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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____)	
In re	)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u>,	)	Case No. 03-46590(DML)11
	)	Jointly Administered
Debtors.)	
	)	Hearing Date and Time: December 17,
_____	)	2003; 10:30 a.m.

**DEBTORS' MOTION FOR APPROVAL OF (I) SETTLEMENT AGREEMENT
WITH FUTURE INDUSTRIES, INC. PURSUANT TO RULE 9019 OF THE
BANKRUPTCY RULES; AND (II) ASSUMPTION OF CONTRACTS
WITH FUTURE INDUSTRIES, INC. PURSUANT TO
SECTION 365(a) OF THE BANKRUPTCY CODE**

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

Mirant Corporation ("Mirant") and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this motion (the "Motion") for authorization to (i) enter into a settlement agreement (the "Settlement Agreement") with Future Industries, Inc. ("Future") pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and (ii) assume certain contracts between debtor Mirant Americas Energy Marketing L.P. ("MAEM") and Future pursuant to 11 U.S.C. § 365(a) of title 11 of the United States Code (the "Bankruptcy Code"): (a) a Master Coal Purchase and Sale Agreement, as amended by the Amendment Agreement (the "Amended Master Agreement"); and (b) a Coal Transaction Confirmation, amended by Amendment No.1 Coal

Transaction Confirmation and further amended by the letter agreement dated November 4, 2003 (the “Amended Confirmation” and with the Amended Master Agreement, the “Amended Contracts”).

I. JURISDICTION AND VENUE

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

II. 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”).¹ 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 (the “MAEC Debtors” and collectively with the Initial Debtors, the New Debtors, and the

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

Wrightsville Debtors, the “Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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, this Court entered an order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. On October 20, 2003, this Court entered an order approving the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 20, 2003, this 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”).

III. 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. Mirant employs thousands of employees worldwide, some of whom are based at Mirant's corporate headquarters in Atlanta and most of whom are based at operating facilities. 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. The Contracts.²

7. On August 28, 2001, MAEM and Future entered into a Master Coal Purchase and Sale Agreement (the "Master Agreement"), which governs any agreed coal purchasing transaction between the parties. Pursuant to the Master Agreement, a written confirmation memorializing a coal purchasing transaction lists the terms and conditions of a coal purchasing transaction agreed by MAEM and Future that are not detailed in the Master Agreement.

8. Also on August 28, 2001, MAEM and Future entered into a Coal Transaction Confirmation, which provides, *inter alia*, that MAEM will purchase 96,000 total tons of coal (approximately one (1) train per month weighing approximately 8,000 tons) from Future per the contract terms of January 1, 2002 through December 31, 2002 and January 1, 2003 through December 31, 2003 at \$32.75 per ton and \$33.50 per ton, respectively.

9. The Coal Transaction Confirmation was subsequently amended by Amendment No.1 Coal Transaction Confirmation (collectively, the "Confirmation" and with the Master Agreement, the "Contracts") to provide, *inter alia*, that, effective as of July 1, 2003, one

² The Contracts are voluminous and, therefore, not attached. Parties in interest may request a copy of such documents by making a request to the Debtors' counsel.

(1) business day in advance of the loading date of each unit shipment of coal, MAEM will issue Future a wire transfer total prepayment of \$262,640.00, based upon an estimated train weight of 8,000 tons of coal at \$32.83 per ton.

10. Recognizing that there would be value in the Contracts after certain modifications, the Debtors commenced negotiations with Future over a compromise that would benefit both the Debtors' estates and Future. The goal of these negotiations was to create a situation where the Contracts would remain in effect, with certain modifications, and satisfy Future's prepetition claims against the Debtors' estates related to the Contracts. The parties have successfully reached such a compromise, as discussed below.

C. Summary of Settlement Agreement.

11. Upon Court approval, MAEM and Future will enter into the Settlement Agreement, a copy of which is attached to the Chaney Affidavit as Exhibit "1", the principle terms of which include:

- MAEM and Future will amend the Master Agreement to include certain provisions related to Mirant's chapter 11 cases effective as of July 15, 2003. Attached to the Settlement Agreement as Exhibit "A" is a copy of the Amended Master Agreement.
- MAEM and Future will amend the Confirmation to include, *inter alia*, a contract price of \$29.89 effective as of September 1, 2003 through December 31, 2003. Attached to the Settlement Agreement as Exhibit "B" is a copy of the Amended Confirmation.
- The Amended Contracts will satisfy any and all amounts owed by MAEM for coal delivered by Future on or before the Petition Date. Future will waive any and all claims against the Debtors for coal delivered by Future to MAEM on or before the Petition Date.
- The Debtors and Future will execute mutual releases with respect to all claims and/or potential claims relating to or arising from any proposed amendment, rejection, or breach of the Contracts.
- The Debtors and Future will each use their best efforts to obtain, on an expedited basis, this Court's approval of the Settlement Agreement.

IV. RELIEF REQUESTED

12. By this Motion, the Debtors hereby request authority to enter into the Settlement Agreement, substantially on the terms described above. As part of the Settlement Agreement, Future has agreed to waive any and all claims against the Debtors for coal delivered by Future to MAEM on or before the Petition Date. The Debtors hereby seek approval of the Settlement Agreement under Rule 9019 of the Bankruptcy Rules. The Debtors also hereby seek approval of the Debtors assumption of the Amended Contracts under section 365 of the Bankruptcy Code.

V. APPLICABLE AUTHORITY

A. The Court Should Authorize the Debtors to Enter Into the Settlement Agreement Under Rule 9019.

13. Rule 9019(a) of the Bankruptcy Rules provides, in part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

14. Rule 9019(a) empowers a bankruptcy court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); *See also In re Zale Corp.*, 62 F.3d 746, 754 (5th Cir. 1995) (stating that “the ‘fair and equitable’ determination does not give the bankruptcy court jurisdiction over settlement conditions that do not bear on the court’s duties to preserve the estate and protect creditors.”). A decision to accept or reject a compromise or settlement is within the sound discretion of the Court. *See 9 Collier on Bankruptcy* ¶ 9019.02 (15th ed. Rev. 2001). “Compromises are favored in bankruptcy” because they minimize the costs of litigation and further the parties’ interest in expediting administration of a bankruptcy estate. *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citing *9 Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. Rev. 2001)). The settlement need not result in the best possible outcome for the debtor, but must not “fall beneath the lowest point in the range of reasonableness.” *In re*

Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Basic to the process of evaluating proposed settlements, is “the need to compare the terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 425 (1968).

15. In order to determine whether a settlement is fair and equitable, this Court should consider and evaluate the following factors:

- (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (c) all other factors bearing on the wisdom of the compromise.

See Cajun Electric, 119 F.3d at 356 (citations omitted).

B. The Rule 9019 Factors Are Satisfied.

16. An evaluation of these factors based on an analysis of the scenario of the Debtors not entering into the Settlement Agreement with Future and, instead, moving to reject the Contracts warrant the approval of the Settlement Agreement under Rule 9019. First, Future may assert a rejection damage claim of approximately \$189,000.00 (including a prepetition claim of approximately \$12,000.00), which the Debtors would be forced to litigate. Certainly, there would be fees, expenses, and costs associated with litigating Future’s rejection damage claim. Moreover, litigation of Future’s rejection damage claim may have a detrimental impact on the Debtors’ reorganization efforts because some of the Debtors’ key personnel and management would be focused on managing this litigation rather than Mirant’s emergence from chapter 11. Pursuant to the Settlement Agreement, Future will agree to waive any and all claims against the Debtors for coal delivered by Future to MAEM on or before the Petition Date.

17. Second, assuming the Contracts and continuing to do business with Future (as opposed to rejecting the Contracts) avoids the extreme difficulty of acquiring replacement

coal for the remainder of the year 2003. The Contracts, thus, are essential service contracts for the Debtors' ongoing business.

C. Approval of Assumption of the Amended Contracts Under Section 365.

18. Bankruptcy Code section 365(a) provides:

. . . the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a).

19. The Debtors' decision to assume or reject an executory contract is an exercise of the Debtors' business judgment. *See, Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985). The business judgment test is not a strict standard, but merely requires a showing that either assumption or rejection of the contract at issues will benefit the Debtors' estate. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd sub nom., NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

20. For the reasons stated above, it is clearly an exercise of sound business judgment for the Debtors to assume the Amended Contracts. Not only will the Debtors avoid litigation with a counterparty by assuming the Amended Contracts, the Debtors will also avoid the extreme difficulty of acquiring replacement coal for the remainder of the year 2003 created by rejecting the Contracts.

VI. CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors request that the Court grant the relief requested herein, and any other relief that is necessary and proper.

Dated: November 21, 2003

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

-and-

By /s/ Michelle C. Campbell

Thomas E Lauria
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Michelle C. Campbell
State Bar No. 24001828
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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 parties listed below and upon all persons on the Limited Service List via United States first class mail, postage prepaid, on the 21st day of November, 2003 in accordance with the Federal Rules of Bankruptcy Procedure:

Future Industries, Inc.
1117 Shaw Mines Road
Meyersdale, PA 15552
Attn: Office Manager
Fax: (814) 634-5997

Future Industries, Inc.
1117 Shaw Mines Road
Meyersdale, PA 15552
Attn: Office Manager
Fax: (678) 579-5765

Future Industries, Inc.
P.O. Box 157
Meyersdale, PA 15552
Attn: Bob Rearick

/s/ Michelle C. Campbell

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

In re)	
	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u>,	)	Case No. 03-46591(DML)
	)	Jointly Administered
Debtors.)	
	)	Hearing Date and Time: December 17,
	)	2003; 10:30 a.m.
)	

ORDER GRANTING DEBTORS' MOTION FOR APPROVAL OF (I) SETTLEMENT AGREEMENT WITH FUTURE INDUSTRIES, INC. PURSUANT TO RULE 9019 OF THE BANKRUPTCY RULES; AND (II) ASSUMPTION OF CONTRACTS WITH FUTURE INDUSTRIES, INC. PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE

Upon the Motion (the "Motion") dated November 21, 2003 filed by Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors") for the entry of an order for authorization to (i) enter into a settlement agreement (the "Settlement Agreement") with Future Industries, Inc. ("Future") pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and (ii) assume certain contracts between debtor Mirant Americas Energy Marketing L.P. ("MAEM") and Future pursuant to 11 U.S.C. § 365(a) of title 11 of the United States Code (the "Bankruptcy Code"): (a) a Master Coal Purchase and Sale Agreement, as amended by the Amendment Agreement (the "Amended Master Agreement"); and (b) a Coal Transaction Confirmation, amended by Amendment No.1 Coal Transaction Confirmation and further amended by the letter agreement dated November 4, 2003 (the "Amended Confirmation" and with the Amended Master Agreement, the "Amended Contracts"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

It is hereby:

ORDERED, that the Motion is hereby GRANTED; it is further

ORDERED, that the Settlement Agreement attached to the Affidavit of Kenneth S. Chaney, Jr. is approved and the Debtors are authorized to perform as required thereunder; it is further

ORDERED, that the releases set forth in the Settlement Agreement will be automatically effective as of the date hereof; it is further

ORDERED, that the Debtors will assume the Amended Contracts, effective as of the dates set forth thereunder.

Dated: December ____, 2003

D. Michael Lynn,
United States Bankruptcy Judge

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION
 IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION

In re	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u>,	)	Case No. 03-46590 (DML)
Debtors.	)	Jointly Administered
	)	Hearing Date and Time: December 17,
	)	2003; 10:30 a.m.

**AFFIDAVIT OF KENNETH S. CHANEY, JR. IN SUPPORT OF THE DEBTORS'
 MOTION FOR APPROVAL OF (I) SETTLEMENT AGREEMENT WITH
 FUTURE INDUSTRIES, INC. PURSUANT TO RULE 9019 OF THE
 BANKRUPTCY RULES; AND (II) ASSUMPTION OF CONTRACTS
 WITH FUTURE INDUSTRIES, INC. PURSUANT TO
SECTION 365(a) OF THE BANKRUPTCY CODE**

STATE OF GEORGIA)
) ss.:
 COUNTY OF FULTON)

I, Kenneth S. Chaney, Jr., being duly sworn, depose and state:

1. I am over eighteen (18) years of age. I submit this Affidavit in support of
 the *Motion For Approval Of (I) Settlement Agreement With Future Industries, Inc.*

Pursuant To Rule 9019 Of The Bankruptcy Rules; And (II) Assumption Of Contracts With Future Industries, Inc. Pursuant To Section 365(a) Of The Bankruptcy Code (the "Motion") filed by Mirant Corporation ("Mirant") and its affiliated debtors (collectively, "Mirant" or the "Debtors"), as debtors-in-possession.

2. I have personal knowledge of the facts and circumstances attested to herein. As part of my duties, I am charged with supervising the business relationship and coal purchasing transactions with Future Industries, Inc. ("Future"). This affidavit is based upon my own personal knowledge and my review of the applicable business records and data described herein. If called upon to testify, I could and would testify competently and truthfully as to the facts and circumstances set forth herein and the correctness of the facts described herein.

3. I serve as Manager of Coal and Emissions for Mirant. I have served in this capacity for the last nineteen months.

4. On August 28, 2001, MAEM and Future entered into a Master Coal Purchase and Sale Agreement (the "Master Agreement"), which governs any agreed coal purchasing transaction between the parties. Pursuant to the Master Agreement, a written confirmation memorializing a coal purchasing transaction lists the terms and conditions of a coal purchasing transaction agreed by MAEM and Future that are not detailed in the Master Agreement.

5. Also on August 28, 2001, MAEM and Future entered into a Coal Transaction Confirmation, which provides, among other things, that MAEM will purchase 96,000 total tons of coal (approximately one (1) train per month weighing approximately 8,000 tons) from Future per the contract terms of January 1, 2002 through

December 31, 2002 and January 1, 2003 through December 31, 2003 at \$32.75 per ton and \$33.50 per ton, respectively.

6. The Coal Transaction Confirmation was subsequently amended by Amendment No.1 Coal Transaction Confirmation (collectively, the "Confirmation" and with the Master Agreement, the "Contracts") to provide, among other things, that effective as of July 1, 2003, one (1) business day in advance of the loading date of each unit shipment of coal, MAEM will issue Future a wire transfer total prepayment of \$262,640.00, based upon an estimated train weight of 8,000 tons of coal at \$32.83 per ton.

7. The Debtors recognize that there would be value in the Contracts after certain modifications and, thus, commenced negotiations with Future over a compromise that would benefit both the Debtors' estates and Future. The goal of these negotiations was to create a situation where the Contracts would remain in effect, with certain modifications, and satisfy Future's prepetition claims against the Debtors' estates related to the Contracts. The parties have successfully reached such a compromise that includes the following terms.

8. Upon Court approval, MAEM and Future will enter into the Settlement Agreement, a copy of which is attached hereto as Exhibit "1" the principle terms of which include:

- MAEM and Future will amend the Master Agreement (the "Amended Master Agreement") to include certain provisions related to Mirant's chapter 11 cases effective as of July 15, 2003. Attached to the Settlement Agreement as Exhibit "A" is a copy of the Amended Master Agreement.
- MAEM and Future will amend the Confirmation (the "Amended Confirmation" and with the Amended Master Agreement, the

“Amended Contracts”) to include, among other things, a contract price of \$29.89 effective as of September 1, 2003 through December 31, 2003. Attached to the Settlement Agreement as Exhibit “B” is a copy of the Amended Confirmation.

- The Amended Contracts will satisfy any and all amounts owed by MAEM for coal delivered by Future on or before the Petition Date. Future will waive any and all claims against the Debtors for coal delivered by Future to MAEM on or before the Petition Date.
- The Debtors and Future will execute mutual releases with respect to all claims and/or potential claims relating to or arising from any proposed amendment, rejection, or breach of the Contracts.
- The Debtors and Future will each use their best efforts to obtain, on an expedited basis, this Court’s approval of the Settlement Agreement.

9. In evaluating the Settlement Agreement, the Debtors analyzed the consequences of rejecting the Contracts. The Debtors believe that Future may assert a rejection damage claim of approximately \$189,000.00 (including a prepetition claim of approximately \$12,000.00), which the Debtors would be forced to litigate. There would be fees, expenses, and costs associated with litigating Future’s rejection damage.


10. The Debtors also believe that litigation of Future’s rejection damage claim may have a detrimental impact on the Debtors’ reorganization efforts because some of the Debtors’ key personnel and management would be focused on managing this litigation rather than Mirant’s emergence from chapter 11. Pursuant to the Settlement Agreement, Future will agree to waive any and all claims against the Debtors for coal delivered by Future to MAEM on or before the Petition Date.

11. The Debtors believe that assuming the Contracts and continuing to do business with Future (as opposed to rejecting the Contracts) avoids the extreme difficulty of acquiring replacement coal for the remainder of the year 2003. The Debtors, therefore,

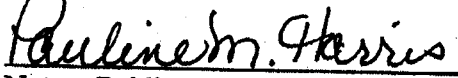
believe that the Contracts are essential service contracts for the Debtors' ongoing business.

12. Based on the above, the Debtors believe that it is clearly an exercise of their sound business judgment to assume the Amended Contracts.

Executed this 19 th day of November 2003, at Fulton County, Georgia.


Kenneth S. Chaney, Jr.

Sworn to before me on this
19th day of November, 2003



Notary Public

My Commission Expires:

Notary Public, DeKalb County, Georgia
My Commission Expires Oct. 14, 2008

AGREEMENT AND RELEASES

This Agreement and Releases ("Agreement") is entered into this 7th day of November, 2003, between and among Future Industries, Inc. ("Future") and Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Mirant Parties").

WHEREAS, on August 28, 2001, debtor Mirant Americas Energy Marketing L.P. ("MAEM") and Future executed and delivered a Master Coal Purchase and Sale Agreement (the "Master Agreement"); and

WHEREAS, also on August 28, 2001, MAEM and Future executed and delivered a Coal Transaction Confirmation, as amended by Amendment No.1 Coal Transaction Confirmation effective as of July 1, 2003 (collectively, the "Confirmation" and with the Master Agreement, the "Contracts"); and

WHEREAS, on July 14, 2003 (the "Petition Date") and continuing into the morning of July 15, 2003, certain of the Mirant Parties filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas for relief under chapter 11 of title 11 of the United States Code, Case No. 03-46590 (DML) (the "Proceeding"); and

WHEREAS, the Mirant Parties have expressed a desire to reject the Contracts pursuant to section 365 of the Bankruptcy Code and Future has indicated that it will assert a claim in the Proceeding against the Mirant Parties for any damages it would incur as a result of the proposed rejection of the Contracts; and

WHEREAS, Future and the Mirant Parties desire to amend the Contracts and have MAEM assume, and not reject, the Contracts as amended; and

WHEREAS, Future and the Mirant Parties desire to settle any claims that Future would have as a result of any proposed amendment, rejection or breach of the Contracts; and

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is herewith acknowledged, Future and the Mirant Parties hereby agree as follows:

1. The Amendments: Contemporaneously with the execution of this Agreement (the "Settlement Date"), MAEM and Future will execute two copies of (i) an amendment to the Master Agreement substantially in the form annexed hereto as Exhibit "A"; and (ii) an amendment to the Confirmation substantially in the form annexed hereto as Exhibit "B" (collectively, the "Amendments").

2. Future's Waiver: The Amendments will satisfy any and all amounts owed by MAEM for coal delivered by Future on or before the Petition Date. Future will waive any and all claims against the Mirant Parties for coal delivered by Future to MAEM on or before the Petition Date.

3. **Bankruptcy Court Approval:** Future and the Mirant Parties will each use their best efforts to obtain, on an expedited basis, approval of this Agreement by the bankruptcy court in the Proceeding.

4. **Conditions Precedent:** The receipt of bankruptcy court approval of this Agreement within sixty (60) days of the Settlement Date is a condition precedent to the effectiveness of this Agreement. In the event the Mirant Parties and Future are unable to obtain such approvals, this Agreement and the Amendments will be deemed null and void.

5. **Release in Favor of the Mirant Parties:** Future executes the following release in favor of the Mirant Parties, their respective agents, attorneys, insurers, assigns, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees (the "Mirant Releasees"):

a. This Release is made and executed by Future, as of the date set forth above. For and in consideration of the terms of this Agreement, Future, acting for itself, its predecessors, assigns, agents, attorneys, insurers, successors, subsidiaries, affiliates, shareholders, officers, directors and employees, does hereby compromise, settle, and fully release and forever discharge the Mirant Releasees and any person, organization, corporation, or entity in privity with the Mirant Releasees, of and from any and all claims, demands, actions, or causes of action which Future had, or may now, or may in the future have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, relating to or arising from any proposed amendment, rejection, or breach of, or default under the Contracts that occurred on or prior to the date of this Agreement.

b. Future states and warrants that it is the sole owner of the claims, demands, actions, or causes of action which are the subject of this Release, that such claims have not been assigned, encumbered or transferred, and that Future has unqualified authority, by the signatory immediately below, to release the same.

c. Future will hold harmless the Mirant Releasees, and any person, persons, or organizations in privity with the Mirant Releasees, of and from any and all claims, demands, actions, or causes of action relating to or arising from any proposed amendment, rejection or breach of, or default under, the Contracts that occurred on or prior to the date of this Agreement by any person or organization claiming an interest in the claims, demands, actions, or causes of action which Future has or may have against the Mirant Releasees with respect to the matters that are the subject of this Release.

d. Future states and warrants that its execution of this Release effects a full, complete and final settlement, satisfaction and extinguishment of all claims, demands, actions, or causes of action owned or asserted, or which could have been asserted by Future against the Mirant Releasees relating to or arising from any proposed amendment, rejection or breach of, or default under, the Contracts that occurred on or prior to the date of this Agreement.

e. In entering into and executing this Agreement, Future has not relied upon any statement or representation pertaining to this matter made by any representative, agent or

employee of the Mirant Releasees, or any person firm, organization or corporation hereby released, or by any person or persons representing them; but Future has relied upon attorneys of its own independent choosing and has determined this Agreement is in its best interest.

f. Future states and warrants that, except as provided in Section 3 of this Agreement, it has full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by Future and constitutes the valid and binding obligation of Future.

6. Release in Favor of Future: The Mirant Parties execute the following release in favor of Future, its agents, attorneys, insurers, assigns, predecessors, successors, subsidiaries, affiliates shareholders, officers, directors and employees (the "Future Releasees"):

a. This Release is made and executed by the Mirant Parties, as of the date set forth above. For and in consideration of the terms of this Agreement, each of the Mirant Parties, acting for themselves and each of their respective predecessors, assigns, agents, attorneys, insurers, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees, does hereby compromise, settle and fully release and forever discharge Future, and any person, organization, corporation, or entity in privity with the Future Releasees, of and from any and all claims, demands, actions, or causes of action which the Mirant Parties had, or may now, or may in the future have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, relating to or arising from any proposed amendment, rejection or breach of, or default under, the Contracts that occurred on or prior to the date of this Agreement.

b. The Mirant Parties state and warrant that they are the sole owner of the claims, demands, actions, or causes of action which are the subject of this Release, that such claims have not been assigned, encumbered or transferred, and that the Mirant Parties have unqualified authority, by the signatories immediately below, to release the same.

c. The Mirant Parties will hold harmless the Future Releasees, and any person, persons, or organizations in privity with the Future Releasees, of and from any and all claims, demands, actions, or causes of action relating to or arising from any proposed amendment, rejection or breach of, or default under, the Contracts that occurred on or prior to the date of this Agreement by any person or organization claiming an interest in the claims, demands, actions, or causes of action which the Mirant Parties have or may have against the Future Releasees with respect to the matters that are the subject of this Release.

d. The Mirant Parties state and warrant that their execution of this Release effects a full, complete and final settlement, satisfaction and extinguishment of all claims, demands, actions, or causes of action owned or asserted, or which could have been asserted by the Mirant Parties against the Future Releasees relating to or arising from any proposed amendment, rejection or breach of, or default under, the Contracts that occurred on or prior to the date of this Agreement.

e. In entering into and executing this Agreement, the Mirant Parties have not relied upon any statement or representation pertaining to this matter made by any representative, agent or employee of the Future Releasees, or any person firm, organization or corporation hereby released, or by any person or persons representing them; but the Mirant Parties have relied upon attorneys of its own independent choosing and has determined this Agreement is in its best interest.

f. The Mirant Parties state and warrant that, except as provided in Section 3 of this Agreement, they have full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by or on behalf of the Mirant Parties and constitutes the valid and binding obligation of the Mirant Parties.

7. Surviving Claims: Except as provided herein, nothing in this Agreement compromises, discharges or otherwise affects any other dispute between the Mirant Releasees and the Future Releasees.

8. Miscellaneous:

a. This Agreement may be amended, modified or supplemented only by written agreement executed by the Mirant Parties and Future.

b. All disputes relating to or arising out of this Agreement will be governed by the laws of the State of Georgia, excluding its choice-of-law rules. The United States Bankruptcy Court for the Northern District of Texas will retain jurisdiction over the terms and application of this Agreement.

c. This Agreement will not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

d. If any material term or provision of this Agreement is found by a final, non-appealable judicial order in any jurisdiction to be invalid or unenforceable, this entire Agreement will automatically terminate *nunc pro tunc* without prejudice to the parties' rights and obligations obtaining with respect to the proposed rejection or amendment of the Contracts prior to entering into this Agreement.

e. This Agreement constitutes the entire agreement and understanding of the parties with respect to the settlement and releases and related transactions contemplated herein. There are no restrictions, promises, representations, warranties, covenants or undertakings between the parties with respect to the transactions contemplated herein, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings, written or oral, between the parties with respect to such transactions.

f. The releases affected hereby will be limited to the claims expressly set forth herein.

IN WITNESS WHEREOF, the Mirant Parties and Future have caused this Agreement to be signed by their respective duly authorized officers or representatives as of the date set forth above.

FUTURE INDUSTRIES, INC.

By



Name: Robert Rearick

Title: Sales Representative

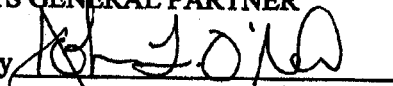
Address: PO Box 157

Meyersdale PA 15552

MIRANT AMERICAS ENERGY
MARKETING, L.P.

BY: MIRANT AMERICAS
DEVELOPMENT, INC.,
ITS GENERAL PARTNER

By



Name: John L. O'Neal

Title: Vice President and CCO

Address: 1155 Perimeter Center West
Atlanta, GA 30338

MIRANT CORPORATION

By



Name: John L. O'Neal

Title: Vice President

Address: 1155 Perimeter Center West
Atlanta, GA 30338

Exhibit A

AMENDMENT AGREEMENT

This Amendment Agreement (the "Amendment") is made and entered into as of the 4th day of November, 2003, by and between Future Industries, Inc. ("Future") and Mirant Americas Energy Marketing, LP ("Mirant").

WHEREAS, Future acknowledges that on July 14, 2003, Mirant filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code and that such case is pending in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division; and

WHEREAS, Future and Mirant are parties to the Master Coal Purchase and Sale Agreement dated August 28, 2001 (the "Master Agreement") and desire to amend the Master Agreement to add provisions related to Mirant's bankruptcy.

NOW THEREFORE, in consideration of the foregoing premises and agreements hereinafter set forth, the parties agree as follows:

1. Terms used in this Amendment shall have the meanings given to them in the Master Agreement.
2. Section 1.3 Representations shall be amended to add the following to the end of this section:
 - (h) The Parties have negotiated and entered into this Agreement in the ordinary courses of their respective businesses, in good faith, for fair consideration and on an arm's length basis.
3. A new Section 8.8 shall be added as follows:

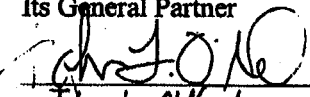
Future acknowledges that on July 14, 2003, Mirant filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (Case No. 03-46590) (the "Filing") and that such case is pending in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division ("Bankruptcy Court"). Until such time as Mirant emerges from Chapter 11 bankruptcy through the confirmation of a plan of reorganization, the Filing shall not constitute an Event of Default under Section 8.1(a)(iii), (v) and/or (vi) of this Agreement; provided, however, that in the event that (a) Mirant files a motion which contemplates the sale of substantially all of its assets; (b) Mirant files a Chapter 11 plan which contemplates the sale of substantially all of its assets; (c) Mirant files a motion or request to convert its Chapter 11 case to a Chapter 7 proceeding; (d) the Bankruptcy Court enters an order converting Mirant's case from a Chapter 11 proceeding to a Chapter 7 proceeding; or (e) the Bankruptcy Court enters an order appointing a trustee or examiner (with expanded powers) in Mirant's bankruptcy case, any such event (a) through

(e) shall constitute an Event of Default under Section 8.1(a)(iii), (v) and/or (vi) of this Agreement, as applicable.


4. This Amendment shall be effective as of July 15, 2003.
5. Except as amended hereby, the Master Agreement shall remain unchanged and in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representative as of the date first above written.

Mirant Americas Energy Marketing, LP
By: Mirant Americas Development, Inc.
Its General Partner

By: 
Name: John L. O'Neal
Title: Vice President and COO

Future Industries, Inc.

By: 
Name: Robert Rearick
Title: Sales Rep

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Exhibit B

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West, Atlanta, Georgia 30338-5416
T 678 579 5000 F 678 579 5001 U www.mirant.com

November 4, 2003

Future Industries, Inc.
1117 Shaw Mines Road
Meyersdale, PA 15552



Re: Second Amendment to Coal Transaction Confirmation dated August 28, 2001

Dear Sir or Madam:

Mirant Americas Energy Marketing, LP ("Mirant") and Future Industries, Inc. ("Future") entered into a Coal Transaction Confirmation dated August 28, 2001, as amended by Amendment 1 effective July 1, 2003, (the "Confirmation"). The parties desire to further amend such Confirmation to change the Contract Price among other terms following Mirant's voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. All capitalized terms used herein shall have the meanings assigned to such terms in the Confirmation.

This letter confirms our mutual agreement regarding the following amendments to the Confirmation:

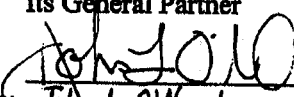
- (a) The Contract Price shall be \$29.89 effective as of September 1, 2003 through the end of the Contract Term, December 31, 2003.
- (b) Mirant shall not be required to provide any form of collateral or security to Future with respect to this Transaction other than the prepayment terms set forth in Amendment 1 to the Confirmation.
- (c) The Confirmation shall be subject to the Master Coal Purchase and Sale Agreement dated August 28, 2001 between Mirant and Future, as amended by the Amendment Agreement dated November 4, 2003.
- (d) Future acknowledges that this Second Amendment may require approval by the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division. Mirant shall notify Future promptly upon becoming aware that such approval is required.

Except as amended hereby and by Amendment 1, the Confirmation shall remain unchanged and in full force and effect in accordance with its terms.

If the foregoing sets forth Future's agreement, please sign and return a copy of this letter.


Sincerely,

Mirant Americas Energy Marketing, LP
By: Mirant Americas Development, Inc.
Its General Partner

By: 
Name: John L. O'Neal
Title: Vice President and CCO
Date: November 4, 2003

Accepted and agreed to by:

Future Industries, Inc.

By: 
Name: Robert Rearick
Title: Sales Representative
Date: November 6, 2003