

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
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**

_____)	
In re	)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u>,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.)	
	)	Hearing Date and Time: September 1,
_____	)	2004; 10:30 a.m.

**THIRD MOTION OF THE DEBTORS FOR AN ORDER PURSUANT TO
11 U.S.C. § 365(d)(4) EXTENDING TIME WITHIN WHICH THE DEBTORS
MAY ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY**

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, “Mirant” or the “Debtors”), as debtors-in-possession, file this third motion (the “Motion”) for the entry of an order pursuant to section 365(d)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”) extending the time for the Debtors to assume or reject (the “Assumption or Rejection Period”) all unexpired leases of nonresidential real property (the “Leases”), including the leases listed on the chart attached hereto as Exhibit “1” and excluding

the MIRMA Leases, as defined below, until the date of confirmation of the plan of reorganization of the Debtors, and respectfully 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 and 82 of its direct and indirect subsidiaries filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

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

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

6. The Previous Extensions. In accordance with the “Order Pursuant to 11 U.S.C. § 365(d)(4) Extending Time Within Which the Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property” dated September 10, 2003, the first extension of the

Assumption or Rejection Period expired on March 10, 2004. Pursuant to the “Interim Order Granting Second Motion Of The Debtors For An Order Pursuant to 11 U.S.C. § 365(d)(4) Extending Time Within Which The Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property” entered on March 3, 2004, the second extension of the Assumption or Rejection Period will expire on September 6, 2004.¹

FACTUAL BACKGROUND

A. Efforts of the Contract Assessment Team.

7. With the aid of their professionals, the Debtors are engaged in an analysis of all of their operations, including with respect to the Leases. To ensure consistency in this process, the Debtors appointed a dedicated team of personnel and professionals, commonly referred to as the “contract assessment” or “CAT” team, to examine and make strategic decisions concerning the disposition of the Leases and the Debtors’ executory contracts. Indeed, as set forth below, the Debtors have made and implemented decisions with respect to a number of the Leases.

B. The Debtors’ Leases of Nonresidential Real Property.

8. The Debtors are parties to the Leases,² including those listed on Exhibit “1.” Since the Petition Date, the Debtors and their professionals have been working diligently to administer these chapter 11 cases and to address a vast number of administrative and business

¹ Regarding any leases and subleases of real property that relate to two (2) power plants located in Maryland, known as the MIRMA Dickerson Lease and the MIRMA Morgantown Lease (collectively with the MIRMA Dickerson Lease, the “MIRMA Leases”), that are operated or controlled by Mirant Mid-Atlantic, LLC, formerly known as Southern Energy Mid-Atlantic, LLC (“MIRMA”), this Court entered the “Order Extending The Period To Assume Or Reject MIRMA Leases Pursuant To 11 U.S.C. § 365(d)(4)” on July 30, 2004, extending the Assumption or Rejection Period for the MIRMA Leases until September 1, 2004 and thereafter, absent an objection, automatic extension, without further order of the Court, until the date of confirmation of a plan of reorganization of the Debtors.

² The Debtors are investigating the proper characterization of the Leases. Until completion of this review, the Debtors reserve all rights to recharacterize the Leases as “financing leases,” or otherwise, if facts and law support such.

issues while, at the same time, stabilizing and operating their businesses to maximize asset values.

(i) Rejected and Assumed Leases.

9. The Debtors have already rejected the following real property leases with: (a) Silver Care LLC located at 2260 Corporate Circle, Suites 460 and 470, Henderson, Nevada; (b) Koin Center Limited Partnership by KCP-Dreyfus Corporation located at 1120 KOIN Center, Portland, Oregon; (c) Trizec Allen Center Limited Partnership located at Two Allen Center, Suite 2890, Houston, Texas; (d) Rotunda Partners & California Dental Association located at 1201 “K” Street, Suite 970, Sacramento, California; (e) Pericen Limited Partnership located at 1117 Perimeter Center West, Suite W-200, W-201, N-500, 8S & 10S Atlanta, Georgia; (f) 400 Rella Realty Associates LLC located at 400 Rella Blvd, Suffern, New York; (g) EON Properties LLC located at 222 Indianapolis Blvd, Suite 102, Shererville, Indiana; (h) Southfield Industrial III, LP located at 105 Southfield Parkway, Forest Park, Georgia; and (i) 901 F Street Venture, LLC located at 901 F Street, NW, Suite 800, Washington, DC.

10. The Debtors have, moreover, assumed an amended real property lease for their corporate headquarters (the “Amended Corporate Headquarters Lease”), situated at 1155 Perimeter Center West, Atlanta, Georgia 30338, based on the maximum financial flexibility and immediate economic benefit provided by the amended terms. In short, the economic concessions granted by the lessor far outweighed the risk of assumption of the Amended Corporate Headquarters Lease prior to confirmation of the plan of reorganization.

RELIEF REQUESTED

11. By this Motion, the Debtors, pursuant to section 365(d)(4) of the Bankruptcy Code, seek an additional extension of the time within which the Debtors must assume or reject

all unexpired leases of nonresidential real property until the date of confirmation of a plan of reorganization of the Debtors.

BASIS FOR RELIEF

A. Section 365(d) of the Bankruptcy Code Provides that a Court May, For Cause, Extend the Assumption or Rejection Period.

12. Section 365(d)(4) of the Bankruptcy Code provides, in pertinent part:

...if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is a lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

13. As the statute indicates, upon a showing of cause by a debtor, this Court may grant extensions of the assumption or rejection time period. See, e.g., Chapman Inv. Assoc. v. American Healthcare Mgmt., Inc. (In re American Healthcare Mgmt., Inc.), 900 F.2d 827 (5th Cir. 1990). The legislative history of section 365(d)(4) indicates that a debtor confronted with the task of analyzing many leases has sufficient cause to extend the statutory sixty-day period. 130 Cong. Rec. S88, 94-95 (1984), reprinted in 1984 U.S.C.C.A.N. 590, 597 (remarks of Sen. Hatch concerning the bill). Construing this legislative history, the bankruptcy court in In re Unit Portions of Delaware, Inc., 53 B.R. 83 (Bankr. E.D.N.Y. 1985), concluded:

Congress recognized that there may be times when it is not possible for the trustee to make a careful and informed assessment of the benefits and burdens of the lease within this 60-day period. Accordingly, it empowered the court to grant a trustee who demonstrates cause for an extension [of] additional time to make this assessment.

Id. at 85.

14. Various courts have considered what constitutes sufficient cause to extend the time period within which a debtor may assume or reject unexpired nonresidential leases. A list of factors was formulated in In re Wedtech Corp., 72 B.R. 464 (Bankr. S.D.N.Y. 1987). In Wedtech, the bankruptcy court held that the following factors, among others, would tend to indicate that “cause” exists to extend the statutory period:

- (a) the leases are an important asset of the estate such that the decision to assume or reject would be central to any plan of reorganization;
- (b) the case is complex and involves large numbers of leases; or
- (c) the debtor has had insufficient time to intelligently appraise each lease’s value to a plan of reorganization.

Id. at 471-72; see also In re Channel Home Centers, Inc., 989 F.2d 682, 689 (3d Cir. 1993), cert. denied, 510 U.S. 865 (1993) (“[N]othing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop.”); In re New York Deli, Ltd., 41 B.R. 198, 200 (Bankr. D. Del. 1984) (approving a nine month extension of time to assume or reject leases); In re Victoria Station, Inc., 88 B.R. 231, 239 n.7 (9th Cir. B.A.P. 1988) (allowing multiple extensions of section 365(d)(4) time period).

B. Cause Exists to Grant the Requested Extension With Respect to the Leases.

(i) The Size and Complexity of these Cases Justify the Requested Extension.

15. Courts regularly have held that the size and complexity of a case, and the inevitable delay which these factors cause in evaluating specific leases and developing a chapter 11 plan warrant an extension of time under section 365(d)(4) of the Bankruptcy Code. See, e.g., Wedtech, 72 B.R. at 471-72; In re Coastal Dry Dock & Repair Corp., 62 B.R. 879, 882 (Bankr. E.D.N.Y. 1987); In re Family Showtime Theatres, Inc., 58 B.R. 679, 684 (Bankr. E.D.N.Y.

1986), aff'd, 72 B.R. 38 (E.D.N.Y. 1987), aff'd, 819 F.2d 1130 (2d Cir. 1987); see also In re Southwest Aircraft Servs., Inc., 831 F.2d 848, 851 (9th Cir. 1987).

16. The Debtors' chapter 11 cases are one of the largest and most complex ever filed. At issue is the recovery of over \$10 billion of recognized claims, the employment of over 6,000 people, and the preservation of electrical generating capacity sufficient to power over 20 million homes. The Debtors' assets, which include power plants and related infrastructure throughout the United States, the Caribbean and the Philippines, generated consolidated operating revenue of \$6.4 billion in 2002.

(ii) The Leases are Important Assets to the Estates.

17. The importance of nonresidential real property leases to a chapter 11 case is a key factor justifying an extension of time within which to assume or reject such leases. See, e.g., In re Babylon Ltd. Partnership, 76 B.R. 270, 274 (Bankr. S.D.N.Y. 1987). In these cases, the Leases are at the heart of the Debtors' operations, the production and sale of electricity and electrical capacity. Without the Leases, the Debtors could not operate their businesses, the Debtors' reorganization efforts would cease, and the going-concern value of the assets would be lost.

18. In addition, the Debtors and their creditors could suffer severe harm if the Debtors are forced to prematurely assume or reject the Leases. For example, if the Debtors were forced to assume the Leases, they would become postpetition obligations of their estates and the lessors would be entitled to administrative priority for any future claims under the Leases without the unsecured damage limitation set forth in section 502(b)(6) of the Bankruptcy Code. If the Debtors determine that one or more of the Leases are not needed for their ongoing operations, then an unnecessary and very large administrative liability may be created by the assumption of

such Leases.³ Such a result is not in the best interest of the Debtors' estates or their creditors. "Although limited extensions were granted in this case, requests by the Debtor to defer assumption to confirmation was denied. It appears that the consequence will be catastrophic for unsecured creditors in the case. They might be entirely excluded from distribution of a fund exceeding \$600,000." Monica Scott, 123 B.R. at 993.

19. If the Debtors assume a Lease, they cannot subsequently seek relief from the consequences of their assumption. In re Vision Metals, Inc., No. 00-4205, Adv. No. 02-6528, 2004 WL 1576496 (Bankr. D. Del. July 14, 2004) (In denying the debtor's motion requesting that an order granting the assumption of an executory supply and settlement agreements be vacated, the court held that: (a) the debtor failed to demonstrate any exceptional circumstances to entitle it to relief under Rule 60(b) from the assumption order; (b) court could not use its equitable power under section 105 to relieve the debtor of consequences of deciding to assume the agreements; and (c) the debtor failed to demonstrate the exceptional circumstances to equitably estop the other party from relying on the assumed agreements.).

20. On the other hand, the Debtors believe, based upon a preliminary analysis, that most of the Leases are of value to their estates and such value is largely intertwined with the plan of reorganization process. Premature rejection of some or all of the Leases at this stage in these cases would forfeit that potential value. Furthermore, a rejection could leave the Debtors with significant damage claims related to the rejection of the Leases.

21. "[T]he unattractive choice of either requiring a bankrupt tenant to reject its long-term lease (and thereby possibly dooming the reorganization to failure) or letting it assume the

³ "Unless the Congress addresses this situation, cause will undoubtedly be found to exist, as a matter of course, for extending to confirmation the time to assume or reject significant leases in Chapter 11 cases." In re Monica Scott, Inc., 123 B.R. 990, 993 (Bankr. D. Minn. 1991).

lease” has lead the Second Circuit to suggest that it might be appropriate to extend a debtor’s period to assume or reject “until the moment of confirmation, when the debtor’s chances of rehabilitation would finally be clear.” In re Klein Sleep Products, Inc., 78 F.3d 18, 29 (2d Cir. 1996).

22. The Debtors are, moreover, cognizant of this Court’s previously stated concern regarding the assumption of contracts with extended terms that represent a significant ongoing expense. Since the Debtors are engaged in an industry that is subject to rapid fundamental changes, this Court’s concerns are particularly accurate. Both the template of a plan of reorganization for the Debtors and the contribution, or lack thereof, of any individual Lease have yet to be determined.⁴ Premature assumption of the Lease could prematurely dictate the architecture of a plan of reorganization. The need for the Leases is in context of the Debtors’ plan of reorganization. The Debtors’ assumption or rejection of the Leases depends on the future capital structure of the reorganized Debtors as provided by the plan of reorganization. Simply put, the Debtors’ flexibility in developing a plan of reorganization would be greatly impaired if the Debtors were prematurely compelled to make a decision as to the assumption or rejection of the Leases.

23. The Debtors, accordingly, submit that the decision to assume the Leases should be deferred until the confirmation of a chapter 11 plan, unless there are immediate and significant tangible benefits that would facilitate any conceivable plan (such as that provided by the terms of the Amended Corporate Headquarters Lease).

⁴ The resolution of real property tax issues in connection with the Debtors' New York operations will have a significant impact on the Debtors' cash flow availability; the development of their plan of reorganization; and their decision to assume certain Leases. Although several settlements have been reached with relevant New York taxing authorities, numerous issues are still outstanding and, thus, may substantially impact the Debtors' cash flow.

(iii) The Debtors are Current on the Rent Obligations Under the Leases.

24. The Debtors are current on their postpetition rental obligations and have adequate cash flow to meet future rent obligations as those obligations come due. See In re Bon Ton Restaurant & Pastry Shop, Inc., 52 B.R. 850, 855 (Bankr. N.D. Ill. 1985) (observing that lessors who receive continuing monthly rent payments generally are not prejudiced by an extension of the section 365(d)(4) deadline). As noted, the Court has already found that the Debtors are administratively solvent. The Debtors' ability and commitment to currently meet their postpetition rental obligations underscores their good faith desire to make informed and reasoned decisions regarding assumption or rejection for the benefit of their estates and creditors.

25. The Debtors are performing under the Leases in the ordinary course of their business operations. The Debtors are complying—and are in a position to continue to comply—with their postpetition rent obligations in accordance with the terms of the Leases as provided for in section 365(d)(3) of the Bankruptcy Code.⁵ The lessors under the Leases will, therefore, not be prejudiced by an extension of the Assumption or Rejection Period. There is, thus, good cause to grant the extension of the Assumption or Rejection Period to confirmation of the plan of reorganization of the Debtors.

⁵ The Court has already determined that the Debtors are administratively solvent. See Order Determining That The Debtors Are Administratively Solvent (entered on July 31, 2003).

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: August 9, 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
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 has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Motion upon all persons identified in Exhibit "1;" and on the Limited Service List on the 9th day of August 2004 via first class mail, postage prepaid, in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Michelle C. Campbell

Non-Residential Real Property Office Leases

No.	Mirant Entity	Lessor	Property Address	Lessor Address	Lease Term	
					From	To
1.	Mirant California, LLC	PERA Urban West Corp	1350 Treat Blvd, Suite 170, Walnut Creek, CA 94597	Jones Lang & LaSalle Property Management Attn: Property Manager 1350 Treat Blvd, Suite 140 Walnut Creek, California 94596 Duplicate Notices To: Pera Urban West Corp., Inc. c/o LaSalle Investment Management, Inc. 1225 17 th Street, Suite 1650 Denver, Colorado 80202 Will Robb LaSalle Investment Management, Inc. 950 Seventeenth Street, Suite 1850 Denver, Colorado 80202	5/1/2000	3/1/2006
2.	Mirant Canal, LLC	Harry H. Blackey & Louis J. Grossman, Trustees of Rockland Haverstraw Trust	1099 Hingham Street, Rockland, MA 02370	Harry H. Blackey & Louis J. Grossman, Trustees of Rockland Haverstraw Trust The Grossman Companies, Inc., 1266 Furnace Brook Parkway Quincy, Mass 02269-0345	2/1/1999	9/30/2004
3.	Mirant New York	Executive Associates North IV, LLC	Four Executive Blvd, Suite 100, Suffern, NY 10901	Executive Associates, Goldstein Management Corp. LLC Attn: I.R. Resnic Two Executive Blvd, Suite 200 Suffern, New York 10901 Duplicate Notice To: Ronald S. Kossar, Esq 402 East Main Street Middletown, New York 10940	9/1/2001	9/1/2008
4.	Mirant Services Inc.	Graham & Company Inc.	300 Cahaba Park Circle, Suite 209, Birmingham, AL 35242	Graham & Company Inc. 2200 Woodcrest Place, Suite 210 Birmingham, Alabama 35209	10/1/2001	9/30/2004

Non-Residential Real Property Ground Leases

No.	Mirant Entity	Lessor	Property Address	Lessor Address	Lease Term	
					From	To
5.	Mirant NY-Gen, LLC	Orange and Rockland Utilities, Inc. (sublease from the City of New York lease)	Grahamsville Hydroelectric Facility 1229 State Route 55A Grahamsville, New York 12740	Orange and Rockland Utilities, Inc. One Blue Hill Plaza Pearl River, NY 10965 Attn: Legal Department Copy to: Skadden, Arps, Slate, Meagher & Flom, LLP 919 Third Avenue New York, NY 10022 Attn: Sheldon S. Adler, Esq.	6/30/1999	12/31/2005
6.	Mirant Potomac River, LLC	PEPCO	Potomac River Generating Station "C" Alexandria, VA	PEPCO 701 9 th Street, NW Washington, D.C. 20068 Copy to: Dickstein Shapiro Morin & Oshinsky LLP 2101 L Street, NW Washington, D.C. 20037 Attn: Kenneth M. Simon, Esq.	12/19/2000	99 years
7.	Mirant Wichita Falls, LP	Verotex CertainTeed Corporation	4511 Allendale Road Wichita Falls, Texas 76310	Verotex CertainTeed Corporation 4515 Allendale Rd. Wichita Falls, Texas 76310 Attention: Facility Manager Copy to: Verotex CertainTeed Corporation P.O. Box 860 Valley Forge, Pennsylvania 19482 Attn: Secretary	6/19/1987	9/30/2017
8.	Mirant Wyandotte, LLC	City of Wyandotte	4200 8 th Street Wyandotte, Michigan	City of Wyandotte 3131 Biddle Avenue	COD has not	40 years from COD

Non-Residential Real Property Ground Leases

No.	Mirant Entity	Lessor	Property Address	Lessor Address	Lease Term	
					From	To
			48192	Wyandotte, Michigan 48192 Attention: City Clerk Copy to: City of Wyandotte 3131 Biddle Avenue Wyandotte, Michigan 48192 Attn: Thomas M. Daly General Manager Copy to: City of Wyandotte 3131 Biddle Avenue Wyandotte, Michigan 48192 Attn: Mark Kowalewski	occurred as of 8/15/03	
9.	Mirant Canal, L.L.C.	Commonwealth of Massachusetts and the Martha's Vineyard Airport Commission	Westside Fire Lane, Number 5 West Tisbury, Massachusetts	Ms. Carol Borer County Manager P.O. Box 190 Edgartown, MA 02539 Tel: (508) 627-5535 Fax: (508) 627-9554	11/01/1994	20 years
10.	Mirant Canal, L.L.C.	Commonwealth Electric Company	208 Edgartown Road Oak Bluffs, Massachusetts 02568	Administrative Services Commonwealth Electric Company 2421 Cranberry Highway Wareham, MA 02571 T.M.X. Fontes Assistant Vice President	5/15/1998	No later than 12/31/2008
11.	Mirant Delta, LLC	State of California State Lands Commission	Marine Terminal	State Lands Commission Attn: Title Unit 100 Howe Avenue Suite 100 – South Sacramento, CA 95825-8202	6/21/1980	6/20/2015 35 Years
12.	West Georgia Generating	Thomaston-Upson County Industrial	95 Yamaha	Thomaston-Upson County Industrial Development Authority P.O. Box 672	11/01/1999	11/01/2009

Non-Residential Real Property Ground Leases

No.	Mirant Entity	Lessor	Property Address	Lessor Address	Lease Term	
					From	To
	Company, L.P.	Development Authority	Thomaston, Georgia 30286	Thomaston, Georgia 30286 Attn: Chairman Fax: (706) 647-6583		
13.	Mirant Lovett, LLC	Tilcon Minerals, Inc.	Town of Stony Point, County of Rockland State of New York	Tilcon Minerals Church Street Tomkins Cove, New York 10986	7/1/1986	6/10/2011
14.	Wrightsville Power Facility, L.L.C.	Pulaski County, Arkansas	Wrightsville Power Facility, LLC 17400 Highway 365 Little Rock, Arkansas 72206	Pulaski County, Arkansas Pulaski County Administration Building 201 South Broadway Little Rock, Arkansas 72201 Attn: County Judge	7/14/2000	earlier of: (i) the repayment of the bonds; and (ii) 7/1/2020
15.	Mirant Bowline, LLC	Robert Keahon	210 Beach Road West Haverstraw, New York 10993	210 Beach Road P.O. Box 486 West Haverstraw, New York 10993	5/15/2002	05/31/2005

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**

_____)	
In re	)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u>,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
)	
Debtors.	)	Hearing Date and Time:
	)	September 1, 2004; 10:30 a.m.
_____)	

**ORDER GRANTING THIRD MOTION OF THE DEBTORS FOR AN ORDER
PURSUANT TO 11 U.S.C. § 365(d)(4) EXTENDING TIME
WITHIN WHICH THE DEBTORS MAY ASSUME OR REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Upon consideration of the motion (the “Motion”) of the debtors and debtors-in-
possession in the above-styled chapter 11 cases (collectively, the “Debtors”) dated August 9,
2004, for the entry of an Order, pursuant to section 365(d)(4) of the Bankruptcy Code,¹ further
extending the time within which the Debtors may assume or reject all unexpired leases of

¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to such terms in the Motion.

nonresidential real property² (the “Leases”); and it appearing that this Court has jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and this Motion is proper in this district in accordance with 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given as set forth on the certificate of service annexed to the Motion and the affidavit filed by Bankruptcy Services LLC; and it appearing that no other or further notice is necessary; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and after due consideration and sufficient cause appearing therefor, it is hereby:

ORDERED that the Motion is granted; it is further

ORDERED that this Order applies to all unexpired leases of nonresidential real property to which the Debtors are parties, including the Leases identified on Exhibit “1” hereto and excluding the MIRMA Leases; it is further

ORDERED that the Debtors’ time to elect to assume or reject the Leases is extended, pursuant to section 365(d)(4) of the Bankruptcy Code, until the date of confirmation of a plan of reorganization of the Debtors; it is further

ORDERED that nothing contained herein will be construed to characterize the Leases as “true” leases and not financing leases. Nothing contained herein will affect the ability of the Debtors to seek to recharacterize the Leases if facts and law support such; it is further

² The Assumption or Rejection Period of the MIRMA Leases are specifically addressed in the “Order Extending The Period To Assume Or Reject MIRMA Leases Pursuant To 11 U.S.C. § 365(d)(4)” entered on July 30, 2004. Pursuant to this order, the Assumption or Rejection Period for MIRMA Leases is until September 1, 2004 and thereafter, absent an objection, automatic extended without further order of the Court until the date of confirmation of a plan of reorganization of the Debtors.

ORDERED that the nothing contained herein will affect the ability of non-Debtor parties to the Leases to seek appropriate relief, including an order of this Court, for payment of post-petition rent or the shortening of the Debtors' time to elect to assume or reject a Lease; and it is further

ORDERED that the extension granted by this Order is without prejudice to: (i) the Debtors' right to seek a further extension(s) of their time to assume or reject some or all of their Leases; and (ii) the Debtors' right to seek further or different relief regarding the Leases.

Dated: _____, 2004

D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE