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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)
)	Jointly Administered
Debtors.)	
_____)	

**MOTION OF DEBTORS TO REJECT THE ELECTRICITY SALES
AGREEMENT BETWEEN MIRANT AMERICAS RETAIL ENERGY
MARKETING, LP AND OWENS BROCKWAY GLASS CONTAINER INC.**

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 for Mirant Americas Retail Energy Marketing, LP ("MAREM") to reject the Electricity Sales Agreement (as amended from time to time, the "Sales Contract") between MAREM and Owens

Brockway Glass Container Inc. (“Owens Brockway”), which is described below in greater detail and attached hereto as Exhibit B.¹ In support thereof the Debtors 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. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, 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 title 11 of the United States Code (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 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 Sales Contract listed below in paragraph 9 hereof, effective ten (10) business days from the date of service of this Motion.

BASIS FOR RELIEF

7. On August 14, 2003, the Court entered an amended 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.

8. 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 of a motion to reject any Contract or Lease via facsimile or overnight mail, to: (i) the counterparty under the respective Contract at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract 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.

9. 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 Sales Contract described below 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 the Contract:** Electricity Sales Agreement dated November 7, 2002 by and between MAREM and Owens Brockway.

Effective Date of Rejection:

June 25, 2004, subject to paragraph 10 hereof

Parties to the Contract:

Mirant Americas Retail Energy Marketing, LP
Owens Brockway Glass Container Inc.

Contact Information for Non-Debtors:

Owens Brockway Glass Container Inc.
Attention: Eric Ramlow, Purchasing Manager-Energy
and Legal Department
One SeaGate
Toledo, Ohio 43666

10. 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 the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Sales Contract, then the Sales Contract shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and Owens Brockway.

11. Pursuant to the Order, claims arising out of the rejection of the Sales Contract 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 the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Sales Contract, unless otherwise agreed, in writing, by the Debtors and Owens Brockway (the "Rejection Claims Deadline").

12. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Sales Contract 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.

General Description of the Sales Contract.

13. Owens Brockway and MAREM are parties to a retail electricity sales agreement² pursuant to which (i) MAREM agreed to deliver to Owens Brockway's facility located at 500 Packard Highway, Charlotte, Michigan (the "Facility"), all electric energy and Ancillary Services (as defined in the Sales Contract) required by such facility and sufficient to cover transmission and distribution losses (the "Electricity") and (ii) Owens Brockway agreed to pay (a) a Demand Charge³ and (b) Energy Charge⁴ for the Electricity. The Sales Contract expires May 31, 2005.

The Sales Contract May Be Rejected.

14. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject an executory contract of the debtor." 11 U.S.C. §365(a). An executory contract has been defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. *See In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco*

² Because the Sales Contract involves retail sale of electricity and not wholesale sale of electricity, the Sales Contract is not subject to FERC jurisdiction.

³ Under the Sales Contract, Owens Brockway is obligated to pay a "Demand Charge" equal to the product of (a) \$2.62 per kilowatt (kW) -month and (b) the highest sixty (60) minute integrated reading (measured in kW) of a meter at the Facility during On-Peak Hours (as defined in the Sales Contract) during the term of the Sales Contract.

⁴ Under the Sales Contract, Owens Brockway is also obligated to pay an "Energy Charge" equal to the sum of (a) the product of (1) the actual aggregate amount of Electricity used each month during the term of the Sales Contract as determined by a meter at the Facility ("Actual Usage") during On-Peak Hours (as defined in the Sales Contract) and (2) \$38.31 per MWh and (b) the product of (1) Actual Usage during Off-Peak Hours (as defined in the Sales Contract) and (2) \$24.67 per MWh.

Petroleum, Inc., 15 F.3d 60, 62-63 (5th Cir. 1994). The Sales Contract is an executory contract because it requires (i) MAREM to provide Owens Brockway with the Electricity as described above and (ii) Owens Brockway to pay for the Electricity. Therefore, the Sales Contract is undoubtedly an executory contract that may be rejected under section 365 of the Bankruptcy Code. See, e.g., *In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr. W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Elec. Power Coop., Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

Rejection Of The Contract is Within the Debtors' Business Judgment.

15. Rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. See *Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. See *Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

16. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)). Since MAREM entered into the Sales Contract, the Debtors' business operations have changed and,

after due inquiry, the Debtors have determined that the Sales Contract is burdensome to their estates.

17. The Debtors have determined, in their reasonable business judgment, that the Contract should be rejected as uneconomical and an impediment to their ongoing business operations. The Sales Contract is “out-of-the-money” with respect to the Debtors and provides no benefit to the Debtors. Therefore, the Debtors have determined that it is in their best interest to reject the Contract.

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
June 11, 2004

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

Ian Peck
State Bar No. 24013306

-and-

By: /s/ Michelle C. Campbell

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she 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 (with exhibits) via U.S. mail, on the 11th day of June, 2004.

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
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Owens Brockway Glass Container Inc.
Attention: Eric Ramlow, Purchasing and
Manager-Energy and Legal Department
One SeaGate
Toledo, Ohio 43666

Paul N. Silverstein
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Andrews & Kurth, L.L.P.
1717 Main Street
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Dallas, TX 75201

/s/ Michelle C. Campbell

EXHIBIT A

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
Debtors.)	Jointly Administered

**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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

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
901 Main Street
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Dallas, TX 75202
(214) 651-5000

By _____

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
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PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A

ELECTRICITY SALES AGREEMENT

This Electricity Sales Agreement (the "Agreement") is entered into as of this 7th day of November, 2002 (the "Effective Date"), by and between Mirant Americas Retail Energy Marketing, LP ("Mirant"), a Delaware limited partnership, and Owens Brockway Glass Container Inc. ("Customer"), a Delaware corporation. Mirant and Customer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Definitions

Actual Usage means the actual aggregate amount of Power used by Customer each month during the Delivery Period as determined by Meter readings taken by the LDC.

Agreement means this document titled Electricity Sales Agreement between Mirant and Customer, including all appendices attached hereto, as the same may be hereafter amended or supplemented from time to time.

Alternative Electric Supplier or AES means a company with the necessary license to sell retail electric generation service in Michigan as defined by the Commission.

Ancillary Services means those items identified in the MISO OATT under schedules 1, 2, 3, 4, 5 and 6.

Billing Demand means the highest sixty (60) minute integrated reading of the Meter during On-Peak Hours of each month during the Delivery Period measured in kilowatts (kW).

Business Day means a day other than Saturday, Sunday, a NERC holiday or a day that is authorized as a holiday by banks in New York, New York, and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

Commission means the Michigan Public Service Commission which regulates natural gas and electric utilities as well as Alternative Electric Suppliers.

Delivery Period means the duration of the rights and obligations involving the delivery and receipt of Power under this Agreement, as further described in Section 2.1.

Delivery Point means the Distribution Company's distribution system.

Demand Charge has the meaning set forth in Section 7.1.

Distribution Charges means the charges payable by a Distribution Service customer as specified in the Distribution Company's retail open access tariff.

Distribution Company means Consumers Energy, the Michigan utility that is the principal subsidiary of CMS Energy (NYSE: CMS) or any successor utility which delivers Power from the Delivery Point to Customer's Facility.

Distribution Service means the distribution and delivery of Power by the Distribution Company over its distribution system.

Eastern Prevailing Time or EPT means the prevailing time (*i.e.*, Standard Time or Daylight Savings Time) on any given day in the Eastern Time Zone.

Energy Charge has the meaning set forth in Section 7.1.

Facility means Customer's facility located at 500 Packard Highway in Charlotte Michigan as it exists on the Effective Date of this Agreement.

Governmental Authority means any national, state or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, entity or any arbitrator with authority to bind a Party at law or any ISO, RTO or similar organization.

Governmental Rule means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect and force of law.

Interest Rate means a per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" plus two percent (2%); provided, the Interest Rate shall never exceed the maximum rate permitted by applicable law.

Kilowatt or kW means a measure of electric energy equal to 1,000 watts.

Kilowatthour or kWh means a measure of electricity consumption equivalent to the use of 1,000 watts of energy over a period of one hour.

Letter of Credit means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from Standard and Poor's Rating Group or A3 from Moody's Investor Services, Inc., in a form acceptable to Mirant. Costs of a Letter of Credit shall be borne by Customer.

Meter means meter number 00029094 located at Customer's Facility and owned and maintained by the Distribution Company.

MISO means the Midwest Independent System Operator, or its successor.

NERC means the North American Electric Reliability Council, or its successor.

Off-Peak Hours means 11:00 pm to 7:00 am, Monday through Friday, and all hours on Saturday, Sunday and the following holidays: Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, Independence Day and Labor Day.

On-Peak Hours means 7:00 am to 11:00 pm, Monday through Friday, excluding any holidays under Off-Peak Hours.

Power means all electric energy and Ancillary Services required by the Customer's Facility.

Stranded Costs Charge / Transition Costs Charge means costs determined by the Michigan Public Service Commission and assessed by the Distribution Company for the purpose of recovering costs related to generation commitments made by Distribution Company that the Distribution Company can no longer recover due to Customer purchasing generation from an Alternative Electric Supplier.

Term has the meaning set forth in Section 2.1.

Transmission Service means the transmission of high-voltage energy as defined in the MISO/Distribution Company OATT.

Transmission Provider means the MISO which transmits energy to the Delivery Point, or its successor.

Scope of Agreement

1.1 The Parties have entered into this Agreement to establish the duties, rights and procedures by which Mirant shall sell and deliver, and Customer shall purchase and receive, Power required by Customer's Facility.

Term and Delivery Period; Purchase and Sale of Power

2.1 **Term and Delivery Period.** This Agreement shall become effective on the Effective Date and shall remain in effect through the end of the Delivery Period ("Term"). The Delivery Period shall commence on December 1, 2002 and terminate on May 31, 2005.

2.2 **Purchase and Sale of Power.** Subject to the terms of this Agreement, Mirant shall sell and deliver, or cause to be delivered, and Customer shall purchase and receive, or cause to be received, at the Delivery Point, Power, and Customer shall pay Mirant the Demand Charge and Energy Charge therefor.

Delivery Obligations

3.1 **Delivery Obligations.** Mirant shall arrange and pay for Transmission Service to deliver Power to the Delivery Point. The quantity of Power delivered by Mirant at the Delivery Point shall be sufficient to cover transmission and distribution losses to the Customer's Facility. Customer shall arrange and pay for Distribution Service to deliver the Power from the Delivery Point to the Facility. In addition, Customer shall be responsible for and pay for any Stranded Costs Charges and/or Transition Costs Charges or other charges under the terms of the Distribution Company's electric choice Distribution Service tariff.

3.2 **Title and Risk of Loss.** Title to and risk of loss related to the Power shall transfer from Mirant to Customer at the Delivery Point. Mirant warrants that it will deliver to Customer Power free and clear of all liens, security interests, claims and encumbrances arising prior to the Delivery Point.

3.3 **Indemnity.** Each Party shall indemnify, defend and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Power is vested in such Party as provided in Section 3.2. Each Party shall indemnify, defend and hold harmless the other Party against any taxes for which such Party is responsible under Section 7.5.

Firm Power

4.1 **Firm Power.** The delivery and receipt obligations with respect to the Power purchased and sold hereunder are firm obligations subject to the payment of damages for non-performance as set forth in Sections 5.1 and 5.2. Mirant shall not be responsible for any interruptions in the delivery of Power beyond the Delivery Point in the event the Distribution Company disconnects, curtails or reduces Distribution Service to Customer in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Distribution Company's facilities, to maintain the safety and reliability of the Distribution Company's electrical system, or due to any other similar reason, including emergencies, forced outages, potential overloading of the Distribution Company's transmission and/or distribution circuits, Force Majeure or the nonpayment by Customer of any Distribution Service charges or other such costs due for services provided by the Distribution Company to Customer.

Failure to Deliver Power

5.1 **Mirant's Failure to Deliver Power.** Unless excused by Force Majeure or during the continuance of any Event of Default by Customer hereunder, if Mirant fails to deliver, or cause to be delivered, Power to the Delivery Point for any other reason during the Delivery Period, Customer may purchase Power from the Distribution Company to cover the amount that Mirant failed to deliver. Customer shall purchase such replacement Power in a commercially reasonable manner. Mirant shall reimburse

Customer for any such purchase of replacement Power in an amount equal to the positive difference, if any, between the actual cost to Customer of purchasing replacement Power including any costs such as brokerage fees or additional transmission service and the cost to Customer had Mirant fully performed its obligations hereunder. Mirant further agrees to reimburse Customer for any penalties paid by Customer to the Distribution Company as a result of Mirant's failure to deliver.

5.2 **Customer's Failure to Receive Power.** Unless excused by Force Majeure or during the continuance of any Event of Default by Mirant hereunder, if Customer fails to receive, or cause to be received, Power at the Delivery Point for any other reason during the Delivery Period, Mirant may sell Power not received by Customer to the Distribution Company or any third party in a commercially reasonable manner. Customer shall pay Mirant the positive difference, if any, between the amount Mirant would be entitled to receive under this Agreement and the actual amount received by Mirant from the sale of Power not received by Customer less any costs such as brokerage fees or additional transmission service. Customer further agrees to reimburse Mirant for any penalties paid by Mirant to the Distribution Company as a result of Customer's failure to receive.

Actual Usage Changes

6.1 **Actual Usage Changes.** Customer agrees to promptly notify Mirant of any event or circumstance known by Customer that in Customer's reasonable belief may impact (whether increase or decrease) its Actual Usage by an amount greater than 25% of its Actual Usage as recorded during the previous year. Such events may include, without limitation, equipment installations, outages, shutdowns or replacements, openings or closings of all or part of any Facility or changes in operating hours but does not include events caused by weather conditions. In the event Customer fails to comply with this Section 6.1, Mirant may charge Customer, for each hour during which Mirant remains unaware of the Actual Usage change, any charges (including charges for Power which exceed the amount of such charges payable to Mirant hereunder) or other amounts actually imposed upon or incurred by Mirant as a result of such Actual Usage change.

Demand Charge; Energy Charge; Billing and Payment; Taxes

7.1 **Demand Charge.** Each month during the Delivery Period, Customer shall pay Mirant an amount equal to the Billing Demand multiplied by \$2.62 per kW-month ("Demand Charge").

7.2 **Energy Charge.** Each month during the Delivery Period, Customer shall pay Mirant an amount equal to the sum of (i) Actual Usage during On-Peak Hours multiplied by \$38.31 per MWh and (ii) Actual Usage during Off-Peak Hours multiplied by \$24.67 per MWh ("Energy Charge"). Actual Usage shall be based on meter readings of Customer's Meter taken by the Distribution Company; provided, however, if meter readings are not available, the Energy Charge shall be based on estimated Power usage until Customer's Actual Usage becomes available. In the event the Distribution Company adjusts any meter readings to take into account any inaccurate measurements, Customer

shall be responsible for additional amounts owed, if any, to Mirant resulting from such adjustments. Mirant shall refund overpayments, if any, to Customer resulting from such adjustments. All additional amounts owed or overpayments related to inaccurate meter readings shall be accounted for in the next monthly invoice issued to Customer.

7.3 Billing and Payment. Customer shall pre-pay for Power deliveries pursuant to the billing and payment dates set forth in this Section 7.3. Mirant shall issue an invoice to Customer by the last day of the current month based on an estimate of the quantity of Power required by Customer's Facility for the following month. Customer shall pay the invoice by the fifteenth (15th) day of the month in which such Power is delivered. Upon receipt of Meter readings from the Distribution Company, Mirant shall include a true-up in the next invoice to be issued to Customer to account for any underpayment or overpayment resulting from Customer's Actual Usage during a month compared to the estimated Power quantity for such month. All payments required under this Agreement shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.4 Disputes of Invoiced Amounts. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the full amount of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required refund shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date the refund is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made.

7.5 Taxes. All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Power shall be included on the Customer's invoice and shall be remitted to the appropriate taxing authority by Mirant. Customer shall be responsible for all taxes (except for taxes on Mirant's income) associated with sales of Power under this Agreement. Customer shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Mirant.

Events of Default and Remedies upon an Event of Default

8.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (the "Defaulting Party"):

(a) the failure by the Defaulting Party to make, when due, payment of any amount if such failure is not remedied within five (5) Business Days after written notice of such failure is received by the Defaulting Party from the other Party (the "Non-Defaulting Party");

(b) any representation or warranty made by the Defaulting Party in this Agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term;

(c) the failure by the Defaulting Party to perform any covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Section 8.1 as a separate Event of Default or the failure to deliver or receive Power, a remedy for which is provided in Sections 5.1 and 5.2) and such failure is not excused by Force Majeure or cured within five (5) Business Days after written notice thereof to the Defaulting Party; and

(d) the Defaulting Party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; or have such petition filed against it and such petition is not withdrawn or dismissed for thirty (30) days after such filing; (iii) otherwise become bankrupt or insolvent (however evidenced); or (iv) is unable to pay its debts or admits its inability generally to pay its debts as they become due.

8.2 **Remedies upon an Event of Default.** If an Event of Default occurs with respect to the Defaulting Party, the Non-Defaulting Party may, for so long as the Event of Default is continuing, (i) suspend its performance under this Agreement, (ii) withhold any payments due the Defaulting Party under this Agreement, and (iii) exercise any remedies available to it at law or in equity including, but not limited to, termination of this Agreement.

Other Early Termination

9.1 **Other Early Termination.** Notwithstanding any provision of this Agreement, in the event that any Governmental Rule is amended, modified, repealed or found unlawful, or changed in any fashion, whether by legislative or agency act, judicial decision or otherwise ("Regulatory Change"), and, as a result of such Regulatory Change, a Party's performance hereunder becomes illegal or otherwise in violation of any Governmental Rule (the "Regulated Party"), then the Regulated Party may unilaterally terminate this Agreement, without any further obligation or liability (except to make payments owed to the other Party), which termination shall be effective upon the earlier

of (a) 12:00 a.m. EPT on the last day of the current billing cycle or (b) the date on which a Party's performance becomes illegal or otherwise in violation of a Governmental Rule. Moreover, in the event that Mirant or its activities under this Agreement cause Mirant to be regulated by any state or local governing body as a public utility, Mirant may unilaterally terminate this Agreement upon at least sixty (60) days prior written notice to Customer, without any obligation or liability (whether payment or otherwise), which termination shall be effective at 12:00 a.m. EPT on the last day of the current billing cycle.

In addition, Customer may terminate this Agreement upon giving at least sixty (60) days notice to Mirant, without liability to Mirant, if the generating facility located in Zeeland, Michigan and owned by an affiliate of Mirant is sold during the Term.

Customer Responsibilities

10.1 Customer shall notify the Distribution Company that it has selected Mirant as its Alternative Electric Supplier and file all reasonably necessary forms required to effect such selection.

10.2 Customer shall, or shall cause the Distribution Company to, provide Mirant information regarding the historical Actual Usage of the Facility, including applicable load factors, utility rate classes and/or schedules, time of use and other utility service information.

10.3 Customer shall comply with any and all emergency curtailment or interruption orders, instructions or similar notices by the Distribution Company or Transmission Provider requiring the interruption or curtailment of Customer's Power usage at the Facility and indemnify, defend and hold Mirant harmless from any and all claims, noncompliance penalties, and any other charges associated with Customer's failure to comply with a curtailment notice within the time specified in such notice.

Limitation of Liability

11.1 THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST OPPORTUNITY COSTS OR LOST PROFITS, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISION OR

OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

11.2 Recognizing that Power provided hereunder shall be ultimately delivered by the Distribution Company, Mirant shall not be liable for any damage to Customer's equipment or facilities, or any economic losses, resulting directly or indirectly from any service interruption, Power outage, voltage or amperage fluctuations, discontinuance of service, reversal of service or similar problems.

Force Majeure

12.1 As used in this Agreement, Force Majeure means an event which is not within the reasonable control of the Party claiming suspension (the "Claiming Party"), and which precludes the Claiming Party from carrying out, in whole or in part, its obligations under this Agreement. Force Majeure includes, but is not limited to, (a) acts of God such as lightning, earthquakes, hurricanes and tornadoes, (b) bona fide events of Force Majeure claimed by the Transmission Provider or Distribution Company, and (c) orders, directives and requirements of any Governmental Authority which prevents either Party from performing under this Agreement. If either Party is unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement and such Party gives notice and full details of the event to the other Party as soon as practicable after the occurrence of such event, then while such Force Majeure is continuing but for no longer period, the obligations of the Claiming Party (other than the obligation to make payments due or becoming due with respect to performance prior to the event) shall be suspended to the extent required. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. Force Majeure does not include an increase or decrease in the price of Power.

Representatives; Notices

13.1 Representatives. Each Party shall appoint a representative with authority to make decisions on its behalf with respect to such Party's rights and obligations under this Agreement, provided that such representatives shall not have the authority to amend or make any decision which would have the same effect as an amendment to this Agreement. A Party's representative may be changed from time to time upon written notice to the other Party.

Mirant: Mirant Americas Retail Energy Marketing, LP
1155 Perimeter Center West, Suite 130

Atlanta, Georgia 30338
Attention: Legal Department
Phone: 678.579.5000

Customer: Owens Brockway Glass Container, Inc.
Attention: Eric Ramlow
Purchasing Manager, Energy
One SeaGate
Toledo, Ohio 43666
Phone: 419.247.8931
Facsimile: 419.247.1014

13.2 Notices. All notices, requests or statements shall be furnished in writing and shall be delivered by regular mail, facsimile or hand delivery. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after the close of business in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received one (1) Business Day after it was sent. Notices by regular mail shall be deemed to have been delivered upon actual receipt.

Representations and Warranties

14.1 As a material inducement to entering into this Agreement, each Party with respect to itself, hereby represents and warrants to the other Party as of the date hereof as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;

(b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(d) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency,

reorganization and other laws affecting creditor's rights generally and general principles of equity;

(e) no bankruptcy is pending against it or to its knowledge threatened against it;

(f) it has knowledge and experience in business matters that enable it to evaluate the merits and risks of entering into this Agreement; and

(g) it is not in a disparate bargaining position with the other Party.

14.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, MIRANT MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (INCLUDING WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE PROVISION OF POWER HEREUNDER, TO THE EXTENT PERMITTED BY LAW.

Governing Law

15.1 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of laws that would require the application of the law of any other state.

Credit

16.1 Credit. Within ten (10) Business Days of the Effective Date, Customer shall deliver to Mirant a Letter of Credit in an amount equal to one hundred ten thousand dollars (\$110,000). Customer shall maintain such Letter of Credit during the Term of this Agreement.

Miscellaneous

17.1 Non-Waiver. The failure of either Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

17.2 Environmental Fuel Mix Disclosure. Mirant shall comply with any Governmental Rules which require it to disclose to any state or federal agency with jurisdiction over Alternative Electric Suppliers the fuel mix of its Power portfolio purchased by Mirant for resale to Customer. Mirant shall provide to Customer a copy of any such disclosure filed by Mirant upon Customer's written request.

17.3 Renewable Power. Mirant shall comply with any applicable renewable energy requirements of any Governmental Authority with jurisdiction over Alternative Electric Suppliers.

17.4 No Third Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

17.5 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties hereto.

17.6 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent, such consent not to be unreasonably withheld.

17.7 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. No amendment, modification or change to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

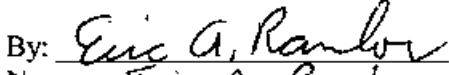
17.8 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same agreement.

In witness whereof, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the Effective Date.

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

By: 
Name: Brian McGee
Title: Vice President

Owens Brockway Glass
Container Inc.

By: 
Name: Eric A. Ramlow
Title: Purchasing Manager - Energy