss  
Co-Chair

By: \_\_\_\_\_  
Joann McNiff  
Co-Chair

Accepted and Agreed to as of  
the day first written above:

MIRANT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

If the foregoing correctly sets forth the understanding and Agreement among PJSC and the Committee, please so indicate by signing the enclosed copy of this letter, whereupon it shall become a binding Agreement among the parties hereto as of the date first above written.

Very truly yours,

PETER J. SOLOMON COMPANY, L.P.

By: Peter J. Solomon Company Limited

General Partner

By:

Anders J. Maxwell  
Managing Director

Accepted and Agreed to as of  
the day first written above:

On Behalf of  
THE OFFICIAL COMMITTEE OF EQUITY HOLDERS OF MIRANT CORPORATION

By:

Morris D. Weiss  
Co-Chair

By:

Joann McNiff  
Co-Chair

Accepted and Agreed to as of  
the day first written above:

MIRANT CORPORATION

By:

Name:  
Title: