

Thomas E Lauria  
State Bar No. 11998025  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744

Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
Telephone: (214) 651-5000  
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION  
  
**IN 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.	)	
	)	Proposed Hearing Date and Time:
	)	April 28, 2004 at 12:00 p.m.
	)	

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**DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE (i) AUTHORIZING THE AMENDMENT OF A CERTAIN PREPETITION CREDIT FACILITY TO PERMIT THE FURTHER EXTENSION OR REPLACEMENT FROM TIME TO TIME OF OUTSTANDING LETTERS OF CREDIT, (ii) AUTHORIZING THE EXECUTION OF AN AMENDMENT AGREEMENT, (iii) CONFIRMING CERTAIN MATTERS RELATED TO THE FOREGOING, AND (iv) GRANTING RELATED RELIEF**

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) (i) authorizing the amendment of a certain prepetition credit facility to permit the further extension or

replacement from time to time of outstanding letters of credit, (ii) authorizing the execution of an amendment agreement, (iii) confirming certain matters related to the foregoing, and (iv) granting related relief. In support of the Motion, the Debtors respectfully state 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. Mirant Corporation and 82 of its direct and indirect subsidiaries (the “Debtors”) filed voluntary chapter 11 petitions and 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 in these administratively consolidated cases.

### **FACTS RELEVANT TO THE MOTION**

5. Mirant is the borrower under a Four-Year Facility Agreement, dated as of July 17, 2001 (the “Four Year Credit Agreement”), among Mirant as borrower, Credit Suisse First Boston, as administrative agent (the “Agent”), and the banks and other financial institutions party thereto as lenders (the “Prepetition Lenders”) as the same may have been amended, modified or supplemented prior to the Petition Date, pursuant to which the Prepetition Lenders agreed to make available to Mirant a working capital and letter of credit facility of up to

US\$1.125 billion in aggregate principal amount, subject to and in accordance with the terms and conditions set out therein. Pursuant to the terms of the Four Year Credit Agreement, Mirant also entered into a Letter of Credit Agreement, dated September 4, 2001 (the “Letter of Credit Agreement”), between Mirant and Wachovia Bank N.A. (the “Issuing Bank”) pursuant to which, at the request of Mirant, the Issuing Bank agreed to issue letters of credit to beneficiaries designated by Mirant, subject to and in accordance with the terms of the Letter of Credit Agreement.

6. Pursuant to the Four Year Credit Agreement and the Letter of Credit Agreement, at the request of Mirant and from time to time prior to the Petition Date, the Issuing Bank issued letters of credit to support the businesses of Mirant and its various subsidiaries. The beneficiaries (the “Beneficiaries”) of the letters of credit include trading counterparties under ‘safe harbor’ contracts, counterparties under power purchase agreements and transportation agreements, lenders under project financing debt, Independent System Operators and other vendors and suppliers. On September 9, 2003, the Debtors filed its Emergency Motion for Entry of an Interim and Final Order Pursuant to Section 105(a) and 363(b) of the Bankruptcy Code (i) Authorizing the Amendment of a Certain Prepetition Credit Facility to Permit Extension or Replacement of Outstanding Letters of Credit, (ii) Authorizing the Execution of an Agreement Related to the Foregoing and (iii) Confirming Certain Matters Relating to the Foregoing (the “First LC Extension Motion”),<sup>1</sup> pursuant to which and following hearings before this Court, an First Interim Order was entered by this Court on September 12, 2003, a Second Interim Order

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<sup>1</sup> Docket Number: 627

was entered by this Court on September 17, 2003 and a Final Order was entered by this Court on October 8, 2003 (collectively, the “First LC Extension Orders”).<sup>2</sup>

7. The First LC Extension Orders authorized, among other things, Mirant to enter into an amendment agreement (the “First Amendment Agreement”) to the Four Year Credit Agreement pursuant to which the parties to the Four Year Credit Agreement set out the terms and conditions upon which the certain letters of credit issued and outstanding on the execution date of the First Amendment Agreement (and as set out in Exhibit G thereto) (the “Existing Letters of Credit”) could be further extended after the Petition Date. In particular, the First Amendment Agreement provides by way of an amendment to Section 2.18 of the Four Year Credit Agreement, the insertion of the following provision (hereinafter referred to as the “Relevant Provision”):

(e) Post-Bankruptcy Letter of Credit. (i) Notwithstanding anything herein to the contrary (including Section 3.02) and subject to Section 2.18(e)(ii), the expiration date of each Letter of Credit set forth on Exhibit G hereto that was issued and outstanding as of the effective date of Amendment No. 4 hereto (each, an “*Existing Letter of Credit*”) will be extended (each, an “*Extended Letter of Credit*”) until the earliest of (the date on which the earliest of such events will occur being the “*Relevant Termination Date*”):

(A) the date six months after such expiration date (or such later date, not later than one year from such expiration date, as may be required by the terms of the agreement with the relevant beneficiary with respect to which an Existing Letter of Credit was issued),

(B) the expiration date specified in the relevant Extension Notice (as defined below), and

(C) September 30, 2004; provided that in the case of the Irrevocable Standby Letter of Credit No. LC870-124536 (as amended) issued by the Issuing Bank in favor of U.S.

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<sup>2</sup> Docket Numbers: 764, 828 and 1149, respectively.

Bank Trust National Association, dated November 17, 2000, the Relevant Termination Date may be no later than December 31, 2004.

8. The Debtors have extended in excess of 45 Existing Letters of Credit to date and anticipate continuing to extend Existing Letters of Credit, including certain Existing Letters of Credit that have been previously extended pursuant to the First Amendment Agreement. Although the Debtors believe that there are no restrictions in the First Amendment Agreement that would otherwise prohibit an Existing Letter of Credit from being extended multiple times, the Prepetition Lenders have expressed concern that the First Amendment Agreement does not contemplate multiple extensions of Existing Letters of Credit.

9. Following discussions with the Prepetition Lenders, the parties have agreed to enter into a further amendment agreement (the “Second Amendment Agreement” and together with the First Amendment Agreement and any further amendments subsequent hereto, the “Amendment Agreements”) to, for the avoidance of doubt, provide that any Existing Letter of Credit may be further extended from time to time subject to the provisions of the Four Year Credit Agreements (as amended). Specifically, the Second Amendment Agreement provides:

Subject to Section 2.18(e)(iii), the expiration date of any Extended Letter of Credit may be extended once or multiple times until the earliest of (x) a date not less than three months after the expiration date of such Extended Letter of Credit and (y) the Letter of Credit Termination Date.

Second Amendment, at § 1(e)(ii). A copy of the Second Amendment Agreement as agreed between the Prepetition Lenders and Mirant is attached hereto as Exhibit “A.”

### **RELIEF REQUESTED**

10. By this Motion, the Debtors seek the entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code (i) authorizing the further amendment of the Four

Year Credit Agreement to permit the further extension of Existing Letters of Credit from time to time pursuant to the terms of the Four Year Credit Agreement (as amended), (ii) authorizing the execution and performance of the Second Amendment Agreement, and (iii) seeking confirmation that (A) Mirant's reimbursement obligations in respect of any drawing under an Extended Letter of Credit shall constitute a prepetition unsecured claim against Mirant with respect to the Bankruptcy Cases (without waiver or prejudice to any objection by a party in interest to the "allowance" of such prepetition unsecured claims); and (B) the issuance of any Extended Letter of Credit will not be recharacterized or otherwise deemed to constitute a new extension of credit for the purposes of section 364 of the Bankruptcy Code or otherwise.

11. The Debtors also seek the Court's waiver of Bankruptcy Rule 6004(g), to the extent applicable, to allow the parties to consummate the transactions contemplated by the Second Amendment Agreement immediately upon entry of the interim order approving this Motion and to the extent of the relief granted by such interim order.

12. Furthermore, the Debtors have discussed with the Prepetition Lenders the possibility of modifying the Relevant Termination Date to provide for the extension of Existing Letters of Credit beyond the current long stop date of September 30, 2004. The Debtors may also seek to modify consensually with the Prepetition Lenders other provisions of the Amendment Agreements from time to time as circumstances warrant. Accordingly, in the interest of administrative efficiency, the Debtors seek to establish procedures for the further modification of the Amendment Agreements. The Debtors intend to provide not less than ten days written notice (the "Notice Period") to each of the Committees of any proposed modifications to an Amendment Agreement. If no written objections are received by the Debtors prior to the expiration of the Notice Period, the Debtors propose that they be authorized to

implement the modifications as set forth in the relevant notice without further notice or order of the Court. If, however, an objection is timely received, the Debtors will not proceed with the proposed modification without further order of the Court on appropriate motion and notice.

### **APPLICABLE AUTHORITY**

13. Section 105(a) of the Bankruptcy Code provides in pertinent part that “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides in pertinent part that a debtor “after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. See, e.g., In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986).

14. Courts look to various factors to determine whether to approve a motion under section 363(b), such as (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. In re Condere, 228 B.R. 615, 626 (S.D. Miss. 1998).

15. The negotiation of the Second Amendment Agreement between Mirant, the Agent and the Prepetition Lenders was undertaken in good faith and on an arms’ length basis. By entering into the Second Amendment Agreement, the Debtors will continue to benefit from the credit support provided by the Four Year Credit Agreement and the Existing Letters of Credit. Accordingly, in their sound business judgment, the Debtors believe that the changes to be made pursuant to the Second Amendment Agreement will continue to benefit the Debtors’ estates.

16. As noted in the First LC Extension Motion, the Debtors continue to derive substantial benefit from the Existing Letters of Credit and the ability to maintain the same. If an Existing Letter of Credit expires or is drawn by the Beneficiary, such event may give rise to a default (or at least a colorable argument that a default had occurred) on the underlying agreements supported by the Existing Letter of Credit. Where the relevant affiliate whose obligations are supported by the Existing Letter of Credit is not a debtor, the automatic stay is not available to prevent the relevant Beneficiary from exercising such rights as are available to it under the underlying agreement, to the detriment of the relevant non-debtor and indirectly the Debtors and their respective estates. Even where a potential default may arguably occur with respect to Debtor obligations, the otherwise avoidable expiration of Existing Letters of Credit will be disruptive to the Debtors' businesses and contrary to the general proposition that the Debtors' businesses are continuing to perform without adverse consequence resulting from the chapter 11 filings.

17. Furthermore, if the Debtors are able to extend such Existing Letters of Credit, the Debtors may utilize excess capacity under the Existing Letters of Credit up to the principal amounts thereof, thereby maximizing the benefit derived from having the Existing Letter of Credit as collateral, in particular, in supporting the Debtors' trading activities. That is, in certain instances, the face amount of an Existing Letter of Credit exceeds the current amount of the underlying obligation supported by such letter of credit. Given that the underlying trading obligations fluctuate daily due to market movements, the Debtors enjoy excess letter of credit capacity with no administrative cost to the estates; however, if a counterparty were to draw the Existing Letter of Credit because of an imminent expiration, such counterparty will likely draw

in an amount equal to its exposure at the time of drawing, thereby extinguishing the liquidity provided by the excess letter of credit capacity.

18. Although the Debtors expect that a Beneficiary entitled to draw on an Existing Letter of Credit will draw, absent a replacement or extension thereof, there can be no assurances that the Beneficiary will actually draw. In the event that a Beneficiary allows an Existing Letter of Credit to expire undrawn and the Debtors (or their affiliates) are otherwise required to provide collateral, the Debtors (or their affiliates) may be required to replace such collateral on an administrative cost basis. In particular, pursuant to the debtor-in-possession financing made available to the Debtors, for each month that a letter of credit remains outstanding thereunder, the Debtors are required to pay a margin of 3.5% per annum on the total aggregate amount of the issuing bank's exposure under all such letters of credit. The ability to further extend the Existing Letters of Credit minimizes the need for the Debtors to use the letters of credit facility under the DIP Financing thereby limiting costs to the estates and leaving such letter of credit facility available for other business and operational needs of the Debtors.

19. Finally, the Debtors believe that the proposed procedures for further modifying the Amendment Agreements fairly balance the need for administrative efficiency and the protection of creditor and equity security holder interests. Importantly, the Debtors will proceed with a proposed modification without further order of the Court only in the event that no Committee opposes such proposed modification.

20. Based on the foregoing, the Debtors believe that the further amendment to the Four Year Credit Agreement and the execution and performance of the Second Amendment Agreement are in the best interests of their estates and their creditors.

21. In addition, Rule 6004(g) of the Federal Rules of Bankruptcy Procedure provides that “[a]n order establishing the use, sale or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise”. To the extent that Rule 6004(g) applies to the relief requested herein, the Debtors respectfully request that this Court waive the ten-day automatic stay imposed by Rule 6004(g).

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, and grant such other relief that may be just and proper.

Dated: Fort Worth, Texas  
April 5, 2004

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

By: Robin E. Phelan  
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  
Craig H. Averch  
State Bar No. 01451020  
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 has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all persons on the Limited Service List via United States first class mail, postage prepaid, on the 5th day of April, 2004 in accordance with the Federal Rules of Bankruptcy Procedure:

/s/ Robin E. Phelan

**AMENDMENT NO. 5 TO THE  
FOUR-YEAR CREDIT AGREEMENT**

Dated as of March 15, 2004

AMENDMENT NO. 5 (the "*Amendment*") TO THE FOUR-YEAR CREDIT AGREEMENT, dated as of July 17, 2001 (as amended, modified or supplemented in accordance with its terms as of the date hereof, the "*Credit Agreement*"), among MIRANT CORPORATION, a Delaware corporation (the "*Borrower*"), the banks, financial institutions and other institutional lenders parties to the Credit Agreement referred to below (collectively, the "*Lenders*") and CREDIT SUISSE FIRST BOSTON, as administrative agent (the "*Agent*") for the Lenders.

PRELIMINARY STATEMENTS:

(1) Capitalized terms not otherwise defined in this Amendment have the same meanings as specified in the Credit Agreement.

(2) The Borrower and certain of its Subsidiaries have filed Chapter 11 petitions commencing cases (the "*Bankruptcy Cases*") in the U.S. Bankruptcy Court for the Northern District of Texas (the "*Bankruptcy Court*").

(3) The Borrower, the Issuing Bank and 100% of the Lenders have agreed to amend the Credit Agreement as hereinafter set forth.

SECTION 1. Amendments to the Credit Agreement. Section 2.18(e) of the Credit Agreement is (subject to the fulfillment of the conditions precedent set forth in Section 2 below) hereby amended and restated in its entirety as follows:

"(e) Post-Bankruptcy Letters of Credit. (i) Notwithstanding anything herein to the contrary (including Section 3.02) and subject to Section 2.18(e)(iii), the expiration date of each Letter of Credit set forth on Exhibit G hereto that was issued and outstanding as of the effective date of Amendment No. 4 hereto (each, an "*Existing Letter of Credit*") will be extended (each, an "*Extended Letter of Credit*") until the earliest of:

(A) the date six months after such expiration date (or such later date, not later than one year from such expiration date, as may be required by the terms of the agreement with the relevant beneficiary with respect to which an Existing Letter of Credit was issued),

(B) the expiration date specified in the relevant Extension Notice (as defined below), and

(C) September 30, 2004 (the “*Letter of Credit Termination Date*”); *provided* that in the case of the Irrevocable Standby Letter of Credit No. LC870-124536 (as amended) issued by the Issuing Bank in favor of U.S. Bank Trust National Association, dated November 17, 2000 (“*LC870-124536*”), the Letter of Credit Termination Date may be no later than December 31, 2004.

(ii) Subject to Section 2.18(e)(iii), the expiration date of any Extended Letter of Credit may be extended once or multiple times until the earliest of (x) a date not less than three months after the expiration date of such Extended Letter of Credit and (y) the Letter of Credit Termination Date.

(iii) In the event that the Borrower wishes to extend any of the Existing Letters of Credit or Extended Letters of Credit, the Borrower will provide notice in writing (an “*Extension Notice*”) to the Issuing Bank of its request to extend such Letter of Credit not later than the earlier of 45 days prior to the expiration date of such Letter of Credit or fifteen (15) Business Days prior to such Letter of Credit’s Notice Date (as defined below); *provided* that if the Borrower fails to deliver an Extension Notice by such dates, as applicable, then the Issuing Bank may deliver a Notice of Termination to the relevant beneficiary of such Letter of Credit. For the purposes of this Section 2.18(e), the term “*Notice Date*” will mean and refer to (a) with respect to an Evergreen Letter of Credit (as defined below), the last date upon which the Issuing Bank may send notice of its intention to terminate or not to extend the expiration date of such Existing Letter of Credit, pursuant to the terms of such Existing Letter of Credit and (b) with respect to any other Existing Letter of Credit, the date, if any, that the relevant beneficiary is required to be notified that such Existing Letter of Credit will be renewed or replaced. Each Extension Notice will specify the expiration date of the related new Extended Letter of Credit, determined in accordance with Section 2.18(e)(i) or 2.18(e)(ii), as applicable, and such other information as the Issuing Bank may reasonably require in order to enable it to issue such new Extended Letter of Credit. As promptly as practicable but in any event within five (5) Business Days of receipt of such Extension Notice from the Borrower, the Issuing Bank will deliver such new Extended Letter of Credit in the form of an amendment to the related Existing Letter of Credit or Extended Letter of Credit, as applicable, to the beneficiary thereof and will request that such beneficiary sign and return an acknowledgement (by facsimile confirmed promptly telephonically) that the beneficiary accepts the terms of such new Extended Letter of Credit on or prior to the close of business three (3) Business Days prior to such Existing Letter of Credit’s or Extended Letter of Credit’s, as applicable, expiration date or Notice Date, as applicable. With respect to any Evergreen Letter of Credit, if the Issuing Bank has not received such written acknowledgment, then the Issuing Bank will deliver to such beneficiary (with copies to the Agent and the Borrower) a Notice of Termination with respect to such Evergreen Letter of Credit.

The Issuing Bank will issue such new Extended Letter of Credit, subject to the following terms and conditions:

(A) The beneficiary of each (x) Existing Letter of Credit and related Extended Letter of Credit or (y) Extended Letter of Credit and new Extended Letter of Credit, as applicable, will be the same entity or such entity's successor in interest (pursuant to the terms of the agreement with the relevant beneficiary with respect to which such Existing Letter of Credit or Extended Letter of Credit, as applicable, was issued).

(B) The face amount of each Extended Letter of Credit or new Extended Letter of Credit, as applicable, will be equal to the then undrawn amount of the related Existing Letter of Credit or Extended Letter of Credit as applicable, unless the Borrower elects in writing a lesser face amount.

(C) Any beneficiary of any Extended Letter of Credit or new Extended Letter of Credit, as applicable, will have the right to draw on such Letter of Credit on substantially the same terms on which such beneficiary was entitled to draw on the related Existing Letter of Credit or Extended Letter of Credit, as applicable.

(D) At the time of extension of any Existing Letter of Credit or Extended Letter of Credit, as applicable, pursuant to this Section 2.18(e), such extension will be effected by an amendment to such Letter of Credit (such amendment to be evidenced by the written acknowledgement by the beneficiary delivered to the Issuing Bank as described above in this Section 2.18(e)(iii)), extending the term thereof together with such modifications as are necessary to reflect the terms of this Section 2.18(e), including, with respect to any Existing Letter of Credit that states on its face that it will renew automatically absent notice or be "evergreen" (each, an "*Evergreen Letter of Credit*"), a modification eliminating such automatic renewal provision and providing that, notwithstanding such provision in such Existing Letter of Credit, the related Extended Letter of Credit will expire on its stated expiration date, unless extended by an instrument signed by the Issuing Bank and agreed to in writing by the Borrower and the beneficiary.

(E) Upon the Issuing Bank's receipt of the acknowledgement of an Existing Letter of Credit's or Extended Letter of Credit's, as applicable, beneficiary of the related Extended Letter of Credit or new Extended Letter of Credit, as applicable, as described in this Section 2.18(iii), such Extended Letter of Credit or new Extended Letter of Credit, as applicable, will be effective upon the expiration date of the related Existing Letter of Credit or Extended Letter of Credit, as applicable.

Any notice delivered to the Issuing Bank pursuant to this Section 2.18(e) will be delivered to Wachovia Bank, N.A., NC 0537, 301 South College Street, Charlotte, NC 28288-0537, facsimile – (704) 383-9831, Attention: Tom Bohrer, telephone – (704) 715-

1389, and Ernest May, facsimile – (267) 321-6903, telephone – (267) 321-6691 (or such other persons as the Issuing Bank may designate in writing).

(iv) Any waiver, modification or amendment of this Section 2.18(e) will require consent by 100% of the Lenders, as well as the consents of the Issuing Bank and the Agent.”

SECTION 2. Conditions Precedent. This Amendment will become effective as of the date first above written when and only when the following conditions will have been satisfied:

(a) The Borrower will have executed and delivered to the Agent a copy of this Amendment, thereby confirming subject to clause (c) below its reimbursement obligations with respect to any drawing under any Extended Letter of Credit.

(b) The Agent will have executed and delivered to the Borrower a copy of this Amendment on behalf of 100% of the Lenders and the Issuing Bank.

(c) The Bankruptcy Court will have entered an order approving the Borrower entering into this Amendment, which order will (i) provide that the Borrower’s reimbursement obligations with respect to any drawing under any Extended Letter of Credit will constitute prepetition unsecured claims against the Borrower with respect to the Bankruptcy Cases and (ii) confirm that the issuance of any Extended Letter of Credit pursuant to the terms of this Amendment will not be recharacterized or otherwise deemed to constitute a new extension of credit for the purposes of section 364 of title 11, United States Code or otherwise.

SECTION 3. Reimbursement. The Borrower hereby represents and warrants that any drawing under any Extended Letter of Credit will constitute a Letter of Credit Advance under Section 2.18(c) of the Credit Agreement and will be treated for all purposes of the Credit Agreement as though it were a Revolving Credit Advance made prior to the commencement of the Bankruptcy Cases.

SECTION 4. Non-Waiver. The execution, delivery and effectiveness of this Amendment will not operate as a waiver of any right, power or remedy of any Person under, or any default (now or hereafter existing) of the Borrower under, the Credit Agreement, at law or otherwise, nor constitute a waiver of any provision of the Credit Agreement or a waiver of any right, power or remedy at law or otherwise, resulting from or in connection with the commencement of the Bankruptcy Cases.

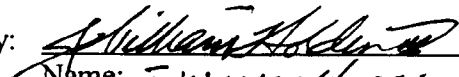
SECTION 5. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopier will be effective as delivery of a manually executed counterpart of this Amendment.

**SECTION 6. GOVERNING LAW. THIS AMENDMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE BANKRUPTCY COURT WILL RETAIN SOLE AND EXCLUSIVE JURISDICTION OF ALL MATTERS ARISING IN CONNECTION WITH THIS AMENDMENT.**

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

MIRANT CORPORATION,  
as Borrower

By:   
Name: J. WILLIAM HOLDEN  
Title: SVP & TREASURER

WACHOVIA BANK, N.A.,  
as Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

ON BEHALF OF THE LENDERS PARTY  
TO THE CREDIT AGREEMENT

CREDIT SUISSE FIRST BOSTON,  
as Agent

By: \_\_\_\_\_  
Name:  
Title:

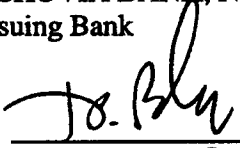
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

MIRANT CORPORATION,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

WACHOVIA BANK, N.A.,  
as Issuing Bank

By:  \_\_\_\_\_  
Name: TOM Bohrer  
Title: Director

ON BEHALF OF THE LENDERS PARTY  
TO THE CREDIT AGREEMENT

CREDIT SUISSE FIRST BOSTON,  
as Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

MIRANT CORPORATION,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

WACHOVIA BANK, N.A.,  
as Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

ON BEHALF OF THE LENDERS PARTY  
TO THE CREDIT AGREEMENT

CREDIT SUISSE FIRST BOSTON,  
as Agent

By:   
Name: **Didier Siffer**  
Title: **Director**

By:   
Name: **CAROL FLATON**  
Title: **MANAGING DIRECTOR**

**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.	)	Hearing Date and Time:
	)	April 28, 2004 at 12:00 p.m.

**ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE (i) AUTHORIZING THE AMENDMENT OF A CERTAIN PREPETITION CREDIT FACILITY TO PERMIT THE FURTHER EXTENSION OR REPLACEMENT FROM TIME TO TIME OF OUTSTANDING LETTERS OF CREDIT, (ii) AUTHORIZING THE EXECUTION OF AN AMENDMENT AGREEMENT, (iii) CONFIRMING CERTAIN MATTERS RELATED TO THE FOREGOING, AND (iv) GRANTING RELATED RELIEF**

Upon consideration of the motion, dated April 5, 2004 (the “Motion”),<sup>1</sup> of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, for the entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code: (i) authorizing Mirant to amend the Four Year Credit Agreement for the purposes of further extending Existing Letters of Credit from time to time, (ii) authorizing Mirant to execute and perform its obligations under the Second Amendment Agreement, (iii) confirming certain matters related to the foregoing, and (iv) granting related relief; and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. sections 157 and 1334; and it appearing that sufficient notice has been provided; and a hearing having been held on April 28, 2004 to consider the Motion (the “Hearing”); and upon the record of the

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<sup>1</sup> Capitalized terms not otherwise defined herein shall bear the same meanings ascribed to them in the Motion.

Hearing and all of the proceedings heard before the Court; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor, it is

**ORDERED** that, the Motion is granted to the extent set forth herein; and it is further

**ORDERED** that, the Debtors are authorized to further amend the Four Year Credit Agreement pursuant to the terms of the Second Amendment Agreement; and it is further

**ORDERED** that, the Mirant is authorized to exercise its rights and perform its obligations under the Second Amendment Agreement with respect to the Existing Letters of Credit, and to execute such other agreements, documents or instruments as may be necessary in furtherance of the transactions contemplated thereby; and it is further

**ORDERED** that, the reimbursement obligations with respect to any drawings under any Extended Letter of Credit (as defined in the Second Amendment Agreement) extended pursuant an Amendment Agreement (including, any Evergreen Letter of Credit renewed pursuant to its terms or otherwise) shall constitute prepetition unsecured claims against Mirant with respect to the Bankruptcy Cases (without waiver or prejudice to any objection by a party in interest to the “allowance” of such prepetition unsecured claims); and it is further

**ORDERED** that, the issuance of any Extended Letter of Credit pursuant to an Amendment Agreement (including the renewal of any Evergreen Letter of Credit pursuant to its terms or otherwise) will not be recharacterized or otherwise deemed to constitute a new extension of credit for the purposes of section 364 of the Bankruptcy Code or otherwise; and it is further

ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE  
(i) AUTHORIZING THE AMENDMENT OF A CERTAIN PREPETITION CREDIT FACILITY TO PERMIT THE FURTHER EXTENSION OR REPLACEMENT FROM TIME TO TIME OF OUTSTANDING LETTERS OF CREDIT, (ii) AUTHORIZING THE EXECUTION OF AN AMENDMENT AGREEMENT, (iii) CONFIRMING CERTAIN MATTERS RELATED TO THE FOREGOING, AND (iv) GRANTING RELATED RELIEF

**ORDERED** that, the Debtors shall provide not less than ten days written notice (the “Notice Period”) to counsel to each of the Committees of any proposed modifications to an Amendment Agreement. If the Debtors prior to the expiration of the Notice Period receive no written objections, the Debtors are authorized to implement the modifications as set forth in the relevant notice without further notice or order of the Court. If, however, an objection is timely received, the Debtors will not proceed with the proposed modification without further order of the Court on appropriate motion and notice; and it is further

**ORDERED** that, the Debtors shall provide reasonable prior notice to the Committees of their intention to extend any of the Existing Letters of Credit and provide summary information relating thereto, including, the principal amount, the beneficiary, the purpose for which such Existing Letter of Credit was originally issued, the Scheduled Expiry Date, the Relevant Termination Date (each as determined in the Second Amendment Agreement) and a brief explanation of the Debtors’ determination to extend the same, provided that, in the event that the Debtors fail to comply with the terms of this paragraph with respect to any Existing Letter of Credit, the Issuing Bank shall not be liable to any person for any matter arising out of any extension of such Existing Letter of Credit which is carried out in accordance with the terms of the Amendment Agreement; and it is further

**ORDERED** that, if, following notification to the Committees of its intention to extend an Existing Letter of Credit, the Debtors determine that such Existing Letter of Credit shall not be so extended, the Debtors shall immediately notify the Committees of such determination, provided that, in the event that the Debtors fail to comply with the terms of this paragraph with respect to any Existing Letter of Credit, the Issuing Bank shall not be liable to

any person for any matter arising out of any extension of such Existing Letter of Credit which is carried out in accordance with the terms of the Amendment Agreement; and it is further

**ORDERED** that, nothing in this Order shall prejudice the ability of any Committee to seek appropriate relief from this Court with respect to any Existing Letter of Credit or any action, or inaction taken or to be taken by the Debtors in relation thereto, provided that requisite notice of any application for such relief shall be served on counsel to the agent to the Lenders and the Issuing Bank; and it is further

**ORDERED** that, the extension of any Existing Letter of Credit in accordance with the terms of this Order shall be valid and binding upon all parties to the Credit Agreement in accordance with the terms thereof and this Order, provided however, that nothing herein shall prejudice the rights of the Lenders or the Issuing Bank to dishonor or challenge the drawing of any Extended Letter of Credit under the Credit Agreement or under applicable law; and it is further

**ORDERED** that, to the extent applicable, the stay imposed by Bankruptcy Rule 6004(g) is hereby waived; and it is further

**ORDERED** that, the Court shall retain jurisdiction to hear and determine all matters relating to implementation and enforcement of this Order.

SIGNED THIS \_\_\_\_ DAY OF APRIL, 2004

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D. Michael Lynn  
United States Bankruptcy Court