

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

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**EMERSON**  
AWANA  
CLERK  
THE POINT OF ENTRY IS  
ON THE FRONT DOCKET

In re	)	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	)	Case No. 03-46590 (DML)
Debtors.	)	)	Jointly Administered
	)	)	Hearing Date and Time:
	)	)	April 28, 2004 at 10:30 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

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

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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

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4/26/2004 11 46 AM (2K)  
MIAMI 469127 v2  
[rsk - Order authorizing changes to credit facility DOC]

**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 receive no written objections prior to the expiration of the Notice Period, 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, a written objection is timely served upon and received by the Debtors, with a copy to the Issuing Bank, the Debtors will not proceed with the proposed modification without (x) written acknowledgment from the objecting party that such objection is withdrawn or otherwise resolved or (y) 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 or any subsequent extension) 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

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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 29<sup>th</sup> DAY OF APRIL, 2004



\_\_\_\_\_  
D. Michael Lynn  
United States Bankruptcy Court

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