

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

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

**ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION**

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

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In re	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590-DML
	)	Jointly Administered
Debtors.	)	
	)	<b>Hearing Date and Time:</b>
	)	<b>January 7, 2004 at 10:30 a.m.</b>

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**MOTION OF THE DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b)  
FOR AUTHORITY TO ENTER INTO (I) A SEPARATION AND RELEASE  
AGREEMENT AND (II) A CONSULTING AGREEMENT WITH EDWIN H. ADAMS**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors” or the “Company”), as debtors-in-possession, file this motion pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into (I) a Separation and Release Agreement and (II) a Consulting Agreement with Edwin H. Adams (the “Motion”), and in support of the Motion, respectfully represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and

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D-1195206.1**

1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and 11 U.S.C. § 365 provides the legal predicate for the relief requested herein. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

### **PROCEDURAL BACKGROUND**

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).<sup>1</sup> On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the “Wrightsville Debtors”). On November 18, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Americas Energy Capital, LP and (ii) Mirant Americas Energy Capital Assets, LLC (collectively, the “MAEC Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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<sup>1</sup> Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered an order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also, on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 21, 2003, the Court entered an order approving the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 5, 2003, the Court granted the motion for the entry of an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to the Wrightsville Debtors. On November 20, 2003, the Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors.

4. The Committees. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases. Specifically, an official unsecured creditors' committee and an official committee of equity security holders have been appointed for Mirant Corporation and an official unsecured creditors' committee has been appointed for Mirant Americas Generation, LLC (collectively, the "Committees").

## **FACTUAL BACKGROUND**

### **A. The Debtors' Business Operations**

5. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal

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

6. As of July 31, 2003, Mirant employs about 6,700 employees worldwide. Approximately 1,000 employees are based at Mirant's corporate headquarters in Atlanta, and approximately 5,700 employees are based at operating facilities. Approximately 1,000 employees are subject to collective bargaining agreements. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

**B. Facts Relevant to the Motion**

7. From 1993 through July 31, 2003, Edwin H. Adams was employed by one of the Debtors or one of the Debtors' international affiliates. Mr. Adams' most recent title was Vice-President for Corporate Development and Technology for Mirant Corporation. In that role, Mr. Adams was responsible for Corporate and Strategic Planning; Research; New Business; and Information Technology. Additionally, Mr. Adams led the prepetition restructuring efforts that took place during the 2002 and 2003 years. Mr. Adams is currently unemployed.

8. Shortly after the Petition Date, as part of an overall cost-cutting initiative, the Debtors implemented a review of the personnel requirements necessary for the Debtors'

reorganization. Although Mr. Adams provided valuable services to the Debtors prior to the Petition Date, given the refocus of the restructuring efforts that would ensue in light of the chapter 11 filings, the Debtors determined that Mr. Adams' services would no longer be required prospectively on a full-time basis. Accordingly, on July 31, 2003, the Debtors terminated Mr. Adams' employment, and in connection therewith, entered into a Separation and Release Agreement, dated as of September 12, 2003 and attached hereto as Exhibit "A" (the "Separation Agreement"), with Mr. Adams, subject to Court approval.<sup>2</sup> Additionally, given Mr. Adams' prominent role in respect of the Debtors' prepetition restructuring efforts as well as other prepetition initiatives, the Debtors may require, from time to time, Mr. Adams' assistance in the near term. Accordingly, the Debtors and Mr. Adams entered into a Consulting Agreement attached hereto as Exhibit "B" (the "Consulting Agreement" and, collectively with the Separation Agreement, the "Agreements"), subject to Court approval, which, as further described herein, provides for the continuation by Mr. Adams of limited services to the Debtors. Without regard to the potential to provide limited services to the Debtors pursuant to the Consulting Agreement, Mr. Adams remains unemployed.

9. Mr. Adams most recent annual base salary plus target short-term incentive totaled \$441,000. Furthermore, Mr. Adams was party to a retention agreement and also participated in several of the Debtors' employee benefit plans. Under his retention agreement and the various employee benefit plans, the Debtors estimate that Mr. Adams has claims against the Debtors' estates in excess of \$578,000 that would be subject to compromise under any

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<sup>2</sup> As Mr. Adams was a "Highly Compensated Employee," as such term is used in the Debtors' First Day Motion in respect of various employee benefits, including the Debtors' Severance Plans, Mr. Adams, at the time of his severance, was not entitled to receive any amounts under said Severance Plans as administrative payments.

chapter 11 plan of reorganization filed in these cases.<sup>3</sup>

**(A) *The Separation Agreement***

10. The following summarizes the pertinent terms of the Separation Agreement:<sup>4</sup>

- Payments and Benefits. Mr. Adams will receive a one-time lump sum payment in the amount of \$363,375 (less the required deductions pursuant to applicable tax withholding laws and regulations). Additionally, Mr. Adams is entitled to receive payment for any accrued wages and/or any accrued but unused vacation days, through the Separation Date, if any (less the required deductions pursuant to applicable tax withholding laws and regulations).
- Prior Agreements. Upon the effectiveness of the Separation Agreement, Mr. Adams shall have no rights under any previous agreements or plans he may have had with the Company, particularly including, but not limited to, the following: (1) the Retention Agreement by and between Mirant Services LLC and Mr. Adams, effective October 1, 2002, (2) the Change in Control Agreement by and among Mirant Corporation, Mirant Services LLC and Adams, dated April 2, 2001, (3) Mirant Services LLC Executive Change in Control Severance Plan, (4) Mirant Services LLC Change in Control Severance Plan, (5) Mirant Services Supplemental Benefit Plan, (6) Amended and Restated Mirant Services Supplemental Executive Retirement Plan, (7) Mirant Corporation Deferred Compensation Plan for Directors and Selected Employees, (8) Mirant Services Severance Pay Plan, (9) Amended and Restated Mirant Corporation Omnibus Incentive Compensation Plan and Mirant Corporation Short-Term Incentive Plan, in each case, as amended from time to time, but excluding the Mirant Services Employee Savings Plan.
- Director & Officer Insurance and Indemnification. The Company agrees that

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<sup>3</sup> The Debtors present their estimate of Mr. Adams' claims solely for the purpose of this Motion. The Debtors understand that Mr. Adams may, absent approval thereof, assert claims far in excess of the Debtors' estimate. The Debtors reserve all rights with respect to any claims that may be asserted by Mr. Adams. Additionally, the Debtors reserve all rights to argue in these chapter 11 cases that any employee's retention agreement is subject to the limitations set forth in section 502(b)(7) of the Bankruptcy Code.

<sup>4</sup> This summary is qualified in its entirety by reference to the provisions of the Separation Agreement which is controlling. Capitalized terms not otherwise defined in this paragraph 10 shall have the same meanings ascribed to them in the Separation Agreement.

Mr. Adams has been and will continue to be covered under the Company's Director and Officer Insurance policy, as specifically provided under and subject to the terms of such policy, including all limitations provided therein. The Company further agrees that Mr. Adams is covered under the indemnification provision of Mirant Corporation's By-Laws for the time that he was an officer of the Company.

- Confidentiality Provisions. Among other things, Mr. Adams agrees that, except as may specifically be required by law, he will not, directly or indirectly, disclose to anyone outside of the Company any confidential or proprietary information.
- Non-Solicitation. Mr. Adams agrees to refrain, for a period of two (2) years from the Separation Date, from interfering with the employment relationship between the Company and certain persons.
- Complete Release. As part of the consideration for the Separation Agreement, Mr. Adams has agreed to waive any and all claims against the Company, including, but not limited to, any and all claims arising from the Company's termination of Mr. Adams' employment, except for claims arising out of the Separation Agreement.

**(B) *The Consulting Agreement***

11. The following summarizes the pertinent terms of the Consulting Agreement:<sup>5</sup>

- Consulting Services. Mr. Adams will consult with the Chief Executive Officer (the "CEO") of the Company and other members of management and its advisors about matters relating to structure, strategy and general issues relating to content development of the Company. Mr. Adams will be available to consult with representatives of the Company upon the terms and conditions set forth in the Consulting Agreement for a minimum of one (1) business day per month.
- Consulting Fee. The Company will provide Mr. Adams with a Consulting Fee of \$2,800 per Day of Service, payable on or prior to the fifteenth day of each calendar month, as compensation for the consulting services rendered for the

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<sup>5</sup> This summary is qualified in its entirety by reference to the provisions of the Consulting Agreement which is controlling. Capitalized terms not otherwise defined in this paragraph 11 shall have the same meanings ascribed to them in the Consulting Agreement.

immediately preceding month. The minimum consulting fees payable to Adams over the entire term of the Consulting Agreement shall be \$70,000, and at least \$45,000 of this will be paid in the first three months of the Consulting Agreement.

- Term of Consulting Services. The term of the Consulting Agreement shall begin on September 1, 2003, and continue through the date that is seven (7) months following the effective date of the Consulting Agreement.
- Benefits. The Company shall not carry workers' compensation insurance or any health or accident insurance to cover Mr. Adams nor pay any amounts on account of Mr. Adams for purposes of Social Security, unemployment insurance, or Federal, state or local withholding and employment taxes, and shall not provide any other contributions or benefits on account of Mr. Adams which might be required or customary in connection with an employer-employee relationship.
- Reimbursable Expenses. Mr. Adams shall be responsible for all of his own expenses unless otherwise approved in writing by the Senior Vice President of Administration and Technical of the Company.
- Independent Contractor. In performing any consulting services pursuant to the Consulting Agreement, Mr. Adams will be an independent contractor to the Company rather than an employee or agent of the Company.
- Confidential Information. Mr. Adams agrees that during and after the term of the Consulting Agreement, he will not, without the prior written consent of the Company, use or disclose to any person other than to persons in the then-present employ of the Company, any information of a confidential or proprietary nature.
- Non-Competition. Adams covenants that he will not, directly or indirectly, during the Term of Consulting Services and for a period of three (3) months after the termination of the Term of Consulting Services, within certain geographical areas, own, manage, operate, control, be employed by or participate in the ownership, management, operation or control of, or be connected in any manner with any business of the type and character engaged in or competitive with that conducted by the Company, including, without limitation, any company engaged in power generation, power plant construction, and/or energy trading.
- Non-Solicitation. During the Term of Consulting Services, Mr. Adams agrees to refrain from interfering in any way with the employment relationship between the Company and certain persons.

## **RELIEF REQUESTED**

12. By this Motion, the Debtors seek, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, authority to enter into the Agreements.

## **BASIS FOR RELIEF**

13. In an effort to advance the Debtors' postpetition restructuring and in an exercise of the Debtors' business judgment, the Debtors have determined that it is in the best interest of their estates, their creditors and all parties in interest for the Debtors to enter into the Agreements. While the Debtors believe that it would be unnecessary and costly to maintain Mr. Adams as a full-time employee, the Debtors desire to maintain a relationship with Mr. Adams. By terminating Mr. Adams' employment and entering into the Consulting Agreement, the Debtors are able to benefit from Mr. Adams' knowledge and expertise when the need arises, while at the same time avoiding the cost of maintaining his full-time employment. Absent the relief requested herein, the Debtors believe that employees may seek alternative employment to the Debtors' detriment, as a means to ensure their own financial security.

14. Further, by entering into the Agreements, the Debtors are able to further their reorganization efforts, while at the same time avoiding costly and time consuming litigation claims relating to the termination of employment. Addressing such claims would undoubtedly distract the Debtors' management and professionals from reorganization efforts. Additionally, entering into the Agreements indicates to certain senior employees that they will not be left unprotected if the Debtors were to sever them without cause and thus alleviates any anxiety amongst the employee base and deterioration in employee morale, which would negatively impact the Debtors, the value of their assets and businesses, and ultimately, the Debtors' ability to reorganize. Accordingly, the Debtors believe that the entry into the Agreements constitutes

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sound business judgment.

15. Such relief is appropriate under the Court's equitable powers under section 105(a) of the Bankruptcy Code and authority to approve non-ordinary course transactions under section 363(b) of the Bankruptcy Code. Section 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." See 11 U.S.C. § 105(a). The Fifth Circuit has acknowledged that section 105 confers broad powers on bankruptcy courts:

[Section] 105 [is] 'an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of § 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction. . . .'

Davis v. Davis (In re Davis), 170 F.3d 475, 492 (5th Cir. 1999) (citation omitted). The Debtors recognize that section 105(a) of the Bankruptcy Code "may be used only to carry out the provisions of Title 11." In re CoServ, L.L.C., 273 B.R. 487, 494 n. 9 (Bankr. N.D. Tex. 2002). The major premise of chapter 11 is the continued and uninterrupted operation of the debtor-in-possession to the greatest extent possible. The Debtors' requested relief is consistent with the "furtherance of the provisions of the Bankruptcy Code." Id. See also In re Southmark Corp., 113 B.R. 280, 281 (Bankr. N.D. Tex. 1990) ("the court may use [section] 105(a) to fashion orders that are necessary or appropriate to further a substantive provision of the Code").

16. Section 363(b)(1) of the Bankruptcy Code provides:

The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

11 U.S.C. § 363(b)(1). See also Cajun Electric Power Cooperative, Inc. v. Official Comm. Of Unsecured Creditors (In re Cajun Electric Power Cooperative, Inc.), 119 F.3d 349, 354 (5th Cir.

1997); Institutional Creditors of Continental Airlines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986). Transactions outside the ordinary course of business need to be justified by sound business purpose in order to obtain bankruptcy court approval. See In re Continental Air Lines, 780 F.2d at 1226 (“implicit in § 363(b) is the ... requirement of justifying the proposed transaction...there must be some articulated business justification” for transactions outside the ordinary course of business); see also In re North American Royalties, Inc., 276 B.R. 587, 593 (Bankr. E.D. Tenn. 2002) (Courts can approve transactions outside the ordinary course of business if the debtor proves that it is justified by a sound business purpose.)

17. Here, the Debtors have used their best business judgment in evaluating the need to enter into the Agreements. As noted above, the Debtors believe that entering into the Agreements in consideration for Mr. Adams’ release of any and all claims (other than claims under the Debtors’ D&O policy) against the Debtors and agreement to provide certain consulting services will allow the Debtors’ management and professionals to focus their attention on the reorganization and rehabilitation of the Debtors’ businesses. The requested relief strikes an appropriate balance between the Debtors’ duty to avoid the unnecessary cost of maintaining Mr. Adams as a full-time employee and the Debtors’ need to be able to periodically utilize Mr. Adams’ skills in connection with their business operations. Thus, the Debtors believe that entering into the Agreements is an exercise of the Debtors’ sound business judgment and is in the best interest of the Debtors, their estate and their creditors. Accordingly, authorizing the Debtors to enter into the Agreements is clearly an appropriate use of this Court’s powers under sections 105(a) and 363(b).

18. No previous request for relief sought herein has been made by the Debtors

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to this or any other court.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: Fort Worth, Texas  
December 11, 2003

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

By /s/ Meredyth A. Purdy  
Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Meredyth A. Purdy  
State Bar No. 24007882

-and-

Thomas E Lauria  
State Bar No. 11998025  
Linda M. Leali  
Erika Ruiz  
WHITE & CASE LLP  
4900 Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

ATTORNEYS FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all persons on the Limited Service List via first class United States Mail, postage prepaid, on the 11th day of December, 2003 in accordance with the Federal Rules of Bankruptcy Procedure:

/s/ Meredyth A. Purdy\_\_\_\_\_

# **EXHIBIT A**

## SEPARATION AND RELEASE AGREEMENT

SEPARATION AND RELEASE AGREEMENT, dated as of September 12, 2003 (this "Agreement"), by and among Mirant Corporation, Mirant Services LLC, each of their subsidiaries and its affiliated entities (collectively, the "Company") and Edwin H. Adams ("you" and together with the Company, the "Parties").

### WITNESSETH:

WHEREAS, the Parties desire to resolve fully and settle finally, completely and forever all claims including, without limitation, any and all claims arising from your employment and/or the termination of your employment with the Company.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration set forth herein:

**1. Effective Dates.** Your last day of employment (*i.e.*, the last day on which you will report to work, perform any duties and carry out assigned tasks) shall be August 1, 2003 and your payroll termination date (*i.e.*, the last working day for which you will be paid your base salary and benefits) will be August 31, 2003 ("Separation Date").

**2. Prior Agreements.** This Agreement supersedes any and all previous and other agreements and plans that you may have had or have with the Company or that apply or may have applied to you, and you shall have no rights under any such agreements and plans upon the effectiveness of this Agreement, particularly including, but not limited to (1) Retention Agreement by and between Mirant Services LLC and you, effective October 1, 2002, (2) the Change in Control Agreement by and among Mirant Corporation, Mirant Services LLC and you, dated April 2, 2001, (3) Mirant Services Supplemental Benefit Plan, (4) Amended and Restated Mirant Services Supplemental Executive Retirement Plan, (5) Mirant Corporation Deferred Compensation Plan for Directors and Selected Employees, (6) Mirant Services Severance Pay Plan, (7) Amended and Restated Mirant Corporation Omnibus Incentive Compensation Plan and in each case, as amended from time to time, but excluding the Mirant Services Employee Savings Plan.

**3. Consulting Agreement.** The Parties agree that they shall enter into a one-year consulting agreement to commence after the Separation Date, in a form attached hereto as Schedule A.

**4. Payments and Benefits.**

(a) Provided you execute this Agreement, and subject to the approval of the United States Bankruptcy Court for the Northern District of Texas, you will receive a one-time lump sum payment in the amount of \$363,375 (less the required deductions pursuant to applicable tax withholding laws and regulations). You will also be entitled to receive payment for any accrued wages and/or any accrued but unused vacation days, through the Separation Date, if any (less the required deductions pursuant to applicable tax withholding laws and regulations).

(b) Your rights under all benefit plans, programs and arrangements to which you were entitled during your employment with the Company shall cease as of the Separation Date. You shall be entitled to continue your health insurance benefits at your sole cost (plus a 2% administrative fee) for the statutory period required under Section 4980B of the Internal Revenue Code of 1986, as amended ("COBRA"). Your right to continued coverage pursuant to COBRA shall be governed by applicable law and the terms of the plans and programs. You will receive information concerning COBRA under a separate cover.

(c) You will be entitled to outplacement services equal to those provided to other senior executives that have separated from Mirant.

**5. Director & Officer Insurance and Indemnification.** The Company agrees that you have been and will continue to be covered under the Company's Director and Officer Insurance policy, as specifically provided under the terms of such policy, including all limitations provided therein. The Company further agrees that you are covered under the indemnification provision of Mirant Corporation's By-Laws for the time that you were an officer of the Company. This paragraph in no way provides for additional coverage or modifies Mirant Corporation's By-Laws or Director & Officer Insurance. Any limitations found within those policies remain in effect and unchanged.

**6. Confidentiality Provisions.**

(a) You agree that except as may specifically be required by law, you will not, directly or indirectly, disclose to anyone outside of the Company any confidential or proprietary information concerning its founders, members and/or employees, including but not limited to any confidential or proprietary information, personal information relating to its founders, members and/or employees and/or their respective families, processes or trade secrets (hereinafter referred to as "Confidential Information"). You also agree that you will not make use of any Confidential Information for your own purposes or for the benefit of anyone or any other entity other than for the Company.

(b) Notwithstanding anything provided herein, and any express or implied claims of exclusivity or proprietary rights, the Company and you hereby agree and acknowledge that the Company and you (and each of their employees, representatives or other agents) are authorized to disclose to any and all persons, beginning immediately upon commencement of their discussions and without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) that are provided to the Company or you relating to such tax treatment and tax structure, except to the extent that such disclosure is subject to restrictions reasonable necessary to comply with securities laws.

**7. Company Property.** You agree to return to the Company, no later than the Separation Date, any and all office equipment, documents, files, materials, electronic information, records, keys, credit or charge cards, telephones, beepers, computer software, computer discs, computer hardware components, hard copies of computer reports, computer passwords, equipment or other items in your possession or control belonging to the Company or containing any Confidential Information relating to the Company. You also agree that you have

reconciled all outstanding business expenses. You further represent to the Company that you have retained no copies of any Confidential Information and will make no attempt to acquire such Confidential Information in the future.

**8. Non-Solicitation.**

(a) For a period of two (2) years from the Separation Date you agree to refrain from interfering in any way with the employment relationship between the Company and any person who is currently or was, within six (6) months of the Separation Date, employed by or acting as a consultant for the Company or any person who shall subsequently become an employee of or consultant for the Company by, including without limitation, (i) discussing employment with, hiring, suggesting for hire, soliciting, or otherwise contracting for the services of any of such persons to participate in independent business ventures for your benefit or for any entity in which you had an interest or were employed, or (ii) causing, inducing, or attempting to cause or induce such persons to abandon, cease or otherwise change their employment or consulting status with the Company.

**9. Disparaging Remarks and Publications.**

(a) You agree not to disparage, either now or at any time in the future, whether through oral or written remarks or by any other action, any of the Released Parties, as that term is defined herein. You further agree that you will not make, or cause to be made, any disparaging references whatsoever to any of the Released Parties, or to any fictitious person or entity intended to resemble any of the Released Parties, in any book, article, letter or any other form of publication or writing that you author or that you assist a third-party in authoring for publication or any other form of public dissemination.

(b) The Company agrees not to disparage you, either now or at any time in the future, whether through oral or written remarks or by other action. For purposes of this provision, the Company shall mean the Company's senior management.

**10. Complete Release.** You, for yourself, your heirs, assigns, successors, executors, and administrators (hereinafter collectively referred to as the "Releasor"), in consideration of the promises and covenants set forth herein, which consideration you acknowledge is more than you are presently entitled to receive, hereby fully release and discharge the Company, each of its subsidiaries, affiliates, officers, directors, members, shareholders, successors, partners, principals, employees, sureties, agents, representatives, attorneys, and/or anyone else connected with each of the foregoing (collectively, the "Released Parties"), forever and unconditionally from any and all manner of action, claim, demand, damages, cause of action, debt, sum of money, contract, covenant, controversy, agreement, promise, judgment, and demand whatsoever, in law or equity, known or unknown, existing or claimed to exist (hereinafter, collectively referred to as "Claims") arising from the beginning of time through the execution of this Agreement, including without limitation, all Claims relating to or arising out of your employment and/or termination of your employment with the Company, payment of base salary, severance, bonus and/or employee benefits and/or any discrimination claim based on race, religion, color, national origin, age, sex, sexual orientation or preference, disability, retaliation, or any cause of action under the following, in each case as amended: the Age Discrimination in

Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Civil Rights Act of 1866, the Equal Pay Act of 1963, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Worker Adjustment and Retraining Notification Act, the Employee Retirement Income Security Act of 1974 (except any valid claim to recover vested benefits, if applicable), any applicable Executive Order program, and their state or local counterparts, including without limitation, the Georgia Fair Employment Practices Act of 1978, and/or any other federal, state or local law, rule, regulation, constitution or ordinance, or under any public policy or common law or arising under any practices or procedure of the Company, and/or any claim for wrongful termination, back pay, future wage loss, injury subject to relief under the Workers' Compensation Act. any other claim, whether in tort, contract or otherwise, or any claim for breach of contract, infliction of emotional distress, defamation, or any claim for costs, fees or other expenses, including attorneys' fees, provided, however, nothing herein shall be deemed to release any claims that you may have arising from a breach by the Company of its obligations set forth in this Agreement.

By signing this Agreement, you acknowledge that:

(i) you have read and fully understand the terms of this Agreement and had the opportunity to negotiate its terms;

(ii) you have been advised and urged to consult with your attorneys, concerning the terms of this Agreement, and that you have done so to the extent you deem necessary;

(iii) you have agreed to this Agreement knowingly and voluntarily and were not subjected to any undue influence or coercion in agreeing to its terms;

(iv) you have been given 7 days to consider this Agreement, and acknowledge that in the event that you execute this Agreement prior to the expiration of the 14 day period, you hereby waive the balance of said period; and

(v) you have agreed that no provision of this Agreement may be modified, changed, waived or discharged unless such waiver, modification, change or discharge is agreed to in writing and signed by the Company.

**11. References.** The Parties agree that any third-party request for references shall be directed Vance Booker, SVP-Administration and Technical or Rick Kuester, SVP - International.

**12. Future Cooperation.** You agree to cooperate with any reasonable request by the Company in connection with any matter with which you were involved or any existing or potential claim, investigation, administrative proceeding, lawsuit or other legal or business matter that arose during your employment by the Company.

**13. Employee Breach.** You acknowledge that any breach by you of any of the terms of this Agreement shall immediately relieve and excuse the Company from its obligations under this Agreement, and the Company shall have the right to seek any other legal or equitable relief that may be available.

**14. Entire Agreement.**

(a) You understand that this Agreement fully and completely waives and gives up all claims you may have against the Company excepting only claims arising out of this Agreement.

(b) This Agreement contains the entire understanding between you and the Company, and supersedes any and all other prior agreements, understandings, discussions, negotiations whether written or oral between you and the Company. You acknowledge that neither the Company nor any representative of the Company has made any representation or promise to you other than set forth herein.

**15. Governing Law.** All matters relating to the interpretation, construction and enforcement of this Agreement shall be governed by the laws of the State of [Georgia], to the extent that such laws are not preempted by the laws of the United States of America and without reference to rules relating to conflicts of laws. Any litigation concerning any claims under or breach of this Agreement shall be brought exclusively in the United States Bankruptcy Court for the Northern District of Texas and, to the extent permitted by law, the parties hereby waive any right in such litigation to object to personal jurisdiction and venues.

**16. Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive the right any of them have to a trial by jury of, under or in connection with this Agreement or any agreement or document executed in conjunction therewith or any course of conduct, statements (whether verbal or written) or actions of any Party relating hereto or thereto,

**17. Disclaimer of Liability.** It is understood and agreed that this Agreement does not constitute an admission by the Company or you that any action either Party has taken was unlawful or wrongful, or that any action constituted a breach of contract or violated any federal, state, or local law, policy, rule or regulation.

**18. Severability.** If any of the provisions of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby, and shall remain in full force and effect.

**19. Counterparts.** This Agreement may be executed as separate counterparts, each of which, when so executed and delivered, shall be an original document, but all of which shall together constitute one and the same instrument. A facsimile transmission of a signed original shall have the same effect as delivery of a signed original.

**20. Notice.** All communications or notices required or permitted by this Agreement shall be made by you to the Company in writing and shall be delivered and addressed as follows:

If to the Company:

Vance Booker  
1155 Perimeter Center West  
Atlanta, Georgia 30338

With a copy to:

White & Case L.P.  
Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Attention: Linda Leali, Esq.

If to Mr. Adams:

The address of your principal residence as it appears in the  
Company's records.

**21. Effectiveness.** This Agreement shall have no force or effect unless and until it has been approved by the United States Bankruptcy Court for the Northern District of Texas. The Parties agree that time is of the essence in getting this agreement approved.

Mirant Corporation

By: UMBooker  
Name:  
Title:  
Dated:

Mirant Services LLC

By: UMBooker  
Name:  
Title:  
Dated:

Edwin H. Adams  
Edwin H. Adams  
Dated: 9/12/09

# **EXHIBIT B**

EXHIBIT "A"

**CONSULTING AGREEMENT**

This Consulting Agreement (hereinafter the "Agreement") is made and entered into by and between Edwin H. Adams (hereinafter the "Consultant") and Mirant Corporation, Mirant Services LLC and each of their subsidiaries and its affiliated entities (collectively, the "Company").

WHEREAS, the Consultant has been an employee of the Company since April 5, 1993. On August 31, 2003, the Consultant's relationship with the Company as an employee was terminated.

WHEREAS, the Company desires to maintain a relationship with the Consultant whereby the Consultant will be available to consult with representatives of the Company upon the terms and conditions hereinafter set forth for a minimum of one (1) business day per month.

WHEREAS, the Consultant is able to provide said services and desires to provide the same to the Company on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the following mutual promises, covenants and undertakings, the parties agree as follows:

1. Consulting Services. The Consultant shall consult with the CEO of the Company and other members of management and its advisors about matters relating to structure, strategy and general issues relating to content development of the Company, its subsidiaries, and affiliates, and such other additional duties that are not inconsistent with his skills and abilities as from time to time may be requested of him by the Company, for a minimum of one (1) business day each month, and any additional business days as mutually agreed to by the Company and the Consultant (the "Consulting Services"). The Consultant shall submit a monthly invoice to the Company of all time devoted to Consulting Services. It is expressly understood by the parties hereto that throughout the Term of Consulting Services (as defined herein), the Consultant will devote such time and effort to performing the Consulting Services as agreed to in writing by the CEO prior to the performance of such Consulting Services and will perform such Consulting Services conscientiously, efficiently and to the best of his ability.

2. Term of Consulting Services. The term of this Agreement shall begin on September 1, 2003, and continue through the date which is seven (7) months following the effective date of this Agreement (the "Term of Consulting Services"), provided, however, that the Term of Consulting Services shall automatically terminate in the event of the Consultant's death or disability. For purposes of this Agreement, the Consultant shall be considered disabled if he becomes incapacitated by reason of sickness, accident or other physical or mental disability and shall, in the good faith opinion of the Company, thereby be unable to perform his duties hereunder.

3. Consulting Fee. Conditioned upon the Consultant's compliance with the covenants, promises and undertakings contained in this Agreement, the Company agrees to provide the Consultant with a consulting fee (the "Consulting Fee") of (US)\$2,800 per "Day of Service" as defined herein, payable on or prior to the fifteenth day of each calendar month, as compensation for the Consulting Services rendered for the immediately preceding month. For purposes of this Section 3, a "Day of Service" shall mean any regular business day on which the Company is open for business and on which the Consultant provides Consulting Services for the Company. Any additional days of work required over and above the minimum one day per calendar month will only be billable if the consultant had prior written approval from the CEO to charge for such additional days. The Consulting Fee paid or provided to the Consultant pursuant to this Section 3 shall be made without deduction or withholding for, or on account of, any tax, including, without limitation, Federal, state or local withholding and employment taxes, Social Security taxes, unemployment taxes or any other taxes or business license fees imposed by law, which shall be the sole responsibility of the Consultant. The Company agrees that the minimum consulting fees payable to the Consultant over the entire term of the agreement shall be \$70,000 and at least \$45,000 of this will be paid in the first three months of the agreement.

4. Benefits. The Company shall not carry workers' compensation insurance or any health or accident insurance to cover the Consultant nor pay any amounts on account of the Consultant for purposes of Social Security, unemployment insurance, or Federal, state or local withholding and employment taxes, and shall not provide any other contributions or benefits on account of the Consultant which might be required or customary in connection with an employer-employee relationship.

5. Reimbursable Expenses. The Consultant shall be responsible for all of his own expenses unless otherwise approved in writing by the SVP of Administration and Technical of the Company.

6. Independent Contractor. It is acknowledged and agreed that, in performing any Consulting Services pursuant to this Agreement, the Consultant will be an independent contractor to the Company and will not be subject to the supervision or control of the Company and the performance of such Consulting Services shall not be deemed to render the Consultant in any way or manner whatsoever an "employee" or agent of the Company or any other entities that directly or indirectly control, are controlled by, or under common control with, the Company for any purpose, including, without limitation, any employee benefit plans or arrangements or fringe benefit plans or programs or payroll practices or employment tax obligations applicable to employees of the Company or its subsidiaries or affiliates. Accordingly, the Company shall not supervise, control or direct the manner or means by which the Consultant performs the Consulting Services, and the Consultant shall have no authority to act for or on behalf of the Company or its subsidiaries or affiliates or to contractually bind the Company or any such subsidiary or affiliate without the Company's express written consent.

7. Place of Performance of Consulting Services. Unless otherwise notified by the Company, the Consultant will perform Consulting Services under this Agreement at the Company's offices at 1155 Perimeter Center West, Atlanta, Georgia 30338-5416, or by

telephone, correspondence or in conferences held at times and places selected by the Company and reasonably convenient to the Consultant.

8. Confidential Information. The Consultant acknowledges that, as a result of his previous employment with, and by providing Consulting Services hereunder to, the Company, he has acquired and will acquire knowledge of trade secrets and other confidential information of the Company and its subsidiaries and affiliates. The Consultant agrees that during and after the term of this Agreement, he will hold inviolate and keep secret all knowledge and information as to the business of the Company developed by him and/or made known to him by the Company or any of its officers, directors or employees or otherwise learned by him while in the Company's employ prior to the term of this Agreement or in his capacity as the Consultant under this Agreement and he will not, without the prior written consent of the Company, use or disclose to any person other than to persons in the then-present employ of the Company, any information of a confidential or proprietary nature, developed by him or by others or by him and others jointly, and whether of an affirmative or negative nature, including, without limitation, information relating to any products, production methods, systems, designs and drawings, know-how, computer programs and data bases, formulae, processes, compositions, research and inventions; such business matters as plans, books, customers and customer requirements, products, prices, costs, discounts, sales, inventories and properties, or any other trade secrets of the Company or any subsidiary or affiliate thereof. As used herein, the term "trade secrets" shall include, unless otherwise publicly known or available, all ideas and information on which the Company or any subsidiary or affiliate thereof has spent money, time or effort to develop and which the Company or any subsidiary or affiliate thereof desires to keep confidential, without regard to whether such ideas and information are novel, inventive or patentable or may have been anticipated.

9. Non-Competition. In consideration of the Consulting Fee to be paid to the Consultant by the Company, the Consultant covenants that he will not, directly or indirectly, during the Term of Consulting Services, within the territory of the United States of America or any other jurisdiction or marketing area in which the Company is doing or is qualified to do business, own, manage, operate, control, be employed by or participate in the ownership, management, operation or control of, or be connected in any manner with any business of the type and character engaged in or competitive with that conducted by the Company, including without limitation, any company engaged in power generation, power plan construction, and/or energy trading.

10. Non-Solicitation. During the Term of Consulting Services, the Consultant agrees to refrain from interfering in any way with the employment relationship between the Company and any person who is currently employed by or acting as a consultant for the Company or any person who shall subsequently become an employee of, or consultant for, the Company by, including without limitation, (i) discussing employment with, hiring, suggesting for hire, soliciting, or otherwise contracting for the services of any of such persons to participate in independent business ventures for the Consultant's benefit or for any entity in which the Consultant had, has, or will have an interest or was, is, or will be employed or (ii) causing, inducing, or attempting to cause or induce such persons to abandon, cease or otherwise change their employment or consulting status with the Company.

If any restriction set forth herein with regard to solicitation is found by any court of competent jurisdiction, or an arbitrator, to be unenforceable because it extends for too long a period of time or over too great a range of activities or over too broad a geographic area, it shall be interpreted to extend over a maximum period of time, range of activities or geographic area as to which it may be enforceable.

11. Irreparable Harm. In the event of the breach or threatened breach of Sections 8, 9 and/or 10 of this Agreement by the Consultant, the Consultant acknowledges that the Company would have no adequate remedy at law and, in the event of such breach, the Company would be irreparably harmed and shall, therefore, be entitled to injunctions, both preliminary and final, enjoining and restraining such breach or threatened breach. Such remedies shall be in addition to all other remedies available at law or in equity including the Company's right to receive from the Consultant any and all damages that may be sustained as a result of the Consultant's breach of contract.

12. Work for Hire. All work performed by the Consultant in creating, developing, modifying, enhancing and maintaining works to which copyright protection may attach during the course of the Consulting Services with the Company shall be considered "works made for hire" to the extent permitted under applicable copyright law and will be considered the sole and exclusive property of the Company, its subsidiaries, and affiliates. To the extent such works are not considered "works made for hire," all right, title and interest to such works, including, but not limited to, the copyright and extensions and renewals thereof, is hereby assigned to the Company or any of its subsidiaries and affiliates and the Consultant agrees to execute any necessary documents requested by the Company or any of its subsidiaries and affiliates at any time in relation to said assignment as deemed reasonably necessary by the Company.

13. Termination. The Consulting Services hereunder shall terminate at the end of the Term of Consulting Services, as provided in Section 2. The Company may terminate this Agreement without notice to the Consultant if the Company is reasonably dissatisfied with the Consulting Services provided by the Consultant, or if the Consultant breaches his representations and covenants set forth in Sections 8, 9 and/or 10 of this Agreement. The Consultant may terminate this agreement by giving the Company a minimum of 30 days written notice.

14. Indemnification. The Consultant shall indemnify, defend and hold harmless the Company, its subsidiaries and affiliates and their employees from all losses, costs, expenses, damages, claims, taxes, penalties and liabilities (including reasonable attorneys' fees and expenses) to which the Company, its subsidiaries and affiliates and/or their employees shall be subject, or for which they shall be liable, arising out of or relating to any breach by the Consultant of this Agreement, including, without limitation, any breach of the representations, warranties and covenants of the Consultant contained in Section 8, 9 and/or 10 of this Agreement, or any action or omission to act by the Consultant or any partner, employee, agent, affiliate or representative of the Consultant in connection with the performance of the Consulting

Services and the Consultant's obligations under this Agreement. The Consultant's obligations under this Section 14 shall survive termination of this Agreement.

15. Non-disparagement. The Consultant agrees that he shall not (except as required by law) directly or indirectly make any statement or release any information, or encourage others to make any statement or release any information that: (a) embarrasses or criticizes the Company, or (b) in any way adversely affects or otherwise maligns the business or reputation of the Company.

16. Successors and Assigns. This Agreement and all rights and obligations hereunder are personal to the Consultant and shall not be assignable and any purported assignment in violation hereof shall not be valid or binding on the Company. Notwithstanding anything else in this Agreement to the contrary, the Company may assign this Agreement to, and all rights under this Agreement shall inure to the benefit of, any successor of the Company. This Agreement shall be binding upon and inure to the benefit of the Company, its successors and assigns.

17. Governing Law. All matters relating to the interpretation, construction and enforcement of this Agreement shall be governed by the laws of the State of Georgia to the extent that such laws are not preempted by the laws of the United States of America. Any litigation concerning any claims under or breach of this Agreement shall be brought exclusively in the United States Bankruptcy Court for the Northern District of Texas and, to the extent permitted by law, the parties hereby waive any right in such litigation to object to personal jurisdiction and venues.

18. Severability. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, which shall remain in full force and effect. To the extent any provision is held invalid or unenforceable for being overly broad, it is the intention of the parties hereto that the court enforce such provision to the limits of proper scope.

19. Notice. Any notices required or permitted to be given by this Agreement shall be in writing, and shall be sufficient if addressed and sent by regular or certified mail, return receipt requested, to the parties at such place that either party may designate by written notice to the other.

20. Entire Agreement. This Agreement contains the entire agreement between the Consultant and the Company and shall supersede any and all other prior agreements, arrangements, or understandings, whether oral or written, regarding the Consultant's consulting arrangement with the Company. The Company has made no promises to the Consultant regarding the Consultant's consulting arrangement other than as set forth in this Agreement.

21. Modification of Agreement. This Agreement may not be modified, changed, extended or discharged orally, but only by an agreement that is in writing and executed by the party against whom enforcement of any change, modification, extension or discharge is

sought. The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. No waiver shall be valid hereunder unless it is in writing and executed by the party granting the waiver.

22. Effectiveness. This Consulting Agreement shall have no force or effect unless and until it has been approved by the United States Bankruptcy Court for the Northern District of Texas.

IN WITNESS WHEREOF, this Consulting Agreement has been executed by the Consultant and the Company as of the date indicated below.

MIRANT CORPORATION,

Date: \_\_\_\_\_ By: UMBook  
Name:  
Title:

MIRANT SERVICES LLC,

Date: \_\_\_\_\_ By: UMBook  
Name:  
Title:

CONSULTANT:

Date: 9/12/09 Edwin H. Adams  
Name: EDWIN H. ADAMS



- B. Entering into the Separation and Release Agreement with Edwin H. Adams (the “Separation Agreement”) is supported by sound business justifications.
- C. Entering into the Consulting Agreement with Edwin H. Adams (the “Consulting Agreement”) is supported by sound business justifications.

THEREFORE, IT IS ORDERED THAT:

1. The Motion is granted.
2. The Debtors are authorized to enter into the Separation Agreement.
3. The Debtors are authorized to enter into the Consulting Agreement.
4. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Order.

Dated: Fort Worth, Texas  
January \_\_, 2004.

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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

**PREPARED BY:**

Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian Peck  
State Bar No. 24013306  
**HAYNES AND BOONE, LLP**  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
(214) 651-5000

-and-

Thomas E Lauria  
State Bar No. 11998025  
Linda M. Leali  
Erika Ruiz  
**WHITE & CASE LLP**  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700