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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE: § CHAPTER 11 CASE  
MIRANT CORPORATION, ET AL., §  
§ CASE NO. 03-46590 (DML)  
§  
Debtors. §

**REQUEST FOR ALLOWANCE OF ADMINISTRATIVE CLAIM**

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

COMES NOW, William A. McLaughlin (“McLaughlin”), a creditor and party in interest in the above-referenced bankruptcy case and files his Request for Allowance of Administrative Claim (“Request”) and in support thereof would show as follows:

1. This case was commenced by the filing of a voluntary petition on or about July 14, 2003 by Mirant Corporation (“Mirant”), Mirant Services, LLC (“Mirant Services”), and its affiliated debtors. By order by this Court, the bankruptcy estates of these debtors, among other related ones, are jointly administered. This court has jurisdiction to consider this Request.

2. McLaughlin worked for Mirant Services, LLC until his termination on December 15, 2003 (the “Termination Date”). McLaughlin was terminated as part of a work force reduction by the company. During his tenure, McLaughlin became a participant in the Mirant

Services Supplemental Compensation Plan (“Supplemental Compensation Plan”) and the Mirant Services Supplemental Benefit Plan (“Supplemental Benefit Plan”).

3. The Supplemental Compensation Plan intended to “compensate a specific group of Employees for their loss of eligibility for benefits under the Mirant Services Supplemental Executive Retirement Plan and the Mirant Services Supplemental Benefit Plan following the spin-off of Mirant Corporation from The Southern Company.” (Ex. A at pg. 2). Under Section 4.1. of the Supplemental Compensation Plan, a participant receives (subject other provisions) a bonus equal to the sum of the following amounts:

- (a) the Present Value of the amount of “Pension Benefit” under the Mirant SBP determined as of the Participant’s normal retirement age and the Present Value of the amount under the Mirant SERP determined as of the Participant’s normal retirement age, which the Participant would have accrued as of December 31, 2005 had the Participant been eligible to participate in such plans through such date and was eligible to participate in the Pension Plan for the entire period; and
- (b) the amount of the “Non-Pension Benefit” under the Mirant SBP which the Participant would have been entitled to receive had the Participant been eligible to participate in the Mirant SBP during the period from the Effective Date through December 31, 2005.

The Supplemental Compensation Plan provides for a single lump sum cash payment of a bonus in the event that Mirant Services terminated McLaughlin’s employment other than for Cause. (Ex. A, ¶ 5.2 (Second Amendment) at pg. 2). The amount of the outstanding but unpaid bonus “shall be determined as of the date the Participant’s employment terminates or the date the Participant retires and shall be paid in a single lump sum cash payment on or before the last day of the calendar quarter following the calendar quarter in which the Participant’s employment terminates or he or she retires.” (Ex. A, ¶ 5.2. (Second Amendment) at pg. 2).

4. Under the Supplemental Benefit Plan, Mirant Services is obligated to provide certain retirement and other deferred compensation benefits for a select group of management or

highly compensated employees. (Ex. B at pg. 1). The Supplemental Benefit Plan provides for a pension benefit and non-pension benefit. (Ex. B, ¶¶ 5.1, 5.2 at pgs. 5-6). The calculation of those benefits are set out in Sections 5.1 and 5.2 in the Supplemental Plan and incorporated herein by reference. (Ex. B, ¶¶ 5.1, 5.2). The distribution of benefits are payable in monthly increments. (Ex. B, ¶ 5.3(a) at pg. 7). If a Participant terminates his employment, he is entitled to receive the “value of his Account (including the market value of any shares of Phantom Common Stock (and fractions thereof) reflected in his Account) in a single lump sum cash distribution or annual cash installments not to exceed ten (10). . . . Such distribution shall be made in a single lump sum cash payment as soon as administratively practicable following the valuation date.” (Ex. B, ¶ 5.3(b) (Second Amendment) at pg. 8).

5. On December 5, 2003, Americas Benefits Committee, as plan administrator, filed a proof of claim on behalf the participants of several benefit and compensation plans, including the Supplemental Compensation Plan and the Supplemental Benefits Plan. In that proof of claim, McLaughlin’s interests are listed in the following manner:

- a) For the Supplemental Benefit Plan, an “Accumulated Benefit Obligation as of 7/14/2003” of \$160.00.
- b) For the Supplemental Compensation Plan, an “Accumulated Benefit Obligation as of 7/14/2003” of \$281,600.

6. McLaughlin continued to work for Mirant Services after it filed for bankruptcy, until his termination on December 15, 2003. Consequently, McLaughlin is entitled to an administrative claim for the difference in the amount of the above-referenced benefits (as of the bankruptcy filing) and the value of those benefits at the time of his termination pursuant to 11 U.S.C. § 503(b). Section 503(b) provides:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including---(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case . . . .

7. Under the Supplemental Compensation Plan, McLaughlin is entitled to the amount accrued under the Supplemental Compensation Plan from the day of bankruptcy filing until the Termination Date. This amount is calculated pursuant to Section 4.1 of the Supplemental Compensation Plan, and Mirant Services' human resource department has the specific amount McLaughlin is due for this period of time. The bonus provided under the Supplemental Compensation Plan is a type of "wage" or "salary" contemplated by Section 503(b). *See, e.g., In re Amarex*, 853 F.2d 1526 (10th Cir. 1988)(allowing portion of bonus attributable to services performed post-petition as an administrative claim). Furthermore, McLaughlin's continued tenure at Mirant Services benefited the estate as he expended time and resources for Mirant Services' ordinary operations.

8. Under the Supplemental Benefit Plan, McLaughlin is entitled to the amount accrued under the Supplemental Compensation Plan from the intervening period of the bankruptcy filing and the Termination Date. This amount is calculated by Sections 5.1 and 5.2, and can be determined with information possessed by Mirant Services' human resource department. The contributions under the Supplemental Benefit Plan is a form of "wage" or "salary" as contemplated by Section 503(b). Again, McLaughlin's continued employment at Mirant Services benefited the estate.

9. The above-referenced claims have not been paid to McLaughlin, nor have they been made the subject of any motion by the Debtor or proof of claim. McLaughlin reserves the

right to amend or modify this administrative claim in the event discovery or future events make it necessary.

10. By reason of the foregoing, McLaughlin has an administrative claim herein. McLaughlin respectfully asks this Court to enter an order, after notice and hearing, directing the debtor-in-possession to pay him a sums due and owing under the Supplemental Compensation Plan and the Supplemental Benefit Plan as an administrative expense pursuant to Section 503(b).

Respectfully submitted,

/s/ Megan Cooley  
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Megan M. Cooley  
State Bar No. 24026815  
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**ATTORNEY FOR  
WILLIAM A. MCLAUGHLIN**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was sent via first class mail, on this 17th day of December, 2003 to the parties listed below.

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/s/ Megan Cooley  
Megan M. Cooley

**MIRANT SERVICES  
SUPPLEMENTAL COMPENSATION PLAN**

Troutman Sanders LLP  
Bank of America Plaza, Suite 5200  
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**MIRANT SERVICES  
SUPPLEMENTAL COMPENSATION PLAN**

**PURPOSE**

This Mirant Services Supplemental Compensation Plan is intended to compensate a specific group of Employees for their loss of eligibility for benefits under the Mirant Services Supplemental Executive Retirement Plan and the Mirant Services Supplemental Benefit Plan following the spin-off of Mirant Corporation from The Southern Company. This Plan is not intended to be governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), as either a welfare benefit plan or a pension plan. It is intended to be a bonus program as such term is defined in the regulations under ERISA at 29 C.F.R. § 2510.3-2(c).

**ARTICLE I - DEFINITIONS**

For purposes of the Plan, the following terms when capitalized shall have the following meanings unless a different meaning is plainly required by the context:

1.1 "Administrative Committee" shall mean the committee designated under Article II.

1.2 "Beneficiary" shall mean any person, estate, trust or organization designated by a Participant to receive payment of the Participant's interest in any Bonus outstanding but unpaid upon the death of such Participant.

1.3 "Board" or "Board of Managers" shall mean the board of managers of the Company.

1.4 "Bonus" shall mean an award to a Participant under the provisions, conditions and restrictions of Articles IV and V of this Plan.

1.5 "Change in Control Benefit Plan Determination Policy" shall mean the Change in Control Benefit Plan Determination Policy, as approved by the Board, as it may be amended from time to time in accordance with the provisions therein.

1.6 "Company" shall mean Mirant Services, LLC, its successors and assigns.

1.7 "Effective Date" shall mean the "Group Status Change Date" as defined in the Employee Matters Agreement entered into between Mirant (f/k/a Southern Energy, Inc.) and The Southern Company.

1.8 "Employee" shall mean each common law employee of an Employing Company, excluding any person represented by a collective bargaining agent.

1.9 "Employing Company" shall mean the Company, any United States subsidiary or affiliate of Mirant and any other subsidiary or affiliate of Mirant which the Board may from time

to time determine to bring under the Plan and which shall adopt the Plan, and any successor of any of them.

1.10 "Good Reason" shall mean, without a Participant's express written consent, after written notice to his Employing Company, and after a thirty (30) day opportunity for the Participant's Employing Company to cure, the continuing occurrence of any of the following events:

(a) Inconsistent Duties. A meaningful and detrimental alteration in the Participant's position or in the nature or status of his or her responsibilities from those in effect immediately prior to the Effective Date;

(b) Reduced Salary. A reduction of five percent (5%) or more by the Employing Company in either of the following: (i) the Participant's annual base salary rate for the twelve month period immediately preceding the Effective Date ("Base Salary") (except for a less than ten percent (10%), across-the-board Base Salary reduction similarly affecting at least ninety-five percent (95%) of all Participants who are Employees of the Employing Company); or (ii) the sum of the Participant's Base Salary plus target bonus under his or her Employing Company's short term bonus plan as in effect as of the Effective Date (except for a less than ten percent (10%), across-the-board reduction of Base Salary plus target bonus under such short term plan similarly affecting at least ninety-five percent (95%) of all Participants who are Employees of the Employing Company);

(c) Compensation Plans. The failure by the Employing Company to continue in effect any "compensation plan or agreement" in which a Participant participates as of the Effective Date or the elimination of the Participant's participation in any such plan, (except for across-the-board plan changes or terminations similarly affecting at least ninety-five percent (95%) of all Participants who are Employees of the Employing Company);

For purposes of this Section 1.10(c), the "compensation plan or agreement" shall mean any written arrangement executed by an authorized officer of the Employing Company which provides for periodic, non-discretionary compensatory payments to employees in the nature of bonuses.

(d) Relocation. A change in a Participant's work location to a location more than fifty (50) miles from the facility where the Participant was located on the Effective Date, unless such new work location is within fifty (50) miles from the Participant's principal place of residence on the Effective Date. The acceptance, if any, by a Participant of employment by an Employing Company at a work location which is outside the fifty mile radius set forth in this Section 1.10(d) shall not be a waiver of the Participant's right to refuse subsequent transfer by an Employing Company to a location which is more than fifty (50) miles from the Participant's principal place of residence on the Effective Date, and such subsequent, unconsented transfer shall be "Good Reason" under this Plan; or

(e) Benefits and Perquisites. The taking of any action by the Employing Company that would directly or indirectly materially reduce the benefits enjoyed by a Participant under the Employing Company's retirement, life insurance, medical, health and accident, disability, deferred compensation or savings plans in which the Participant was participating as

of the Effective Date, or the failure by the Employing Company to provide a Participant with the number of paid vacation days to which the Participant is entitled on the basis of years of service with the Employing Company in accordance with the Employing Company's normal vacation policy in effect as of the Effective Date (except for across-the-board plan or vacation policy changes or plan terminations similarly affecting at least ninety-five percent (95%) of all Participants who are Employees of the Employing Company).

1.11 "Mirant" shall mean Mirant Corporation, its successors and assigns.

1.12 "Mirant SBP" shall mean the Mirant Services Supplemental Benefit Plan, as from time to time amended.

1.13 "Mirant SERP" shall mean the Mirant Services Supplemental Executive Retirement Plan, as from time to time amended.

1.14 "Participant" shall mean an Employee eligible to receive a Bonus pursuant to Article III.

1.15 "Plan" shall mean this Mirant Services Supplemental Compensation Plan, as amended from time to time.

1.16 "Plan Year" shall mean the calendar year.

1.17 "Present Value" shall mean the amount calculated using seven and one-half percent (7 ½%) interest and the 1983 Group Annuity Mortality Table with male and female rates averaged.

1.18 "Termination for Cause" or "Cause" shall mean the termination of a Participant's employment by an Employing Company under any of the following circumstances:

(a) The Participant willfully neglects or refuses to discharge his or her duties to the Employing Company as an employee or refuses to comply with any lawful or reasonable instructions given to him or her by the Employing Company or its designee without a reasonable excuse;

(b) The Participant is guilty of gross misconduct. For purposes of this Plan, the following acts shall constitute gross misconduct:

(i) any act involving fraud or dishonesty or breach of appropriate regulations of competent authorities;

(ii) the carrying out of any activity or the making of any statement which would prejudice or impair the good name and standing of Mirant, its subsidiaries or affiliates or would bring Mirant, its subsidiaries or affiliates into contempt, ridicule or would reasonably shock or offend any community in which Mirant, its subsidiaries or affiliates are located;

(iii) attendance at work in a state of intoxication or otherwise being found in possession at his or her workplace of any prohibited drug or substance, possession of which would amount to a criminal offense;

(iv) assault or other act of violence against any employee or other person during the course of the Participant's employment; and

(v) conviction of any felony or misdemeanor involving moral turpitude.

Where the context requires, words in the masculine gender shall include the feminine and neuter genders, words in the singular shall include the plural, and words in the plural shall include the singular.

## ARTICLE II - PLAN ADMINISTRATION

2.1 Administrative Committee. The general administrative functions of the Plan shall be managed by the Administrative Committee appointed by the Board of Managers. The initial members of the Administrative Committee shall be the members of the Company's Americas Benefits Committee. Administrative Committee members shall serve at the pleasure of the Board of Managers and may be removed and appointed as the Board of Managers in its sole discretion shall determine.

2.2 Powers. The Administrative Committee shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan more particularly set forth herein. The Administrative Committee shall have the discretionary authority to interpret the Plan and shall determine all questions arising in the administration, interpretation and application of the Plan. Any such determination by it shall be conclusive and binding on all persons. It may adopt such regulations as it deems desirable for the conduct of its affairs. It may appoint such accountants, counsel, actuaries, specialists and other persons as it deems necessary or desirable in connection with the administration of this Plan, and shall be the agent for the service of process.

### 2.3 Duties of the Administrative Committee.

(a) The Administrative Committee is responsible for the daily administration of the Plan. It may appoint other persons or entities to perform any of its fiduciary functions. The Administrative Committee and any such appointee may employ advisors and other persons necessary or convenient to help it carry out its duties, including its fiduciary duties. The Administrative Committee shall have the right to remove any such appointee from his position. Any person, group of persons or entity may serve in more than one fiduciary capacity.

(b) The Administrative Committee shall maintain accurate and detailed records of Participants and of their rights under the Plan and of all receipts, disbursements, transfers and other transactions concerning the Plan. Such accounts, books and records relating thereto shall be open at all reasonable times to inspection and audit by persons designated by the Administrative Committee.

(c) The Administrative Committee shall take all steps necessary to ensure that the Plan complies with the law at all times. These steps shall include such items as the preparation and filing of all documents and forms required by any governmental agency; maintaining adequate Participants' records; recording and transmission of all notices required to be given to Participants and their Beneficiaries; securing of such fidelity bonds as may be required by law; and doing such other acts necessary for the proper administration of the Plan. The Administrative Committee shall keep a record of all of its proceedings and acts, and shall keep all such books of account, records and other data as may be necessary for proper administration of the Plan.

2.4 Indemnification. The Employing Companies shall indemnify the Administrative Committee against any and all claims, losses, damages, expenses and liability arising from an action or failure to act, except when the same is finally judicially determined to be the result of gross negligence or willful misconduct. The Employing Companies may purchase at their own expense sufficient liability insurance for the Administrative Committee to cover any and all claims, losses, damages and expenses arising from any action or failure to act in connection with the execution of the duties of the Administrative Committee. No member of the Administrative Committee shall receive any compensation from the Plan for his or her service as such.

### ARTICLE III - ELIGIBILITY

Employees earning annual base compensation of \$100,000 or more, but less than \$140,000, on the Effective Date of the Plan (who shall be listed by the Administrative Committee on Appendix A to the Plan) shall be eligible for Bonuses. The Plan is not intended to provide benefits of any kind to any other Employees, including without limitation, anyone hired after the Effective Date and anyone whose compensation falls within the above salary range after the Effective Date.

### ARTICLE IV - BONUSES

4.1 Amount of Bonus. Participants shall receive, subject to Sections 4.2 and 5.3, a Bonus equal to the sum of the following amounts:

(a) the Present Value of the amount of "Pension Benefit" under the Mirant SBP determined as of the Participant's normal retirement age and the Present Value of the amount under the Mirant SERP determined as of the Participant's normal retirement age, which the Participant would have accrued as of December 31, 2005 had the Participant been eligible to participate in such plans through such date and was eligible to participate in the Pension Plan for the entire period; and

(b) the amount of "Non-Pension Benefit" under the Mirant SBP which the Participant would have been entitled to receive had the Participant been eligible to participate in the Mirant SBP during the period from the Effective Date through December 31, 2005.

The terms and provisions of the Mirant SERP and the Mirant SBP are hereby incorporated into the Plan to the extent necessary to determine a Participant's Bonus hereunder.

4.2 Forfeiture of Bonus. In the event that (a) a Participant's employment by an Employing Company is terminated for Cause, or (b) a Participant voluntarily terminates his or her employment for any reason other than for Good Reason, the amount of any outstanding but unpaid Bonus shall be forfeited and no Employing Company shall have any further obligations to such Participant under this Plan.

4.3 Coordination with Eligibility for Mirant SERP and Mirant SBP. In the event that a Participant becomes eligible to participate in the Mirant SERP and the Mirant SBP on or before December 31, 2005, the amount of the Participant's Bonus will be equal to the amount determined under Section 4.1(b) only, and shall be paid on or before the last day of the calendar quarter following the calendar quarter in which the Participant becomes eligible to participate in the Mirant SERP and the Mirant SBP. The amount of any outstanding but unpaid Bonus determined under Section 4.1(a) shall be forfeited. No Employing Company shall have any further obligation to such Participant under this Plan.

4.4 Change in Control. The provisions of the Change in Control Benefit Plan Determination Policy are incorporated herein by reference to determine the occurrence of a "Change in Control" of Mirant Corporation and the benefits to be provided hereunder in the event of such a change in control. Any modifications to the Change in Control Benefit Plan Determination Policy are likewise incorporated herein.

## ARTICLE V - BONUS PAYMENTS

5.1 Payment. Bonuses shall be paid in a single lump sum cash payment on or before March 31, 2006, unless paid at an earlier time as provided in this Article V.

5.2 Acceleration of Payment. In the event that (a) an Employing Company terminates a Participant's employment other than for Cause, (b) a Participant voluntarily terminates his or her employment with an Employing Company for Good Reason, or (c) a Participant retires under the terms of the Mirant Services Pension Plan on or before December 31, 2005, the amount of any outstanding but unpaid Bonus shall be determined as of the date the Participant's employment terminates or the date the Participant retires and shall be paid in a single lump sum cash payment on or before the last day of the calendar quarter following the calendar quarter in which the Participant's employment terminates or he or she retires.

5.3 Payment Upon Disability. In the event a Participant's employment with an Employing Company terminates due to his or her becoming totally disabled, as determined by the Administrative Committee, during the period from the Effective Date through December 31, 2005, the amount of the Participant's Bonus shall be determined as of the date of total disability and shall be paid in a single lump sum cash payment on or before the last day of the calendar quarter following the calendar quarter in which the Administrative Committee determines that the Participant is totally disabled.

5.4 Payment Upon Death. In the event a Participant dies during the period from the Effective Date through December 31, 2005, the amount of the Participant's Bonus shall be determined as of the date of death and shall be paid to his or her Beneficiary in a single lump sum cash payment on or before the last day of the calendar quarter following the later of: (a) the

calendar quarter in which the Participant's death occurs, or (b) the calendar quarter in which the Administrative Committee is provided proof of such Participant's death. In the event a Participant dies on or after December 31, 2005 with a Bonus outstanding but unpaid, the amount of such Bonus shall be paid to his or her Beneficiary in a single lump sum cash payment on or before the last day of the quarter following the later of: (a) the calendar quarter in which the Participant's death occurs, or (b) the calendar quarter in which the Administrative Committee is provided proof of such Participant's death.

5.5 Mirant Corporation Guarantee. If the Company fails or refuses to make payments under the Plan, Participants may have the right to obtain payment by Mirant pursuant to the terms of the "Guarantee Agreement Concerning Southern Energy Resources, Inc. Compensation and Benefit Arrangements" entered into by the Company and Mirant Corporation. A Participant's right to payment is not increased as a result of this Mirant Guarantee. Participants have the same right to payment from Mirant as they have from the Company. Any demand to enforce this Mirant Guarantee should be made in writing and should reasonably and briefly specify the manner and the amount the Company has failed to pay. Such writing given by personal delivery or mail shall be effective upon actual receipt. Any writing given by telegram or telecopier shall be effective upon actual receipt if received during Mirant's normal business hours, or at the beginning of the next business day after receipt, if not received during Mirant's normal business hours. All arrivals by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery.

## ARTICLE VI - MISCELLANEOUS PROVISIONS

6.1 No Assignment. No Participant shall commute, sell, assign, transfer or otherwise convey the right to receive any payments under this Plan, which payments and the rights thereto are expressly declared to be nonassignable and nontransferable. Any attempt to assign or transfer the right to any payment under this Plan shall be void and have no effect.

6.2 Source of Distributions. No Employing Company shall reserve or otherwise set aside funds for the payment of Bonuses under this Plan and the Participants shall be general and unsecured creditors of the Employing Companies with respect to any payments under this Plan.

6.3 Amendment and Termination. Except for the provisions of Section 4.3 hereof, which may not be amended following a "Change in Control," as defined in the Change in Control Benefit Plan Determination Policy, the Plan may be amended, modified, or terminated by the Board of Managers in its sole discretion at any time and from time to time. However, no amendment or termination shall cause a forfeiture or reduction in any accrued benefits as of the date of such amendment or termination. This Plan shall terminate on March 31, 2006, unless earlier terminated by the Board of Managers.

6.4 Other Compensation. The Bonuses made in accordance with this Plan are in addition to any other benefits or compensation to which a Participant may be entitled or for which he or she may be eligible, whether funded or unfunded, by reason of his or her employment with any Employing Company, except as provided in Section 4.2.

6.5 Payment of Taxes. There shall be deducted from each payment under this Plan the amount of any tax required by any governmental authority to be withheld and paid over by an Employing Company to such governmental authority for the account of the person entitled to such distribution.

6.6 Participants Bound by Terms of Plan. Calculations under this Plan shall be made by the Administrative Committee, subject to the review of the Board of Managers, and each Participant and Beneficiary shall be bound by such calculations and the terms and conditions of this Plan.

6.7 Governing Law. This Plan, and all its rights under it, shall be governed by and construed in accordance with the laws of the State of Georgia.


IN WITNESS WHEREOF, Mirant Services, LLC hereby adopts the Mirant Services Supplemental Compensation Plan this 28<sup>th</sup> day of march, 2001.

MIRANT SERVICES, LLC

By: 

Its: VP, Human Resources

Attest:

By: 

Its: Vice President and Corporate Secretary

**FIRST AMENDMENT TO THE  
MIRANT SERVICES  
SUPPLEMENTAL COMPENSATION PLAN**

**WHEREAS**, on March 28, 2001, Mirant Services, LLC (the "Company") adopted the Mirant Services Supplemental Compensation Plan (the "Plan"), to compensate a specific group of Employees for their loss of eligibility for benefits under the Mirant Services Supplemental Executive Retirement Plan and the Mirant Services Supplemental Benefit Plan following the spin-off of Mirant Corporation from The Southern Company; and

**WHEREAS**, pursuant to Section 6.3 of the Plan, the Board of Managers of the Company (the "Board") has the authority to amend the Plan; and

**WHEREAS**, the Board has delegated its authority to amend the Plan, provided such amendment does not have a material effect on the cost of the Plan, to the Americas Benefits Committee (the "Committee"); and

**WHEREAS**, the Committee desires to change the valuation date of the "non-pension benefit" portion of Participants' Bonuses under the Plan for purposes of determining the amount of distribution of such "non-pension benefit" upon termination from the last business day of the calendar quarter in which the Participant terminates to the last business day of the month in which the Participant terminates; and

**WHEREAS**, the Committee has determined that the above amendment would not have a material effect on the cost of the Plan.

**NOW, THEREFORE**, the Committee hereby amends the Plan as follows, to be effective as of March 1, 2002:

I.

Section 4.3 of the Plan shall be deleted in its entirety and replaced with the following new Section 4.3:

4.3 Coordination with Eligibility for Mirant SERP and Mirant SBP. In the event that a Participant becomes eligible to participate in the Mirant SERP and the Mirant SBP on or before December 31, 2005, the amount of the Participant's Bonus will be equal to the amount determined under Section 4.1(b) only, and shall be valued as of the last business day of the month in which the Participant becomes eligible to participate in the Mirant SERP and the Mirant SBP; provided, however, if the Participant becomes so eligible to participate in the Mirant SERP and the Mirant SBP within five (5) business days prior to the last day of such month,

the Participant's Bonus under this Section 4.3 may be valued as of the last business day of the following month, at the Committee's discretion. The Bonus under this Section 4.3 shall be paid in a single lump sum cash payment as soon as administratively practicable following the valuation date. The amount of any outstanding but unpaid Bonus determined under Section 4.1(a) shall be forfeited. No Employing Company shall have any further obligation to such Participant under this Plan.

## II.

Section 5.2 of the Plan shall be deleted in its entirety and replaced with the following new Section 5.2:

5.2 Acceleration of Payment. In the event that (a) an Employing Company terminates a Participant's employment other than for Cause, (b) a Participant voluntarily terminates his or her employment with an Employing Company for Good Reason, or (c) a Participant retires under the terms of the Mirant Services Pension Plan on or before December 31, 2005, the amount of any outstanding but unpaid Bonus, as determined under subsection 4.1(a), shall be determined as of the date the Participant's employment terminates or the date the Participant retires and shall be paid in a single lump sum cash payment on or before the last day of the calendar quarter following the calendar quarter in which the Participant's employment terminates or he or she retires. The amount of any outstanding but unpaid Bonus, as determined under subsection 4.1(b), shall be valued as of the last day of the month in which the Participant's employment terminates or the date the Participant retires; provided, however, if the Participant terminates or retires within five (5) business days prior to the last day of such month, the Participant's Bonus under Section 4.1(b) may be valued as of the last business day of the following month, at the Committee's discretion. The Bonus under Section 4.1(b) shall be paid in a single lump sum cash payment as soon as administratively practicable following the valuation date.

## III.

All parts of the Plan not inconsistent here with are hereby ratified and confirmed.

IN WITNESS WHEREOF, Mirant Services, LLC, through its duly authorized officer pursuant to a unanimous consent of the Committee dated March 5, 2002, has adopted this First Amendment to the Mirant Services Supplemental Compensation Plan, this 5<sup>th</sup> day of March, 2002 to be effective March 1, 2002.

MIRANT SERVICES, LLC:

By: Dianne W. Davenport  
Dianne W. Davenport  
VP, Human Resources

**SECOND AMENDMENT TO THE  
MIRANT SERVICES  
SUPPLEMENTAL COMPENSATION PLAN**

**WHEREAS**, on March 28, 2001, Mirant Services, LLC (the "Company") adopted the Mirant Services Supplemental Compensation Plan (the "Plan"), to compensate a specific group of Employees for their loss of eligibility for benefits under the Mirant Services Supplemental Executive Retirement Plan and the Mirant Services Supplemental Benefit Plan following the spin-off of Mirant Corporation from The Southern Company; and

**WHEREAS**, pursuant to Section 6.3 of the Plan, the Board of Managers of the Company (the "Board") has the authority to amend the Plan; and

**WHEREAS**, the Board has delegated its authority to amend the Plan, provided such amendment does not have a material effect on the cost of the Plan, to the Americas Benefits Committee (the "Committee"); and

**WHEREAS**, the Committee desires to amend the Plan to reflect amendments to the Mirant Services Supplemental Benefit Plan; and

**WHEREAS**, the Committee has determined that the above amendment would not have a material effect on the cost of the Plan.

**NOW, THEREFORE**, the Committee hereby amends the Plan as follows, to be effective as of September 30, 2002:

**I.**

**The last sentence of Section 4.2 of the Plan shall be deleted in its entirety and replaced with the following new sentence:**

The terms and provisions of the Mirant SERP and the Mirant SBP, as such plans may be amended from time to time, are hereby incorporated into the Plan to the extent necessary to determine a Participant's Bonus hereunder.

**II.**

**All parts of the Plan not inconsistent here with are hereby ratified and confirmed.**

**IN WITNESS WHEREOF**, Mirant Services, LLC, through its duly authorized officer pursuant to a unanimous consent of the Committee dated September 30, 2002, has adopted this Second Amendment to the Mirant Services Supplemental Compensation Plan, this 30<sup>th</sup> day of September, 2002 to be effective September 30, 2002.

**MIRANT SERVICES, LLC:**

By:   
Dianne W. Davenport

Omnibus Plan, to the extent such payments do not exceed 200% of the Participant's base pay (as determined for purposes of Section 2.5 herein); provided, however, any payment received by the Participant under the Mirant Services Supplemental Compensation Plan shall be specifically excluded.

II.

Section 2.12 of the Plan shall be deleted in its entirety and replaced with the following new Section 2.12:

2.12 "Incentive Pay" shall mean those short-term incentive awards, if any, paid (or which would have been paid except for the deferral of such amounts under the Mirant Services Deferred Compensation Plan for Directors and Select Employees or any successor plan) to a Participant under the terms of the Omnibus Plan and such other incentive awards as may be approved from time to time by the Board of Managers, to the extent such payments do not exceed 200% of the Participant's base pay (as determined for purposes of Section 2.5 herein); provided, however, any payment received by the Participant under the Mirant Services Supplemental Compensation Plan shall be specifically excluded.

III.

Section 5.1(b) shall be deleted in its entirety and replaced with the following new Section 5.1(b):

(b) For purposes of Section 5.1(a)(1), the Participant's Average Monthly Earnings shall be calculated based on the Participant's Earnings that are considered under the Pension Plan in calculating his Retirement Income, but without regard to the limitation of Section 401(a)(17) of the Code, and including the following additional amounts:

(1) any portion of such Participant's base pay that he may have elected to defer under the Mirant Corporation Deferred Compensation Plan for Directors and Select Employees, or any successor plan, during the applicable Plan Year;

(2) any Incentive Pay or Affiliated Employer Incentive Pay that was paid (or which would have been paid except for the deferral of such amounts under the Mirant Services Deferred Compensation Plan for Directors and Select Employees or any successor plan) during the applicable Plan Year in excess of the Participant's Base Pay Percentage for such Plan Year; and

(3) for the Plan Year after the year of the Participant's termination of employment, a Participant shall be deemed to have Earnings

equal to the Earnings that he had under the Pension Plan during the year of the Participant's termination of employment, but without regard to the limitations of Section 401(a)(17) of the Code and including the additional amounts in Section 5.1(b)(2) for the Plan Year after the year of the Participant's termination of employment but excluding any such amounts under Section 5.1(b)(2) for the year of the Participant's termination of employment and excluding any amounts paid from the Mirant Corporation Deferred Compensation Plan for Directors and Select Employees.

In addition, to determine the Plan Years which produce the highest monthly average to calculate Average Monthly Earnings under the Plan, a Participant's Earnings shall include those additional amounts provided for in this Section 5.1(b).

III.

The Accrued SERP Benefit as of the date of this Amendment shall be protected as provided in Section 6.2 of the Plan.

IV.

Except as amended herein by this Second Amendment, the Plan shall remain in full force and effect as amended by the Company prior to the adoption of this Second Amendment.

IN WITNESS WHEREOF, Mirant Services, LLC, through its duly authorized officer pursuant to a resolution of the Committee at its meeting on February 13, 2002, has adopted this Second Amendment to the Mirant Services Supplemental Executive Retirement Plan, this 25 day of FEBRUARY, 2002 to be effective January 1, 2002.

MIRANT SERVICES, LLC:

By: Dianne W. Davenport  
Dianne W. Davenport

## MIRANT SERVICES

### SUPPLEMENTAL BENEFIT PLAN

#### ARTICLE I - PURPOSE AND ADOPTION OF PLAN

1.1 Adoption: This Mirant Services Supplemental Benefit Plan is hereby adopted as of January 1, 2001.

1.2 Purpose: The Plan is designed to provide certain retirement and other deferred compensation benefits primarily for a select group of management or highly compensated employees which are not otherwise payable or cannot otherwise be provided (1) under the Mirant Services Pension Plan and the Mirant Services Employee Savings Plan, as a result of the limitations set forth under Sections 401(a)(17), 401(k), 401(m), 402(g), or 415 of the Code; and (2) to compensate for lost benefits resulting from participation in the Mirant Corporation Deferred Compensation Plan for Directors and Select Employees, as such plan may be amended from time to time. The Plan shall be an unfunded deferred compensation arrangement whose benefits shall be paid solely from the general assets of the Employing Companies.

1.3 Transferred Accounts. The Committee, in its sole discretion, may allow the transfer of amounts representing a Participant's account from another supplemental benefit plan to the Employing Companies' general assets to be recorded as a separate bookkeeping account under this Plan, or combined with the amounts in the Participant's Account under this Plan, as the Committee shall determine.

(a) Funds representing the amounts in each Participant's "Supplemental Benefit Account" (as such term is defined in the Southern Company Energy Marketing Executive Deferred Compensation and Supplemental Benefit Plan (the "SCEM Plan")) under the SCEM Plan, as determined on the Effective Date of this Plan, shall be transferred to the Company's general assets and recorded as a bookkeeping account for such Participant (the "SCEM Accounts"). No further contributions shall be made to the SCEM Accounts, which shall receive interest at the prime rate as published in the *Wall Street Journal*, compounded daily. Payments shall be made from the SCEM Accounts at the same time and in the same manner as a Participant's Account under this Plan.

(b) Funds representing the amounts in each Employee's "Account" (as such term is defined in the Southern Company Supplemental Benefit Plan (the "Southern Plan")) under the Southern Plan, as determined on the Effective Date of this Plan, shall be transferred to the Company's general assets. Such amounts will be included in the respective Participant's Account under this Plan and payable at the same time and in the same manner as the Participant's Account under this Plan. With respect to an Employee whose Account under the Southern Plan is transferred to this Plan (the "Southern Account"), but who is not a Participant in this Plan, payment of the amounts in such Southern Account shall be made at the same time and in the same manner as if such Southern Account were an Account under this Plan.



## ARTICLE II - DEFINITIONS

2.1 “Account” shall mean the total amount credited to the bookkeeping account of a Participant established by the Employing Company to reflect the interest of a Participant in the Plan resulting from a Participant’s Non-Pension Benefit calculated in accordance with Section 5.2.

2.2 “Beneficiary” shall mean any person, estate, trust, or organization entitled to receive any payment under the Plan upon the death of a Participant.

2.3 “Board” or “Board of Managers” shall mean the Board of Managers of the Company.

2.4 “Bonus Plan” shall mean the Mirant Services Supplemental Compensation Plan.

2.5 “Change in Control Benefit Plan Determination Policy” shall mean the Change in Control Benefit Plan Determination Policy, as approved by the Board, as it may be amended from time to time in accordance with the provisions therein.

2.6 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

2.7 “Committee” shall mean the committee as designated by the Board to be responsible for administering the Plan, and as referred to in Section 3.1 hereof.

2.8 “Common Stock” shall mean common stock of Mirant.

2.9 “Company” shall mean Mirant Services, LLC, its successors and assigns.

2.10 “Deferred Compensation Plan” shall mean the Mirant Corporation Deferred Compensation Plan for Directors and Select Employees, as amended from time to time.

2.11 “Effective Date” shall mean January 1, 2001.

2.12 “Employee” shall mean an employee of an Employing Company, not covered by a collective bargaining agreement between the Employing Company and a union or other employee representative.

2.13 “Employing Company” shall mean the Company, any United States subsidiary or affiliate of Mirant, or any other subsidiary or affiliate of Mirant, which the Board may from time to time determine to bring under the Plan and which shall adopt the Plan, and any successor of any of them.

2.14 “Mirant” shall mean Mirant Corporation (f/k/a Southern Energy, Inc.), its successors and assigns.

- 2.15 "Non-Pension Benefit" shall mean the benefit described in Section 5.2.
- 2.16 "Participant" shall mean an Employee or former Employee who is eligible and participates in the Plan pursuant to Sections 4.1 and 4.2.
- 2.17 "Pension Benefit" shall mean the benefit described in Section 5.1.
- 2.18 "Pension Plan" shall mean the Mirant Services Pension Plan, as amended from time to time.
- 2.19 "Phantom Common Stock" shall mean the Common Stock in which a Participant is deemed to invest his Non-Pension Benefit as if such Common Stock had been purchased upon contribution to the Savings Plan.
- 2.20 "Plan" shall mean the Mirant Services Supplemental Benefit Plan, as amended from time to time.
- 2.21 "Plan Year" shall mean the calendar year.
- 2.22 "Purchase Price" shall mean for purposes of deemed purchases of Phantom Common Stock the following: (a) with respect to the Savings Plan, the closing price on the New York Stock Exchange of a share of the Common Stock under the Savings Plan as of the applicable Valuation Date; and (b) with respect to any investment of dividends attributable to Phantom Common Stock, the dividend reinvestment price of a share of the Common Stock under the Savings Plan as of the applicable Valuation Date.
- 2.23 "Resolution Date" shall mean the first date on which all of the amount deferred with respect to a Participant under this Plan is reasonably ascertainable within the meaning of Treasury Regulation 31.3121(v)(2).
- 2.24 "Sales Price" shall mean the closing price on the New York Stock Exchange of a share of Common Stock under the Savings Plan as of each applicable Valuation Date.
- 2.25 "Savings Plan" shall mean the Mirant Services Employee Savings Plan, as amended from time to time.
- 2.26 "Trust" shall mean the Mirant Corporation Deferred Compensation Trust.
- 2.27 "Valuation Date" shall mean each business day of the New York Stock Exchange.

Where the context requires, the definitions of all terms set forth in the Pension Plan, the Savings Plan and the Deferred Compensation Plan shall apply with equal force and effect for purposes of interpretation and administration of the Plan, unless said terms are otherwise

specifically defined in the Plan. The masculine pronoun shall be construed to include the feminine pronoun and the singular shall include the plural, where the context so requires.

### ARTICLE III - ADMINISTRATION OF PLAN

3.1 Administrator. The general administration of the Plan shall be placed in the Committee. The Committee shall consist of the members of the Company's Americas Benefits Committee. Any member may resign or may be removed by the Board of Managers and new members may be appointed by the Board of Managers at such time or times as the Board of Managers in its discretion shall determine. The Committee shall be chaired by the Chairman of the Americas Benefits Committee and may select a Secretary (who may, but need not, be a member of the Committee) to keep its records or to assist it in the discharge of its duties. A majority of the members of the Committee shall constitute a quorum for the transaction of business at any meeting. Any determination or action of the Committee may be made or taken by a majority of the members present at any meeting thereof, or without a meeting by resolution or written memorandum concurred in by a majority of the members.

3.2 Powers. The Committee shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan more particularly set forth herein. It shall have the discretion to interpret the Plan and shall determine all questions arising in the administration, interpretation and application of the Plan. Any such determination by it shall be conclusive and binding on all persons. It may adopt such regulations as it deems desirable for the conduct of its affairs. It may appoint such accountants, counsel, actuaries, specialists and other persons as it deems necessary or desirable in connection with the administration of this Plan, and shall be the agent for the service of process.

#### 3.3 Duties of the Committee.

(a) The Committee is responsible for the daily administration of the Plan. It may appoint other persons or entities to perform any of its fiduciary functions. The Committee and any such appointee may employ advisors and other persons necessary or convenient to help it carry out its duties, including its fiduciary duties. The Committee shall have the right to remove any such appointee from his position. Any person, group of persons or entity may serve in more than one fiduciary capacity.

(b) The Committee shall maintain accurate and detailed records and accounts of Participants and of their rights under the Plan and of all receipts, disbursements, transfers and other transactions concerning the Plan. Such accounts, books and records relating thereto shall be open at all reasonable times to inspection and audit by persons designated by the Committee.

(c) The Committee shall take all steps necessary to ensure that the Plan complies with the law at all times. These steps shall include such items as the preparation and filing of all documents and forms required by any governmental agency; maintaining of adequate Participants' records; recording and transmission of all notices required to be given to Participants and their Beneficiaries; the receipt and dissemination, if required, of all reports and information

received from the Employing Companies; securing of such fidelity bonds as may be required by law; and doing such other acts necessary for the proper administration of the Plan. The Committee shall keep a record of all of its proceedings and acts, and shall keep all such books of account, records and other data as may be necessary for proper administration of the Plan.

3.4 Indemnification. The Employing Companies shall indemnify the Committee against any and all claims, losses, damages, expenses and liability arising from an action or failure to act, except when the same is finally judicially determined to be due to gross negligence or willful misconduct. The Employing Companies may purchase at their own expense sufficient liability insurance for the Committee to cover any and all claims, losses, damages and expenses arising from any action or failure to act in connection with the execution of the duties as Committee. No member of the Committee who is also an Employee shall receive any compensation from the Plan for his services in administering the Plan.

#### ARTICLE IV - ELIGIBILITY

4.1 Eligibility Requirements. All Employees who are determined eligible to participate in accordance with Section 4.2: (a) whose benefits under the Pension Plan are limited by the limitations set forth in Sections 401(a)(17) or 415 of the Code, (b) for whom contributions by the Employing Company to the Savings Plan are limited by the limitations set forth in Sections 401(a)(17), 401(k), 401(m), 402(g) or 415 of the Code, or (c) who make deferrals under the Deferred Compensation Plan, shall be eligible to receive benefits under the Plan.

4.2 Determination of Eligibility. The Committee shall determine which Employees are eligible to participate. Upon becoming a Participant, an Employee shall be deemed to have assented to the Plan and to any amendments hereafter adopted. The Committee shall be authorized to rescind the eligibility of any Participant if necessary to insure that the Plan is maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees under the Employee Retirement Income Security Act of 1974, as amended.

#### ARTICLE V - BENEFITS

##### 5.1 Pension Benefit.

(a) Each Participant shall be entitled to a Pension Benefit equal to that portion of his Retirement Income under the Pension Plan which is not payable under the Pension Plan as a result of the limitations imposed by Sections 401(a)(17) or 415(b) of the Code.

(b) For purposes of this Section 5.1, the Pension Benefit of a Participant shall be calculated based on the Participant's Earnings that are considered under the Pension Plan in calculating his Retirement Income, without regard to the limitation of Section 401(a)(17) of the Code, including any portion of his compensation he may have elected to defer under the Deferred Compensation Plan. The actuarial equivalent of any payments received by a Participant under Section 4.1(a) of the Bonus Plan shall be used as an offset in calculating the Pension Benefit for

such Participant hereunder and shall be determined using the actuarial assumptions in Section 1.17 of the Bonus Plan.

(c) To the extent that a Participant's Retirement Income under the Pension Plan is recalculated as a result of an amendment to the Pension Plan in order to increase the amount of his Retirement Income, the Participant's Pension Benefit shall also be recalculated in order to properly reflect such increase in determining payments of the Participant's Pension Benefit made on or after the effective date of such increase.

## 5.2 Non-Pension Benefit.

(a) A Participant shall be entitled to a Non-Pension Benefit which is determined under this Section 5.2. An Account shall be established for the Participant as of his initial Plan Year of participation in the Plan. Each Plan Year, such Account shall be credited with an amount equal to the amount that the Employing Company is prohibited from contributing to the Savings Plan on behalf of the Participant as a result of the limitations imposed by Sections 401(a)(17), 401(k), 401(m), 402(g) or 415(c) of the Code.

(b) For purposes of this Section 5.2, the Non-Pension Benefit of a Participant shall be calculated based on the Participant's compensation that would have been considered in calculating allocations to his accounts under the Savings Plan, without regard to the limitations of Section 401(a)(17) or Section 402(g) of the Code, including any portion of his compensation he may have elected to defer under the Deferred Compensation Plan. Any payments received by a Participant under Section 4.1(b) of the Bonus Plan shall be used as an offset in determining the Non-Pension Benefit for such Participant hereunder.

(c) The Non-Pension Benefit of the Participant shall be deemed to be invested in Phantom Common Stock. On each such date of investment, a Participant's Account shall be credited with the number of shares (including fractional shares) of Phantom Common Stock which could have been purchased on such date, based upon the Common Stock's Purchase Price. As of the date upon which occurs the payment of dividends on the Common Stock, there shall be credited with respect to shares of Phantom Common Stock in the Participant's Account on such date, such additional shares (including fractional shares) of Phantom Common Stock as follows:

(1) In the case of cash dividends, such additional shares as could be purchased at the Purchase Price with the dividends which would have been payable if the credited shares had been outstanding;

(2) In the case of dividends payable in property other than cash or Common Stock, such additional shares as could be purchased at the Purchase Price with the fair market value of the property which would have been payable if the credited shares had been outstanding; or

(3) In the case of dividends payable in Common Stock, such additional shares as would have been payable on the credited shares if they had been outstanding.

(d) As soon as practicable following the first day of his eligibility to have benefits credited to his Account, a Participant shall designate in writing on a form to be prescribed by the Committee the method of payment of his Account, which shall be the payment of a single lump sum or a series of annual installments not to exceed ten (10). The method of distribution initially designated by a Participant shall not be revoked and shall govern the distribution of a Participant's Account. Notwithstanding the foregoing, in the sole discretion of the Committee, upon application by the Participant, the method of distribution designated by such Participant may be modified not later than the 366<sup>th</sup> day prior to a Participant's date of separation from service in order to change the form of distribution of his Account in accordance with the terms of the Plan; provided, however, that any Participant who is required to file reports pursuant to Section 16(a) of the Securities and Exchange Act of 1934, as amended, with respect to equity securities of Mirant Corporation shall not be permitted to amend his distribution election during any time period for which such Participant is required to file any such reports with respect to his Non-Pension Benefit unless such amendment is specifically approved by the Committee in its sole discretion. Each Participant, his Beneficiary, and legal representative shall be bound as to any action taken pursuant to the method of distribution elected by a Participant and the terms of the Plan.

### 5.3 Distribution of Benefits.

(a) The Pension Benefit, as determined in accordance with Section 5.1, shall be payable in monthly increments on the first day of the month concurrently with the Participant's Retirement Income under the Pension Plan. The form in which the Pension Benefit is paid will be the same as elected by the Participant under the Pension Plan except that the amount of the monthly benefit will be modified at the appropriate time based on the commencement of payments as follows:

(i) If all or a portion of the Participant's Pension Benefit has not yet been "taken into account" for employment tax purposes within the meaning of Treasury Regulation 31.3121(v)(2), the Participant's initial monthly payment of his Pension Benefit or, if such "taking into account" occurs thereafter, his first monthly Pension Benefit following the Resolution Date, shall be increased by the amount necessary to pay the tax due under the Federal Insurance Contributions Act with respect to the amount of the Participant's Pension Benefit then required to be "taken into account" ("FICA Tax"), if any, increased by the amount necessary to pay the Participant's federal and state income tax (at a combined estimated rate of forty-five percent (45%)) upon such FICA Tax and upon such increase.

(ii) In the event of a one-time increase in a Participant's Pension Benefit under Section 5.3(a)(i) hereof, the Employing Company shall thereafter reduce the Participant's Pension Benefit by the aggregate amounts, if any, paid under Section 5.3(a) hereof, and calculate, based upon such reduced Pension Benefit, the difference between the Participant's monthly Pension Benefit prior to such reduction and the Pension Benefit the Participant would have received based upon the reduced Pension Benefit determined on an actuarially equivalent basis in accordance with the terms of the Pension Plan, taking into account the form of benefit elected by the Participant under the Pension Plan.

(iii) The Beneficiary of a Participant's Pension Benefit shall be the same as the Provisional Payee, if any, of the Participant's Retirement Income under the Pension Plan.

(b) When a Participant terminates his employment with the Employing Company (including any subsidiaries or affiliates thereof), said Participant shall be entitled to receive the market value of any shares of Phantom Common Stock (and fractions thereof) reflected in his Account in a single lump sum cash distribution or annual cash installments not to exceed ten (10). Such distribution shall be made as soon as reasonably practicable following the last business day of the calendar quarter in which the Participant terminates. With regard to any distribution made under this Article, the market value of any shares of Phantom Common Stock credited to a Participant's Account shall be based on the Sales Price. No portion of a Participant's Account shall be distributed in Common Stock.

(c) In the event a Participant elects to receive the distribution of his Account in annual installments, the first payment shall be made as soon as reasonably practicable following the last business day of the calendar quarter in which the Participant terminates. Installments shall equal the balance in the Participant's Account taking into account the tax due under the Federal Insurance Contributions Act divided by the number of annual installment payments. Each subsequent annual payment shall be an amount equal to the balance in the Participant's Account as of the Valuation Date, divided by the number of the remaining annual payments and shall be due on the anniversary of the preceding payment date.

(d) Upon the death of a Participant, or a former Participant prior to the payment of the market value of any shares of Phantom Common Stock (and fractions thereof) credited to said Participant's Account based on the Sales Price, the unpaid balance shall be paid in the sole discretion of the Committee (1) in a lump sum to the designated Beneficiary of a Participant or former Participant as soon as reasonably practicable following the last business day of the calendar quarter in which the Committee is provided evidence of the Participant's death or (2) in accordance with the distribution method chosen by such Participant or former Participant. The Beneficiary designation may be changed by the Participant or former Participant at any time without the consent of the prior Beneficiary. In the event a Beneficiary designation is not on file or the designated Beneficiary is deceased or cannot be located, payment will be made to the person or persons in the first of the following classes of successive preference, if then living:

- (1) the Participant's spouse on the date of his death;
- (2) the Participant's children, equally;
- (3) the Participant's parents, equally;
- (4) the Participant's brothers and sisters, equally; or
- (5) the Participant's executors or administrators.

Payment to such one or more persons shall completely discharge the Plan with respect to the amount so paid.

(e) Upon the total disability of a Participant or former Participant, as determined by the Committee, prior to the payment of the market value of any shares of Phantom Common Stock (and

fractions thereof) credited to such Participant's Account based on the Sales Price, the unpaid balance of his Account shall be paid in the sole discretion of the Committee (1) in a lump sum to the Participant or former Participant, or his legal representative as soon as reasonably practicable following the last business day of the calendar quarter following the date on which the Committee makes the determination of the Participant's disability or (2) in accordance with the distribution method elected by such Participant or former Participant.

(f) Notwithstanding the foregoing provisions of this Section 5.3, if a Participant or Beneficiary becomes entitled to a payment of his Account balance and such Account balance does not exceed \$5,000, said Participant shall receive the market value of any shares of Phantom Common Stock (and fractions thereof) reflected in his Account in a single lump sum distribution. Such distribution shall be made as soon as reasonably practicable following the last business day of the calendar quarter following the date on which he becomes entitled to such payment.

(g) The Committee, in its sole discretion upon application made by the Participant, a designated Beneficiary, or their legal representative, may determine to accelerate payments or, in the event of death or total disability (as determined by Social Security Administration), to extend or otherwise make payments in a manner different from the manner in which such payment would be made under the method of distribution elected by the Participant in the absence of such determination.

5.4 Funding of Benefits. Except as expressly limited under the terms of the Trust, the Employing Companies shall not reserve or otherwise set aside funds for the payment of their obligations under the Plan. In any event, such obligations shall be paid or deemed to be paid solely from the general assets of the Employing Companies. Participants shall only have the status of general, unsecured creditors of the Employing Companies. Notwithstanding that a Participant shall be entitled to receive the balance of his Account under the Plan, the assets from which such amount shall be paid shall at all times remain subject to the claims of the creditors of the Employing Company. When a Participant becomes entitled to payment of a Pension Benefit, the Employing Company may, in its sole discretion elect to purchase an annuity from a reputable third party annuity provider to secure payment of all or any portion of the Participant's Pension Benefit, pursuant to a uniform annuitization program adopted by the Committee.

5.5 Withholding. There shall be deducted from payments and, if necessary, from the Non-Pension Account under the Plan the amount of any tax required by any governmental authority to be withheld and paid over by the Employing Company to such governmental authority for the account of the Participant or Beneficiary.

5.6 Recourse Against Deferred Compensation Trust. In the event a Participant disputes the calculation of his Pension Benefit or Non-Pension Benefit, or payment of amounts due under the terms of the Plan, the Participant has recourse against his Employing Company, Mirant, the Plan, and the Trust for payment of benefits to the extent the Trust so provides.

5.7 Mirant Guarantee. If the Company fails or refuses to make payments under the Plan, Participants employed by the Company may have the right to obtain payment by Mirant

pursuant to the terms of the "Guarantee Agreement Concerning Southern Energy Resources, Inc. Compensation and Benefit Arrangements" entered into by the Company and Mirant. A Participant's right to payment is not increased as a result of this Guarantee. Participants have the same right to payment from Mirant as they have from the Company. Any demand to enforce this Guarantee should be made in writing and should reasonably and briefly specify the manner and the amount the Company has failed to pay. Such writing given by personal delivery or mail shall be effective upon actual receipt. Any writing given by telegram or telecopier shall be effective upon actual receipt if received during Mirant's normal business hours, or at the beginning of the next business day after receipt, if not received during Mirant's normal business hours. All arrivals by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery.

5.8 Change in Control. The provisions of the Change in Control Benefit Plan Determination Policy are incorporated herein by reference to determine the occurrence of a change in control or preliminary change in control of Mirant, the benefits to be provided hereunder and the funding of the Trust in the event of such a change in control. Any modifications to the Change in Control Benefit Plan Determination Policy are likewise incorporated herein.

#### ARTICLE VI - MISCELLANEOUS

6.1 Assignment. Neither the Participant, his Beneficiary, nor his legal representative shall have any rights to sell, assign, transfer or otherwise convey the right to receive the payment of any Pension Benefit or Non-Pension Benefit due hereunder, which payment and the right thereto are expressly declared to be nonassignable and nontransferable. Any attempt to assign or transfer the right to payment under the Plan shall be null and void and of no effect.

6.2 Amendment and Termination. Except for the provisions of Section 5.8 hereof, which may not be amended following a "Change in Control," as defined in the Change in Control Benefit Plan Determination Policy, the Plan may be amended or terminated at any time by the Board of Managers, provided that no amendment or termination shall cause a forfeiture or reduction in any benefits accrued as of the date of such amendment or termination. The Plan may also be amended by the Committee (a) if such amendment does not involve a substantial increase in cost to the Employing Companies, or (b) as may be necessary, proper, or desirable in order to comply with laws or regulations enacted or promulgated by any federal or state governmental authority.

6.3 No Guarantee of Employment. Participation hereunder shall not be construed as creating any contract of employment between the Employing Company and a Participant, nor shall it limit the right of the Employing Companies to suspend, terminate, alter, or modify, whether or not for cause, the employment relationship between the Employing Company and a Participant.

6.4 Construction. This Plan shall be construed in accordance with and governed by the laws of the State of Georgia, to the extent such laws are not otherwise superseded by the laws of the United States.

IN WITNESS WHEREOF, the Plan has been executed by a duly authorized officer of Mirant Services, LLC, pursuant to resolutions of the Board of Managers of the Company, this 28<sup>th</sup> day of March, 2001, to be effective as provided herein.

MIRANT SERVICES, LLC

By: Travis Davenport

Its: VP, Human Resources

Attest:

By: Elizabeth B. Chendh

Its: Vice President and Corporate Secretary

**FIRST AMENDMENT TO THE  
MIRANT SERVICES  
SUPPLEMENTAL BENEFIT PLAN**

**WHEREAS**, Mirant Services, LLC (the "Company") heretofore adopted the Mirant Services Supplemental Benefit Plan (the "Plan"), effective January 1, 2001 to provide certain retirement and other deferred compensation benefits primarily for a select group of management or highly compensated employees; and

**WHEREAS**, pursuant to Section 6.2 of the Plan, the Board of Managers of the Company (the "Board") has the authority to amend the Plan; and

**WHEREAS**, the Board has delegated its authority to amend the Plan, provided such amendment does not have a material effect on the cost of the Plan, to the Americas Benefits Committee (the "Committee"); and

**WHEREAS**, the Committee desires to change the valuation date of Participants' Accounts for purposes of determining the amount of distribution upon termination from the last business day of the calendar quarter in which the Participant terminates to the last business day of the month in which the Participant terminates; and

**WHEREAS**, the Committee has determined that the above amendment would not have a material effect on the cost of the Plan.

**NOW, THEREFORE**, the Committee hereby amends the Plan as follows, to be effective as of March 1, 2002:

I.

Section 5.3(b) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(b):

(b) When a Participant terminates his employment with the Employing Company (including any subsidiaries or affiliates thereof), said Participant shall be entitled to receive the market value of any shares of Phantom Common Stock (and fractions thereof) reflected in his Account in a single lump sum cash distribution or annual cash installments not to exceed ten (10). The Participant's Account shall be valued as of the last business day of the month in which the Participant terminates; provided, however, if the Participant terminates within five (5) business days prior to the last day of such month, the Participant's Account may be valued as of the last business day of the following month, at the Committee's discretion. Such distribution shall be paid in a single lump sum cash payment as soon as

administratively practicable following the valuation date. With regard to any distribution made under this Article, the market value of any shares of Phantom Common Stock credited to a Participant's Account shall be based on the Sales Price. No portion of a Participant's Account shall be distributed in Common Stock.

## II.

Section 5.3(c) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(c):

(c) In the event a Participant elects to receive the distribution of his Account in annual installments, the Participant's Account and the first payment shall be valued as of the last business day of the month in which the Participant terminates; provided, however, if the Participant terminates within five (5) business days prior to the last day of such month, the Participant's Account may be valued as of the last business day of the following month, at the Committee's discretion. Each subsequent annual payment shall be an amount equal to the balance in the Participant's Account as of the valuation date, divided by the number of the remaining annual payments. Installment payments shall be paid in a single lump sum cash payment as soon as administratively practicable following the valuation date. Installments shall equal the balance in the Participant's Account taking into account the tax due under the Federal Insurance Contributions Act divided by the number of annual installment payments.

## III.

Section 5.3(f) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(f):


(f) Notwithstanding the foregoing provisions of this Section 5.3, if a Participant or Beneficiary becomes entitled to a payment of his Account balance and such Account balance does not exceed \$5,000, said Participant shall receive the market value of any shares of Phantom Common Stock (and fractions thereof) reflected in his Account in a single lump sum distribution. The Participant's Account shall be valued as of the last business day of the month in which the Participant terminates; provided, however, if the Participant terminates within five (5) business days prior to the last day of such month, the Participant's Account may be valued as of the last business day of the following month, at the Committee's discretion. Payments shall be paid in a single lump sum cash payment as soon as administratively practicable following the valuation date.

## IV.

All parts of the Plan not inconsistent here with are hereby ratified and confirmed.

IN WITNESS WHEREOF, Mirant Services, LLC, through its duly authorized officer pursuant to a unanimous consent of the Committee dated March 5, 2002, has adopted this First Amendment to the Mirant Services Supplemental Benefit Plan, this 5<sup>th</sup> day of March, 2002 to be effective March 1, 2002.

MIRANT SERVICES, LLC:

By:   
Dianne W. Davenport  
VP, Human Resources

**SECOND AMENDMENT TO THE  
MIRANT SERVICES  
SUPPLEMENTAL BENEFIT PLAN**

**WHEREAS**, Mirant Services, LLC (the "Company") heretofore adopted the Mirant Services Supplemental Benefit Plan (the "Plan"), effective January 1, 2001 to provide certain retirement and other deferred compensation benefits primarily for a select group of management or highly compensated employees;

**WHEREAS**, pursuant to Section 6.2 of the Plan, the Board of Managers of the Company (the "Board") has the authority to amend the Plan;

**WHEREAS**, the Board has delegated its authority to amend the Plan, provided such amendment does not have a material effect on the cost of the Plan, to the Americas Benefits Committee (the "Committee");

**WHEREAS**, the Committee desires to change the deemed investment return credited to a Participant's Non-Pension Benefit Account; and

**WHEREAS**, the Committee has determined that the above amendment would not have a material effect on the cost of the Plan.

**NOW, THEREFORE**, the Committee hereby amends the Plan as follows, to be effective as of September 30, 2002:

**I.**

**Section 5.2(c) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.2(c):**

(c) The Non-Pension Benefit of the Participant shall be deemed to be invested as follows:

(i) Prior to September 30, 2002, the amounts credited to the Non-Pension Benefit Account of the Participant shall be deemed to be invested in Phantom Common Stock. On each such date of investment, a Participant's Account shall be credited with the number of shares (including fractional shares) of Phantom Common Stock which could have been purchased on such date, based upon the Common Stock's Purchase Price. As of the date upon which occurs the payment of dividends on the Common Stock, there shall be credited with respect to shares of Phantom Common Stock in the Participant's Account on such date, such additional shares (including fractional shares) of Phantom Common Stock as follows:

(A) In the case of cash dividends, such additional shares as could be purchased at the Purchase Price with the dividends which would have been payable if the credited shares had been outstanding;

(B) In the case of dividends payable in property other than cash or Common Stock, such additional shares as could be purchased at the Purchase Price with the fair market value of the property which would have been payable if the credited shares had been outstanding; or

(C) In the case of dividends payable in Common Stock, such additional shares as would have been payable on the credited shares if they had been outstanding.

(ii) As of September 30, 2002, the amounts credited to the Non-Pension Benefit Account of the Participant shall be credited with deemed interest at the prime rate as published in the *Wall Street Journal*, compounded daily.

## II.

**Section 5.3(b) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(b):**

(b) When a Participant terminates his employment with the Employing Company (including any subsidiaries or affiliates thereof), said Participant shall be entitled to receive the value of his Account (including the market value of any shares of Phantom Common Stock (and fractions thereof) reflected in his Account) in a single lump sum cash distribution or annual cash installments not to exceed ten (10). The Participant's Account shall be valued as of the last business day of the month in which the Participant terminates; provided, however, if the Participant terminates within five (5) business days prior to the last day of such month, the Participant's Account may be valued as of the last business day of the following month, at the Committee's discretion. Such distribution shall be paid in a single lump sum cash payment as soon as administratively practicable following the valuation date. With regard to any distribution made under this Article, the market value of any shares of Phantom Common Stock credited to a Participant's Account shall be based on the Sales Price. No portion of a Participant's Account shall be distributed in Common Stock.

## III.

**Section 5.3(d) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(d):**

(d) Upon the death of a Participant, or a former Participant prior to the payment of the value of said Participant's Account (including the market value of any shares of Phantom Common Stock (and fractions thereof) credited to said Participant's Account, based on the Sales Price), the unpaid balance shall be paid in the sole discretion of the Committee (i) in a lump sum to the designated Beneficiary of a Participant or former Participant as soon as reasonably practicable following the last business day of the calendar quarter in which the Committee is provided evidence of the Participant's death or (ii) in accordance with the distribution method chosen by such Participant or former Participant. The Beneficiary designation may be changed by the Participant or

former Participant at any time without the consent of the prior Beneficiary. In the event a Beneficiary designation is not on file or the designated Beneficiary is deceased or cannot be located, payment will be made to the person or persons in the first of the following classes of successive preference, if then living:

- (1) the Participant's spouse on the date of his death;
- (2) the Participant's children, equally;
- (3) the Participant's parents, equally;
- (4) the Participant's brothers and sisters, equally; or
- (5) the Participant's executors or administrators.

Payment to such one or more persons shall completely discharge the Plan with respect to the amount so paid.

#### IV.

**Section 5.3(e) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(e):**

(e) Upon the total disability of a Participant or former Participant, as determined by the Committee, prior to the payment of the value of such Participant's Account (including the market value of any shares of Phantom Common Stock (and fractions thereof) credited to said Participant's Account, based on the Sales Price), the unpaid balance of his Account shall be paid in the sole discretion of the Committee (i) in a lump sum to the Participant or former Participant, or his legal representative as soon as reasonably practicable following the last business day of the calendar quarter following the date on which the Committee makes the determination of the Participant's disability or (ii) in accordance with the distribution method elected by such Participant or former Participant.

#### V.

**Section 5.3(f) of the Plan shall be amended by deleting such subsection in its entirety and replacing it with the following new Section 5.3(f):**

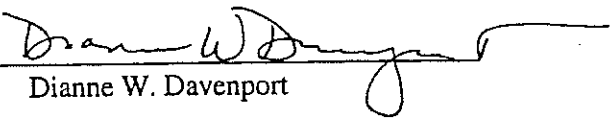
(f) Notwithstanding the foregoing provisions of this Section 5.3, if a Participant or Beneficiary becomes entitled to a payment of his Account balance and such Account balance does not exceed \$5,000, said Participant shall receive the value of his Account (including the market value of any shares of Phantom Common Stock (and fractions thereof) credited to said Participant's Account, based on the Sales Price) in a single lump sum distribution. The Participant's Account shall be valued as of the last business day of the month in which the Participant terminates; provided, however, if the Participant terminates within five (5) business days prior to the last day of such month, the Participant's Account may be valued as of the last business day of the following month, at the Committee's discretion. Payments shall be paid in a single lump sum cash payment as soon as administratively practicable following the valuation date.

VI.

All parts of the Plan not inconsistent here with are hereby ratified and confirmed.

IN WITNESS WHEREOF, Mirant Services, LLC, through its duly authorized officer pursuant to a unanimous consent of the Committee dated September 30, 2002, has adopted this Second Amendment to the Mirant Services Supplemental Benefit Plan, this 30<sup>th</sup> day of September, 2002 to be effective September 30, 2002.

MIRANT SERVICES, LLC:

By:   
Dianne W. Davenport