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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, et al.,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
_____)	

**MOTION OF DEBTORS PURSUANT TO SECTION 365(a) OF
THE BANKRUPTCY CODE FOR AUTHORITY TO REJECT
EMPLOYMENT AGREEMENT OF HARVEY A. WAGNER**

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively with Mirant, the “Debtors”), as debtors and debtors in possession, file this motion (the “Motion”), pursuant to section 365(a) of title 11 of the United States Code (as amended, the “Bankruptcy Code”), for authority to reject that certain Employment Agreement between Harvey A. Wagner and Mirant,

**MOTION OF DEBTORS PURSUANT TO SECTION 365(a) OF
THE BANKRUPTCY CODE FOR AUTHORITY TO REJECT
EMPLOYMENT AGREEMENT OF HARVEY A. WAGNER**

dated May 16, 2003 (the “Contract”), which is attached hereto as Exhibit A,¹ and in support of the Motion respectfully represents as follows:

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.

PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), the Debtors filed voluntary chapter 11 petitions. 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. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas (“UST”) in these administratively consolidated cases.

5. The Examiner. On April 7, 2004, this Court authorized the UST to appoint an examiner in these cases to analyze certain potential causes of action and act as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The UST appointed William K. Snyder as the examiner in these cases.

¹ Not all parties were served with the Contract. Any party may request a copy of the Contract by making a written request therefor to the Debtors’ counsel.

RELIEF REQUESTED

6. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Contract, effective ten (10) business days from the date upon service of this Motion.

BASIS FOR RELIEF

7. Under the Contract, the Debtors employed Harvey A. Wagner as their Chief Financial Officer (“CFO”). On April 21, 2004, the Court entered an order (the “Separation Order”) authorizing the Debtors to pay Mr. Wagner a separation payment of \$217,500, less any applicable withholding taxes. Pursuant to the Separation Order, Mr. Wagner retained all of his prepetition claims against the Debtors arising from the Contract, distribution on account of which is subject to reduction as more fully set forth in the Separation Order. On or about April 30, 2004, Mr. Wagner’s employment with the Debtors ceased.

8. On August 27, 2004, this Court entered an order governing the procedures regarding the filing of proofs of claim against the Debtors in these cases (the “Bar Date Order”). Pursuant to the Bar Date Order, non-debtor parties to executory contracts rejected by the Debtors have thirty (30) days from the effective date of such rejection by which to file a proof of claim. To provide certainty to both the Debtors and Mr. Wagner regarding his prepetition claims arising from the Contract, the Debtors now seek to reject the Contract.²

9. On August 14, 2003, the Court entered an order (the “Order”) approving procedures (the “Rejection Procedures”) for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

² The Debtors are filing this motion in the interest of caution and reserve all rights with respect to any proof of claim that Mr. Wagner may file including, but not limited to, the right to assert that the Contract is not executory for purposes of section 365 of the Bankruptcy Code.

10. In summary, the Order allows the Debtors, in exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service, via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for the Committees. A copy of the Order is attached hereto as Exhibit B.

11. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the Contract will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

- (a) **Title of Contract:** "Employment Agreement" between Harvey A. Wagner and Mirant, dated May 16, 2003, relating to the employment of Harvey A. Wagner as Chief Financial Officer of Mirant.

Effective Date of Rejection:

June 10, 2004, subject to paragraph 10 hereof

Parties to the Contract:

Mirant Corporation
Harvey A. Wagner

Contact Information of Non-debtors:

Harvey A. Wagner
2500 Peachtree Road
Unit 310 North
Atlanta, Georgia 30305

12. If an objection to this Motion is timely filed and served upon: White & Case LLP, Wachovia Financial Center, 200 South Biscayne Boulevard, Suite 4900, Miami,

Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas, 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Contract, then the Contract shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract.

13. Pursuant to the Order, claims arising out of the rejection of the Contract must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) thirty (30) days after the Effective Date or (ii) the date of the Order of the Court upholding the Debtors' determination to reject the Contract, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract (the "Rejection Claims Deadline").³

14. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Contract who fails to timely file a proof of claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

³ Thus, provided no part in interest objects to the Motion, the last day on which Mr. Wagner may file a proof of claim arising from the rejection of the Contract is July 12, 2004.

CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors respectfully request that this Court grant the relief requested herein and any further relief that this Court deems necessary and proper.

Dated: Fort Worth, Texas
May 27, 2004

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

By: /s/ Ian T. Peck
Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian T. Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
Linda M. Leali
Richard S. Kebrdle
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
(305) 371-2700

ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 27th day of May 2004.

Harvey A. Wagner
2500 Peachtree Road
Unit 310 North
Atlanta, Georgia 30305

/s/ Ian T. Peck

EXHIBIT “A”

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into this 16th day of MAY, 2003 (the "Effective Date") by and between Mirant Corporation (hereinafter "Mirant"), and Harvey A. Wagner (hereinafter "Wagner").

WITNESSETH:

WHEREAS, Mirant desires to secure the services of Wagner as an executive of Mirant;
and

WHEREAS, Wagner desires to be employed by Mirant in this capacity; and

WHEREAS, Mirant and Wagner wish to enter into this Employment Agreement setting forth the terms and conditions of such employment,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Employment Duties.

(a) Mirant hereby agrees to employ Wagner as its Executive Vice President and Chief Financial Officer, and Wagner hereby agrees to accept such employment upon the conditions set forth in this Agreement. Wagner will have the powers, duties, and responsibilities from time to time assigned to him by Mirant's Board of Directors (the "Board") or its Chief Executive Officer, and Wagner will report directly to the Chief Executive Officer of Mirant.

(b) During the term of this Agreement, Wagner agrees to be a full-time employee of Mirant and devote his full and exclusive business time, energy and skill to the business and affairs of Mirant. He shall perform all of his duties properly and faithfully in the best interest of Mirant and will not intentionally become involved in any personal matters which adversely affect or reflect on Mirant. Wagner may (i) engage in community, charitable, and educational activities, (ii) manage personal investments, and (iii) serve on those corporate boards or committees that he disclosed to Mirant as of the Effective Date of this Agreement, provided

that such activities do not materially conflict or interfere with the performance of Wagner's obligations under this Agreement.

2. Term. The term of this Agreement is for three years from January 1, 2003. At the end of the term of this Agreement, if it has not been terminated earlier pursuant to Section 5, Wagner will become an at-will employee of Mirant.

3. Compensation.

(a) Salary. At the commencement of this Agreement, Mirant shall pay Wagner a salary of \$425,000 per year, minus normal withholdings, paid in equal bimonthly installments. Mirant shall evaluate the compensation provided to Wagner on an annual basis and shall make such adjustments as Mirant deems appropriate, with the understanding that Wagner's salary will not be reduced during the term of this Agreement without his consent.

(b) Bonus. Mirant shall provide Wagner with a target bonus (the "2003 Target Bonus") during his first year of employment of at least 65% of base salary minus normal withholdings, provided that Wagner shall be eligible to receive a bonus up to two times the 2003 Target Bonus. Thereafter, in subsequent years of this Agreement, the terms of his target bonus (the "Bonus") will be tied to the same goals as those of other Senior Mirant Executives; provided, however, that (i) the target for the Bonus shall be at least 65% of Wagner's then current base salary, and (ii) Wagner shall be eligible to receive a bonus up to two times the Bonus.

(c) Mirant will reimburse Wagner for all reasonable expenditures incurred by Wagner in the course of his employment or in promoting the interests of Mirant, consistent with Mirant's requirements that supporting documentation be provided, including expenditures for (i) transportation, lodging, and meals during overnight business trips, (ii) business meals and entertainment, (iii) supplies and business equipment, (iv) long-distance telephone calls and cell phone usage, and (v) membership dues for business and professional associations, publications,

the Buckhead Club, and any other association of which Wagner becomes a member in connection with the performance of his duties.

(d) Mirant will provide Wagner with a membership at a country club of his choice and will pay all dues required to maintain such membership.

(e) Mirant will reimburse Wagner for the reasonable costs of the preparation of his annual federal and state tax returns in an amount not to exceed \$3,000.

(f) Mirant will reimburse Wagner for the reasonable costs of Executive Financial Planning services provided by vendors approved by Mirant in an amount not to exceed \$20,000 per year.

(g) Mirant will reimburse Wagner for the reasonable costs of legal services relating to estate and financial planning; provided, however, that the cost of such services shall not exceed \$6,000 for every five (5) year period.

(h) Mirant will reimburse Wagner for the reasonable monthly and/or annual costs associated with Wagner's home security system in an amount not to exceed \$1,500 per year.

4. Benefits.

Employee Benefits.

(a) Wagner shall be entitled, during the term of this Agreement, to participate in all employee benefit programs maintained by Mirant for the benefit of its employees, including benefits available to senior officers of Mirant and/or Mirant's Management Council, according to the terms of such plans.

(b) Wagner will be entitled to four (4) weeks paid vacation annually. Consistent with Mirant's vacation policy, unused vacation time not exceeding 40 hours will accumulate and carry over to subsequent years. Any unused vacation at the date of termination of this Agreement for any reason will be paid to Wagner at the time of termination.

(c) Notwithstanding anything else contained in this Agreement, after termination or expiration of Wagner's employment for any reason other than Cause (as defined in Section 5B below), Wagner will, for an eighteen (18) month period from the date of termination, be entitled to remain on any medical, health, dental, on the same basis as during his employment (including payment by Mirant of the costs and expenses associated with such programs on the same terms as when Wagner was employed with Mirant). In meeting its obligations under this provision, Mirant and Executive will take all actions which may be necessary or appropriate to comply with criteria set forth by Mirant's insurance carriers and other program providers.

5. Termination of Employment.

(a) Death or Disability. In the event of Wagner's death or total disability, this Agreement shall terminate immediately. Wagner shall be deemed totally disabled if he is eligible to receive long-term disability benefits under Mirant's then existing long-term disability Plan. In the event of his death or disability, Wagner or his estate will be entitled to such benefits, if any, as are provided under the terms of various Mirant health insurance, life insurance, pension and disability Plans.

(b) Termination for Cause. Mirant may terminate this Agreement and Wagner's employment immediately hereunder for: 1) any nonapproved absence from work, unrelated to illness or physical incapacity, in excess of thirty (30) continuous days; 2) any acts or conduct by Wagner involving moral turpitude that could reasonably be expected to interfere with his ability to perform the functions of his job, results in injury to Mirant and has not been cured by Wagner within thirty (30) days after receipt by Wagner of written notice from Mirant of such conduct; 3) any material dishonesty in the performance of his duties as an employee of Mirant; that results in injury to Mirant and has not been cured by Wagner within thirty (30) days after receipt by Wagner of written notice from Mirant of such conduct 4) any willful or gross negligence by Wagner in complying with the terms of this Agreement or in performing his duties

for Mirant that results in injury to Mirant; and has not been cured by Wagner within thirty (30) days after receipt by Wagner of written notice from Mirant of such conduct; 5) any material breach of this Agreement which has not been cured by Wagner within thirty (30) days after receipt by Wagner of written notice from Mirant of such breach; or 6) any unauthorized disclosure of confidential information regarding Mirant. In the event of a termination pursuant to this subparagraph (5(b)), Wagner will not be entitled to any further benefits or compensation under this Agreement except as provided for in this Agreement, to the extent mandated by law, or as otherwise agreed to at the time by Mirant and Wagner. Termination pursuant to this subparagraph 5(b) shall be deemed a termination for Cause.

(c) Termination by Mirant by Notice. Mirant shall have the additional right to terminate this Agreement and Wagner's employment without Cause by giving Wagner written notice of termination. Such termination shall be effective immediately upon receipt of notice by Wagner. In the event of a termination pursuant to this subsection, Wagner will be entitled to a lump sum payment (the "Separation Payment"), minus required withholdings, equal to the number of whole and partial months remaining in the term of this Agreement at the time of notice, multiplied by the Separation Payment Multiplier; provided, however, that the Separation Payment shall be equal to at least twelve times the Separation Payment Multiplier (the "Minimum Separation Payment"). The Separation Payment Multiplier represents Wagner's monthly base salary plus target incentive at the time of initial employment, which, as of the Effective Date, totals \$58,437.50. The Separation Pay Multiplier will increase if Wagner's base salary increases during the term of this Agreement and, therefore, the Minimum Separation Payment will increase as well.

(d) Termination by Wagner for Good Reason. Wagner may resign for Good Reason on thirty (30) days written notice to Mirant, provided he previously notified Mirant of an action forming the basis for "Good Reason" as set forth below and Mirant failed to cure such

action within thirty (30) days of receiving such notice. In the event of a termination pursuant to this subsection, Wagner will be entitled to the Separation Payment set forth in paragraph 5(c) above, subject to the terms set forth in paragraph 5(c) above. However, due to the extent that Executive terminates his employment with Mirant for "Good Reason" under the terms of the Change of Control Agreement between him and Mirant, then any benefits pursuant to this subsection will be offset against benefits in the Change of Control Agreement so that Executive will not be entitled to payments under both Agreements for a "Good Reason" termination. For purposes of this Agreement, "Good Reason" shall exist if Mirant, without Wagner's written consent, (A) takes any action which is inconsistent with, or results in the reduction of, Wagner's then current title, duties or responsibilities, (B) requires Wagner to report to any person other than the Chief Executive Officer, (C) reduces Wagner's then current base salary, (D) reduces the benefits to which Wagner is entitled on the Effective Date, unless a similar reduction is made for other executive employees, (E) commits a breach of this Agreement which is not remedied by Mirant within thirty (30) days of receiving written notice by Wagner of such breach, or (F) requires Wagner to relocate more than fifty (50) miles from the location of Mirant's offices on the Effective Date.

(e) Termination by Wagner for Other than Good Reason. Wagner may resign for other than Good Reason on sixty (60) days written notice to Mirant. During such sixty (60) day notice period, Mirant may relieve Wagner of his duties, but this shall not relieve Mirant of its obligations to pay Wagner his entire salary for the entire notice period. At the conclusion of such notice period, he will not be entitled to any further compensation or benefits hereunder, other than previously accrued, vested benefits or as otherwise provided for in this Agreement.

6. Covenant Not To Solicit

(a) Non-Solicitation of Employees. For a period of two years following the termination of Wagner's employment with Mirant, Wagner shall not solicit or attempt to solicit,

directly or indirectly by assisting others, any employees of Mirant in order to induce such employees to leave Mirant or become employed or affiliated with any other person, company or entity.

(b) Injunctive Relief. Wagner acknowledges that the covenant not to solicit is a reasonable means of protecting and preserving Mirant's investment in its business and in Wagner's employment. Wagner agrees that any breach of this covenant will result in irreparable damage and injury to Mirant and that Mirant will be entitled to injunctive relief in any court of competent jurisdiction without the necessity of posting any bond.

(c) Enforceability of Covenant. Mirant and Wagner agree that Wagner's obligation under the covenant not to solicit is separate and distinct from other provisions of this Agreement, and the failure or alleged failure of Mirant to perform its obligations under any other provisions of this Agreement shall not constitute a defense to the enforceability of these covenants not to compete and not to solicit. The parties also agree that the covenant not to solicit survives the expiration or termination of this Agreement.

7. Nondisclosure of Trade Secrets and Confidential Information.

(a) Trade Secrets Defined. As used in this Agreement, the term "Trade Secret" shall mean any and all information which is not commonly known by or available to the public and which information (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Such information shall include, but not be limited to, any customer lists, customer billing information, technical information regarding Mirant products sold by Mirant, sales techniques and information concerning personnel assignments, and matters concerning the financial affairs and management of Mirant.

(b) Nondisclosure of Trade Secrets. Throughout the term of this Agreement and at all times following the expiration or termination of this Agreement, Wagner shall not directly or indirectly transmit or disclose any trade secret of Mirant to any person, concern or entity. The obligations under this sub-paragraph 7(b) shall remain in effect as long as the information constitutes a trade secret under applicable law.

(c) Confidential Information Defined. As used in this Agreement, the term “Confidential Information” shall mean all information that does not rise to the level of a trade secret and that is not generally disclosed or known to persons not employed by Mirant.

(d) Nondisclosure of Confidential Information. Throughout the term of Wagner’s employment with Mirant and for a period of two years following the termination of Wagner’s employment with Mirant, Wagner shall not, either directly or indirectly, transmit or disclose any confidential information to any person, concern or entity except as necessary to perform Wagner’s duties under this Agreement or otherwise with the consent of Mirant.

(e) Injunctive Relief. Wagner acknowledges that these nondisclosure covenants are a reasonable means of protecting and preserving Mirant’s interests in the confidentiality of this information. Wagner agrees that any breach of these covenants will result in irreparable damage and injury to Mirant and that Mirant will be entitled to injunctive relief in any court of competent jurisdiction without the necessity of posting any bond.

(f) Enforceability of Covenants. Mirant and Wagner agree that Wagner’s obligations under these nondisclosure covenants are separate and distinct from other provisions of this Agreement, and the failure or alleged failure of Mirant to perform its obligations under any provision of this Agreement shall not constitute a defense to the enforceability of these nondisclosure covenants. The parties also agree that the nondisclosure covenants survive the expiration or termination of this Agreement.

8. Miscellaneous.

(a) Litigation Costs. Notwithstanding anything else contained in this Agreement, if, for any reason whatsoever, Mirant terminates Wagner's employment during the term of this Agreement, then Mirant will reimburse Wagner for all reasonable costs and expenses incurred by him (including attorneys' fees, court costs, and the costs of paralegal and other legal or investigative support personnel) connected with investigating, preparing, defending, or appealing any negotiations, litigation, or similar proceeding arising out of this Agreement, whether commenced or threatened. Such reimbursement will be subject to a cap of \$250,000 except in the event that an actual lawsuit is filed and Wagner prevails in such litigation by way of a jury verdict or final court order in his favor, in which event, there will be no cap on the amount of litigation costs which he may recover from the Company. Such reimbursements will be paid in advance of the final disposition of such negotiation, litigation, or similar proceeding within ten (10) days after Wagner submits requests for reimbursement along with supporting invoices.

(b) Reimbursement. Mirant will reimburse Wagner for all costs, including attorneys' fees, Wagner incurs in connection with the preparation and/or negotiation of this Agreement.

(c) Waiver. The waiver by any party to this Agreement of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

(d) Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(e) Assignment and Successors. This Agreement may be assigned by Mirant without Wagner's consent to an affiliated entity of Mirant, including one of Mirant's affiliates, any survivor entity or other successor in interest, but no such assignment shall relieve Mirant of

its full responsibilities hereunder. This Agreement shall inure to the benefit of and be binding upon the parties hereto and upon their respective legal representatives and successors in interest.

(f) Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements.

(g) Governing Law. This Agreement shall be governed by the laws of the State of Georgia.

(h) Notice. Whenever any notice is required, it shall be given in writing addressed as follows:

To Mirant: Mirant Corporation
 1155 Perimeter Center West
 Atlanta, Georgia 30338-5416
 Attention: Chief Executive Officer

To Wagner: Harvey A. Wagner
 2500 Peachtree Road, N.W.
 Unit 310 North
 Atlanta, Georgia 30305

Notice shall be deemed given and effective three (3) days after the deposit in the U.S. mail of a writing addressed as above and sent first class mail, certified, return receipt requested, or when actually received. Either party may change the address to which notices shall be delivered or mailed by notifying the other party of such change in accordance with this paragraph.

(i) Amendments. This Agreement may not be amended or modified except in writing signed by both Parties.

(j) Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto having duly executed and delivered this Employment Agreement as of the date first written above.

MIRANT CORPORATION

By: MTBoat [SEAL]

Harvey A. Wagner [SEAL]
Harvey A. Wagner

Candace Jones Hills
Witness

EXHIBIT “B”

U.S. BANKRUPTCY COURT,
 NORTHERN DISTRICT OF TEXAS
ENTERED
 TAWANA J. MARSHALL, CLERK
 THE DATE OF ENTRY IS
 ON THE COURT'S DOCKET

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.)	

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER
 PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE
 AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contacts (the “Motion”) filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Rejection Procedures referenced on Exhibit “A” attached hereto are hereby approved; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

ORDERED that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the “Rejection Claims Deadline”) will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

ORDERED that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

ORDERED that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unitil; (vi) the NSTAR Companies (as each entity is defined in its respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

ORDERED that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2003



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

Rejection Procedures

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

**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
Debtors.))	Jointly Administered

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

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.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition 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 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 Debtors’ motion for an order requesting that the Debtors’ bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

RELIEF REQUESTED

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

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 “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

BASIS FOR RELIEF

5. On _____, 2003, the Court entered an order (the “Order”) approving procedures (the “Rejection Procedures”) for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors’ ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit “A”.

7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the “Effective Date”):

**Title of Lease/Contract:
Effective Date of Rejection:
Parties to the Lease/Contract
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
_____, 2003

HAYNES AND BOONE, LLP
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By _____

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-and-

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PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION