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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

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In re	)	
	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590-DML
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date and Time: To Be Set, if Necessary

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**APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 327(a)  
AND 328 AUTHORIZING THE EMPLOYMENT AND RETENTION OF STONELEIGH  
HUFF BROUS MCDOWELL, L.P. AS REAL ESTATE BROKER TO THE DEBTORS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(a) and 328 Authorizing the Employment of Stoneleigh Huff Brous McDowell, L.P. (“Stoneleigh”) as real estate broker to the Debtors (the “Application”), and in support of this Application, respectfully represent as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. § 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 in these administratively consolidated cases.

## **Retention of Stoneleigh**

5. By this Application, the Debtors seek to employ and retain Stoneleigh as real estate broker to the Debtors pursuant to a “Standard Listing And Commission Agreement Sale Transaction” dated March 1, 2004.<sup>1</sup> Pursuant to sections 327(a) and 328 of the Bankruptcy Code, the Debtors request that the Court approve the retention of Stoneleigh as their real estate

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<sup>1</sup> Parties may obtain a copy of such agreement by sending a written request to counsel for the Debtors.

broker to aid the Debtors in the sale of a 77-acre site located in Parker County, Texas (the “Property”).

6. The Debtors purchased the Property over three years ago with the intention of developing a gas-fired power plant on the Property. The Property has two air permits, which would permit the establishment of a plant on the Property, but the water permit process was not completed. In connection with the formulation of their business plan, the Debtors have determined to explore the possibility of selling the Property. The Debtors have determined to retain the services of Stoneleigh, a respected worldwide commercial real estate firm, to assist them in this process

7. Prior to reaching a decision to employ Stoneleigh, the Debtors approached four different real estate brokers regarding the sale of the Property. The Debtors have determined that the terms and services offered by Stoneleigh best meet the needs of the Debtors. The Debtors anticipate that Stoneleigh will render the following services in connection with this retention: (1) Market the Property; (2) Identify potential purchasers of the Property; (3) Establish a letter of intent once a purchaser is identified; (4) Negotiate the terms for the sale of the Property; and (5) Assist the Debtors as necessary with the closing of the sale of the Property.

8. Pursuant to section 328(a) of the Bankruptcy Code, the Debtors may retain Stoneleigh on any reasonable terms and conditions. Consistent with industry standards and practice, as compensation, Stoneleigh will receive a commission equal to 6% of the gross purchase price of the Property, payable and contingent upon the close of the transaction. If, however, Stoneleigh negotiates a sale of the Property with one of several parties that the Debtors have identified as potential purchasers, Stoneleigh will receive a commission equal to 3% of the

gross purchase price. In addition, Stoneleigh will be entitled to reimbursement of its reasonable expenses in connection with the engagement. The proposed form of order approving Stoneleigh's retention, appended hereto as Exhibit 1, authorizes the Debtors to pay such commission without further order of the Court, upon appropriate notice to the official committees and the Office of the United States Trustee.

9. The Debtors submit that the most reasonable terms and conditions are the commissions being charged by Stoneleigh to the Debtors in a competitive market for real estate brokerage services. The Debtors submit that the proposed retention upon the terms and conditions set forth herein are reasonable and based upon industry standards. In sum, the Debtors believe that the commissions to be charged by Stoneleigh are reasonable in light of (a) industry practice; (b) market rates charged for comparable services both in and out of the chapter 11 context; and (c) Stoneleigh's substantial experience in real estate brokerage.

10. For the reasons stated in this Application and in the Affidavit of Jerry Alexander (the "Alexander Affidavit"), the Debtors believe that it would be appropriate, efficient and advantageous for Stoneleigh to advise them in connection with the matters described in this Application.

11. The Debtors believe that the real estate brokerage services to be rendered by Stoneleigh will not be duplicative of the services rendered by any other of the Debtors' professionals retained in these chapter 11 cases. Nevertheless, Stoneleigh will carefully coordinate its efforts with bankruptcy counsel and other professionals retained by the Debtors and make sure that its actions are not duplicative of the actions undertaken by the Debtors' other professionals.

12. The Debtors believe that the engagement of Stoneleigh, as real estate broker, to render the foregoing professional services is necessary and appropriate. Stoneleigh has stated its desire and willingness to act in these cases and render the necessary professional services as real estate broker for the Debtors. To the best of the Debtors' knowledge, Stoneleigh and its partners, employees and associates do not have any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, or their respective attorneys and accountants, in the matters on which it is being retained except as may be set forth in the Alexander Affidavit.

#### **Disinterestedness of Stoneleigh**

13. To the best of the Debtors' knowledge, information and belief, Stoneleigh represents no interest adverse to the Debtors or to their estates in the matters for which Stoneleigh is proposed to be retained, except as set forth herein and in the Alexander Affidavit. The Alexander Affidavit, executed on behalf of Stoneleigh in accordance with the provisions of section 327 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, Local Bankruptcy Rule 2016(b) and U.S. Trustee Guidelines, is incorporated herein by reference. The Debtors' knowledge, information and belief regarding the matters set forth in this Application are based, and made in reliance, upon said affidavit.

14. In addition, as set forth in the Alexander Affidavit, Debtors submit that Stoneleigh is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that the firm, its partners and employees, to the best of their knowledge:

- a. are not creditors, equity security holders or insiders of the Debtors;
- b. are not and were not investment bankers for any outstanding

security of the Debtors;

- c. have not been, within 3 years before the date of the filing of the Debtors' chapter 11 petitions, (i) investment bankers for a security of the Debtors, or (ii) an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the Debtors;
- d. are not and were not, within 2 years before the date of the filing of the Debtors' chapter 11 petitions, a director, officer, or employee of the Debtors or of an investment banker specified in subparagraph (b) or (c) of this paragraph, and
- e. do not have an interest materially adverse to the interest of the Debtors' estates, or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors or an investment banker, specified in subparagraphs (b) or (c) of this paragraph, or for any other reason.

15. The Debtors firmly believe that Stoneleigh is the most qualified firm to represent the Debtors with respect to the matters on which it has been engaged.

### **NOTICE**

16. Notice of this Application has been served on the Limited Service List, as approved by the Court. The Debtors submit no other or further notice be given.

17. No previous request for relief sought herein has been made by the Debtors to this or any other court.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order (i) approving the retention of Stoneleigh Huff Brous McDowell, L.P. as real estate broker for the Debtors pursuant to sections 327(a) and 328 of the Bankruptcy Code, and (ii) granting the Debtors such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 5th day of March, 2004.

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

Robin Phelan  
State Bar No. 15903000

-and-

By:  /s/ Michelle C. Campbell

Thomas E Lauria  
State Bar No. 11998025  
Michelle C. Campbell  
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200 South Biscayne Blvd.  
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ATTORNEYS FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all parties on the Limited Service List via first class mail, postage prepaid, the 5th day of March 2004 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Michelle C. Campbell \_\_\_\_\_



**Exhibit 1**

**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
	)	

**INTERIM ORDER PURSUANT TO 11 U.S.C. § 327(a) AUTHORIZING THE  
EMPLOYMENT AND RETENTION OF STONELEIGH HUFF BROUS  
MCDOWELL, L.P. AS REAL ESTATE BROKER TO THE DEBTORS**

Came on for consideration the Application for Entry of an Order pursuant to 11 U.S.C. § 327(a) Authorizing the Employment and Retention of Stoneleigh Huff Brous McDowell, L.P. (“Stoneleigh”) as Real Estate Broker to the Debtors (the “Application”), of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”). The Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Court further finds that this is a core proceeding pursuant to 28 U.S.C. § 157. After reviewing the Affidavit of Jerry Alexander in support of the Application, a copy of which is annexed as an exhibit to the Application (the “Alexander Affidavit”), and the other motions, pleadings, and papers filed in these chapter 11 cases, together with the representations on the record, the Court finds that, on an interim basis, (i) the proposed employment of Stoneleigh as real estate broker to the Debtors is in the best interest of the

Debtors and their respective estates, (ii) Stoneleigh and its personnel do not hold or represent an interest adverse to the Debtors or their estates in the matters upon which they are

to be engaged such that would disqualify Stoneleigh from rendering services as real estate broker to the Debtors, and (iii) Stoneleigh and its personnel are “disinterested persons” as the term is defined in section 101(14) of the Bankruptcy Code. The Court further finds that the Application should be **GRANTED** on an interim basis subject to the terms set forth below. IT IS THEREFORE

**ORDERED** that the Application is granted on an interim basis (the “Interim Order”); and it is further

**ORDERED** that the retention of Stoneleigh as real estate broker to the Debtors and Debtors-in-Possession is hereby **GRANTED** on an interim basis pursuant to 11 U.S.C. § 327(a) for the purposes set forth in the Application and Alexander Affidavit; and it is further

**ORDERED** that, within three (3) business days of the entry of this Interim Order, counsel for the Debtors shall serve the Interim Order upon all parties entitled to receive notice of the Application; and it is further

**ORDERED** that Stoneleigh shall be compensated in the manner described in the Application and Alexander Affidavit and shall be subject to review only in accordance with section 328(a) of the Bankruptcy Code:

a. Stoneleigh is hereby relieved of the obligation to maintain time records; and

b. Stoneleigh shall be entitled to a commission only if a sale with respect to the Property (as described in the Application) is fully executed; and it is further

**ORDERED** that the Debtors must notify the Office of the United States Trustee and counsel for the official committees of their intent to pay a commission to Stoneleigh. If none of

those parties objects by 5:00 p.m. Central time on the 5th business day after such notification, on the 6th business day, the Debtors are permitted to pay such commission as an administrative expense without further order of the Court. If a party objects to such intent, the matter shall be set as soon as reasonably practicable thereafter.

**ORDERED** that to the extent of any conflict between the terms and conditions of the Application and the Interim Order, the terms and conditions of this Interim Order shall govern; and it is further

**ORDERED** that this Interim Order shall become a Final Order on the twenty-seventh (27th) day after entry of this Interim Order without further notice or hearing unless an objection to the Interim Order is timely filed with the Court and served on counsel for the Debtors on or before twenty-six (26) days after entry of the Interim Order.

DATED: \_\_\_\_\_

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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

Upon Submission, Please Return to:

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ATTORNEYS FOR THE DEBTORS AND  
DEBTORS-IN-POSSESSION

**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.	)	
	)	Hearing Date and Time: To Be Set

**AFFIDAVIT OF JERRY ALEXANDER IN SUPPORT OF THE  
APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§  
327(a) AND 328 AUTHORIZING THE EMPLOYMENT AND RETENTION  
OF STONELEIGH HUFF BROUS MCDOWELL, L.P. AS  
REAL ESTATE BROKER TO THE DEBTORS**

STATE OF TEXAS            )  
  )ss.:  
COUNTY OF TARRANT    )

Jerry Alexander, being duly sworn, deposes and says:

1. I am a Principal of Stoneleigh Huff Brous McDowell, L.P. with an office in Tarrant County, Texas (“Stoneleigh”). This affidavit (the “Affidavit”) is submitted in support of an application (the “Application”) of the above-captioned debtors, as debtors and debtors-in-possession (the “Debtors”) in the above-captioned Chapter 11 cases (the “Chapter 11 Cases”) for an order authorizing the employment and retention of Stoneleigh as real estate broker to Debtors. Unless otherwise stated, I have personal knowledge of the facts hereinafter set forth.

2. The Debtors seek to retain Stoneleigh as their real estate broker to aid the Debtors in the sale of a 77-acre site near Parker County, Texas (the “Property”). The nature and extent

of services that Stoneleigh proposes to render at Debtors' request in connection with the Property include, but are not limited to, the following: (1) Market the Property; (2) Identify potential purchasers of the Property; (3) Establish a letter of intent once a purchaser is identified; (4) Negotiate the terms for the sale of the Property; and (5) Assist the Debtors as necessary with the closing of the sale of the Property.

3. It is the intention of Debtors that the functions to be performed by Stoneleigh will not be duplicative of those performed by Debtors' other professionals, but Stoneleigh will only perform those services necessary for Debtors to be represented in these Chapter 11 Cases while continuing to operate their businesses and manage their properties as debtors-in-possession.

4. Neither I nor Stoneleigh, insofar as I have been able to ascertain, has any connection with Debtors, their creditors, or any other party-in-interest herein, or their respective attorneys or accountants, except as follows: Stoneleigh, an international real estate services company, has, had or may in the future have, business relationships with one or more of the entities involved in this proceeding, and may in the future represent entities which are claimants herein in matters totally unrelated to these pending Chapter 11 Cases. Stoneleigh's clients include many institutions and commercial corporations, some of which may be creditors or otherwise involved in these Chapter 11 proceedings. For example, a review of the notice list and other lists provided by Debtors' counsel identifies companies with whom Stoneleigh has conducted business in the past and is conducting business presently, including, Bank One, UBS, Halliburton, and Georgia-Pacific. None of Stoneleigh's services to those or any other entities, to my knowledge, have any relationship to Debtors or Debtors' Chapter 11 cases.

5. Insofar as I have been able to ascertain, Stoneleigh and its licensed real estate professionals responsible for providing the services set forth in the Listing:

- (a) Are not creditors, equity security holders, or insiders of Debtors;
- (b) Are not and were not an investment banker for any outstanding security of debtors;
- (c) Have not been, within three (3) years before the date of the filing of Debtors' Chapter 11 petitions, (i) an investment banker for a security of Debtors, or (ii) an attorney for such investment banker in connection with the offer, sale, or issuance of a security of Debtors;
- (d) Are not and were not, within two (2) years before the date of the filing of Debtors' Chapter 11 petitions, a director, officer, or employee of Debtors or of any investment bankers as specified in subparagraph (b) or (c) of this paragraph; and
- (e) Do not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, Debtors or any investment banker as specified in subparagraph (b) or (c) of this paragraph, or for any other reason.

6. To the best of my knowledge, Stoneleigh and its employees do not have any relation to or connection with any judge of this Court or with the United States Trustee for this region or any person employed in the Office of the United State Trustee.

7. I am advised that professionals (such as Stoneleigh) retained by Debtors are required to apply for compensation for professional services to be rendered in connection with these Chapter 11 Cases and for reimbursement of expenses incurred, in accordance with applicable provisions of the Bankruptcy Code.

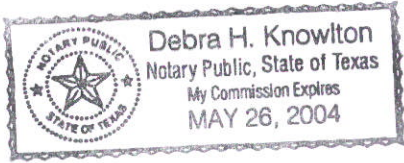
8. However, because of the commission based structure of Stoneleigh's fee and the nature of the services to be provided by Stoneleigh, I respectfully request that:

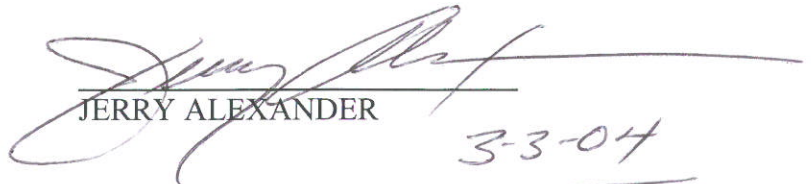
- (a) Stoneleigh be relieved of the obligation to maintain time records, (which it does not maintain in the usual course of its business) and
- (b) Inasmuch as Stoneleigh will be entitled to its commission if, and only if, the sale of the Property is fully executed, Stoneleigh requests that the Order of this Court authorizing Debtors to retain Stoneleigh and provide that the commission shall be paid if, and only if, the sale of the Property is fully executed, and, unless there is an objection by any creditors or interested party, that it be paid as an administrative expense without the necessity of further court order.

9. Stoneleigh has not shared or agreed to share with any other person the compensation paid or to be paid by Debtors in connection with the Chapter 11 Cases, other than pursuant to normal compensation arrangements with its licensed real estate professionals, or with any co-broker who may procure a buyer for the Property, in accordance with the terms of the Listing.



10. The foregoing constitutes the statement of Stoneleigh pursuant to Section 327 of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure.



  
JERRY ALEXANDER  
3-3-04

Sworn to and Subscribed  
before me this 3<sup>rd</sup> day of  
March, 2004

  
NOTARY PUBLIC  
My Commission Expires: 5/26/04