ENTERED
OCT 17 2002
Clerk, U.S. Bankruptcy Court
Northern District of Alabama
By:

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

In re	)	**Chapter 11**
	)	
MEADOWCRAFT, INC.,	)	**Case No. 02-06910-TOM-11**
	)	
Debtor.	)	

CORRECTED[1] FINAL ORDER (i) AUTHORIZING POST-PETITION FINANCING AND (ii) GRANTING SENIOR LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIM STATUS PURSUANT TO 11 U.S.C §§ 105, 503(b), 507 AND 364

Upon the motion of the above-referenced Debtor and Debtor-in-Possession dated September 18, 2002 (the "**Motion**") seeking the entry of an order, pursuant to §§ 363, 364(c) and (d) of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**")[2], and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), inter alia:

(i) authorizing Meadowcraft, Inc. ("**Meadowcraft**" or the "**Debtor**") to borrow funds in the aggregate principal amount not to exceed $65,000,000 pursuant to the terms of that certain Debtor-in-Possession Loan and Security Agreement, dated as of September 20, 2002 (the "**DIP Credit Agreement**"),[3] by and among Standard Federal Bank National Association, acting by and through LaSalle Business Credit, Inc., as its agent, as Lender and as Administrative Agent (in its capacity as Administrative Agent,

[1] This Order is correcting the prior definition of "Carve-Out" in paragraph 5 to include within said definition the reference to subparagraph (c) related to fees under 28 U.S.C. § 1930.

[2] All section references are to the Bankruptcy Code unless otherwise indicated.

[3] All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the DIP Credit Agreement.

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the "**DIP Agent**"), LaSalle Business Credit, Inc., as Collateral Agent, Congress Financial Corporation (Southern), as Lender and as Documentation Agent, the lenders signatory to the DIP Credit Agreement (the "**DIP Lenders**"), and Meadowcraft, as Borrower, and the other Financing Agreements (collectively, the "**DIP Loan Documents**");

(ii) authorizing Meadowcraft, pursuant to §§ 364(c) and 364(d), to grant to the DIP Agent, for the ratable benefit of the DIP Lenders, first-priority (except as provided in (a) and (b) below), valid and perfected security interests in and liens upon all real, personal or mixed property of Meadowcraft at any time existing or arising, wherever located, and all proceeds and products thereof (together, the "**DIP Liens**"), to secure the Obligations at any time owing or to be performed by Meadowcraft pursuant to the DIP Credit Agreement (the "**DIP Obligations**"), subject only to (a) valid, perfected and enforceable liens in existence as of the Petition Date (as defined below) as set forth on Schedule 8.4 to the DIP Credit Agreement, to the extent such liens are not otherwise subject to avoidance, such liens to retain their priority as of the Petition Date (the "**Permitted Prior Liens**"), which Permitted Prior Liens shall specifically include the pre-petition liens in favor of Bank of America, N.A. as administrative agent ("**Prepetition Term Agent**") for the benefit of the lenders ("**Prepetition Term Lenders**"), party to that certain credit agreement dated as of June 30, 1999 (the "**Term Credit Agreement**") on the Term Lender Primary Collateral as the same is defined in that certain Intercreditor Agreement dated January 3, 2002 by and among Bank of America, LaSalle and Congress (the "**Term Lender Primary Collateral**"), and (b) the Carve-Out (as defined below) (the "**DIP Collateral**");

(iii) granting super-priority administrative claim status for the DIP Obligations in the Debtor's chapter 11 case, subject only to the Carve-Out and Permitted Prior Liens;

(iv) modifying the automatic stay to permit the DIP Agent, for the benefit of the DIP Lenders, to take certain actions in respect of the DIP Credit Agreement and the other DIP Loan Documents;

(v) scheduling a preliminary hearing (the "**Preliminary Hearing**") on the Motion to consider entry of an interim order (the "**Interim Order**") pursuant to Bankruptcy Rule 4001(c) authorizing Meadowcraft to borrow from the DIP Agent and the DIP Lenders up to an aggregate principal amount of $7,677,000 under the DIP Credit Agreement upon the terms and conditions set forth in the DIP Credit Agreement and the other DIP Loan Documents, to the extent not inconsistent with this Order, inclusive of the amounts necessary to repay the Prepetition Obligations referred to in Paragraph C below, pending the Final Hearing referred to below; and

(vi) scheduling a final hearing (the "**Final Hearing**") to consider entry of this final order (the "**Final Order**") authorizing the Postpetition Financing (as defined in paragraph F) in full; and it further appearing, based upon the record presented to this Court, that:

a. Notice of the Interim Order and of the relief requested in the Motion and the Preliminary Hearing scheduled thereon has been given by facsimile and/or email to the creditors and parties set forth in the Amended Certificate of Service filed with the Bankruptcy Court on September 20, 2002; and

b. Due to the exigent circumstances, good and sufficient notice of the relief requested in the Motion and the Preliminary Hearing scheduled thereon has been given;

c. Good and sufficient notice of the terms of the Interim Order and the Final Hearing has been given, as required in the Interim Order; and

d. A limited objection to the Motion was filed by the Prepetition Term Lenders, and an objection to the Motion was filed by the Official Committee of Unsecured Creditors. No other objection has been filed or otherwise asserted to the relief requested herein. The objection of the Prepetition Term Lenders has been resolved by the entry of a separate order, and the Committee has consented to the terms of this Final Order.

NOW, THEREFORE, upon the entire record of the Preliminary Hearing and the Final Hearing held before this Court with respect to the Motion, and after hearing counsel for various parties in interest, including the Bankruptcy Administrator, and no objection to the relief requested in the Motion having been filed or asserted other than the objections described immediately above, and this Court having found good and sufficient cause therefor, it is hereby **FOUND** that:

A. On September 3, 2002 (the "**Petition Date**"), the Debtor filed with the Court a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code (the "**Bankruptcy Case**"). No trustee or examiner has been appointed in the Bankruptcy Case. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is authorized to continue in the operation of its business and management of its properties as debtor-in-possession.

B. This Court has jurisdiction over the Bankruptcy Case and the Motion pursuant to 28 U.S.C. § 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. Without prejudice to the rights of any statutory committee of the Official Committee of Unsecured Creditors appointed on or about September 25, 2002 pursuant to

Section 1103 (the **"Committee"**) in this Bankruptcy Case solely to the extent provided in Paragraph 16, the Debtor admits and hereby stipulates and agrees that it is truly and justly indebted to the agent and those certain lenders (collectively, the "**Prepetition Lenders**") party to that certain Loan and Security Agreement dated as of January 3, 2002 (as amended, restated, supplemented or otherwise modified to date, and as amended, restated, supplemented or otherwise modified from time to time hereafter, the "**Prepetition Credit Agreement**") among Meadowcraft, the Prepetition Lenders and LaSalle Business Credit, Inc., as agent for the Prepetition Lenders (in such capacity, "**Prepetition Agent**"), on account of the claims of the Prepetition Agent and Prepetition Lenders against the Debtor (the "**Prepetition Obligations**") under the Prepetition Credit Agreement, and all collateral and ancillary documents executed in connection therewith (collectively, the "**Prepetition Loan Documents**"), without defense, counterclaim or offset of any kind. The Debtor further admits, stipulates and agrees that as of the Petition Date (i) the Debtor was liable in favor of the Prepetition Agent and the Prepetition Lenders in the aggregate unpaid principal amount of approximately $3,680,914.48 (including approximately $1,000,000.00 in respect of letters of credit issued pursuant to the Prepetition Loan Documents and which remained outstanding and undrawn as of the Petition Date), as well as interest, charges, costs and expenses, all in respect of loans made by the Prepetition Agent and the Prepetition Lenders to Meadowcraft pursuant to the Prepetition Credit Agreement, and (ii) prior to the Petition Date, certain defaults and events of default under the Prepetition Credit Agreement had occurred and were continuing and, as a result thereof, the Prepetition Agent and the Prepetition Lenders, prior to the commencement of the Bankruptcy Case, were entitled to accelerate the Prepetition Obligations and commence the exercise of remedies, all as more fully set forth in the Prepetition Loan Documents.

D. Without prejudice to the rights of the Committee solely to the extent provided in Paragraph 16, the Debtor further admits, stipulates and agrees that the Prepetition Obligations are secured by valid, perfected, enforceable and nonavoidable first priority liens and security interests in favor of the Prepetition Agent, for the ratable benefit of the Prepetition Lenders (the "**Prepetition Liens**"), upon and in all of Meadowcraft's real, personal and mixed property existing on the Petition Date and all proceeds thereof (including the setoff rights described in the Prepetition Loan Documents and arising by operation of law), including without limitation, accounts, inventory, documents, equipment, fixtures, instruments, vehicles, monies and other tangible and intangible personal property, and the proceeds thereof, subject only to the Permitted Prior Liens (except that the Prepetition Agent's liens and security interests upon and in the Term Lender Primary Collateral existing on the Petition Date and all proceeds thereof are entitled to second priority), (collectively, the "**Prepetition Collateral**"). As a result, all of the Debtor's cash on hand (with the exception of $3,100,000 drawn under the Prepetition Credit Agreement on August 30, 2002) and all proceeds of Prepetition Collateral received after the Petition Date, are the Prepetition Lenders' cash collateral within the meaning of § 363(a) ("**Cash Collateral**"). The Debtor further admits that, on a going concern basis, the Prepetition Collateral has a value well in excess of the outstanding amount of the Prepetition Obligations, and that the Prepetition Lenders are therefore oversecured.

E. In the event the Debtor defaults under the DIP Credit Agreement or this Order, the DIP Lenders (who are also the Prepetition Lenders) would be prejudiced if they were unduly delayed by the automatic stay from realizing upon the DIP Collateral for the DIP Obligations. Accordingly, the relief from the automatic stay authorized by Paragraph 11 of this Order is appropriate under the circumstances.

F. The financing arrangement contemplated by the Motion and approved herein, pursuant to which, subject to the terms and conditions set forth in the DIP Credit Agreement and the other DIP Loan Documents, postpetition Revolving Loans and Letter of Credit Accommodations (collectively, "**Loans**") of up to $65,000,000 may be made available to Meadowcraft (the "**Postpetition Financing**"), from which the first proceeds of the Loans made on the Closing Date (the "**Initial Loans**") will be used to repay in full any Prepetition Obligations remaining after the application of the Cash Collateral, is necessary to provide the Debtor with sufficient liquidity to continue to operate its business as a going concern and will contribute to payment of the actual and necessary costs and expenses of preserving its estate. Absent an alternative source of working capital, the Debtor does not have sufficient liquidity from the use of Cash Collateral or unencumbered cash to carry on the operation of its business. The Postpetition Financing will provide funds necessary for the Debtor to maintain business relationships with its vendors and suppliers, to purchase new inventory, to pay employees and otherwise to finance its operations and is essential to the Debtor's continued viability. In addition, the Debtor's need for financing is immediate. In the absence of the Postpetition Financing the Debtor will not have sufficient liquidity to pay employees, purchase raw materials and to fund continued operations, and immediate and irreparable harm to the unsecured creditors, the Debtor and its estate would occur.

G. Given the Debtor's current financial condition, financing arrangements and capital structure, the Debtor cannot obtain unsecured credit allowable under § 503(b)(1) as an administrative expense. Financing on a postpetition basis is not otherwise available without the Debtor (i) granting, pursuant to § 364(c)(1), claims having priority over any and all administrative expenses of the kinds specified in §§ 503(b) and 507(b), other than with respect to

the Carve-Out as expressly described below, and (ii) securing, pursuant to §§ 364(c) and (d), such indebtedness and obligations with first priority security interests in and liens upon the DIP Collateral, subject only to the Permitted Prior Liens and the Carve-Out. In the Debtor's business judgment, financing is unavailable to the Debtor on terms more favorable than those extended by the DIP Lenders.

H. The DIP Lenders have agreed to provide Postpetition Financing on the terms and conditions set forth in the DIP Credit Agreement and the other DIP Loan Documents and in reliance thereon, including, subject to Paragraph 17, the repayment in full of the Prepetition Obligations (including, without limitation, the prepetition letters of credit, which shall be deemed to have been re-issued pursuant to the DIP Credit Agreement) out of the proceeds of the Initial Loans, provided that the Court enters an order approving the DIP Credit Agreement and granting first priority perfected liens and security interests and super-priority claims, subject only to the Carve-Out and Permitted Prior Liens, to or for the benefit of the DIP Lenders as set forth herein and in the DIP Credit Agreement and the other DIP Loan Documents with respect to all DIP Obligations and DIP Collateral, and modifying the automatic stay with respect to all the DIP Collateral securing the DIP Obligations as set forth more fully below.

I. Based on the record presented to this Court by the Debtor at the Preliminary Hearing and the Final Hearing, it appears that (i) the Postpetition Financing is the product of an arms-length negotiation, (ii) the execution, delivery, performance and payment of the DIP Credit Agreement and the other DIP Loan Documents have been duly authorized by all necessary corporate or other action on behalf of the Debtor, and (iii) the Postpetition Financing pursuant to the DIP Credit Agreement is entered into by DIP Lenders in good faith, as the term "good faith" is used in § 364(e). Such entering into the Postpetition Financing, making the Loans and

otherwise entering into the transactions contemplated by the DIP Credit Agreement and the implementation thereof do not, in and of themselves, provide the DIP Agent or DIP Lenders with sufficient control over the Debtor to subject the DIP Agent or DIP Lenders to any liability (including, without limitation, environmental liability as an "owner", "operator" or "responsible person" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986) in connection with the management of the Debtor's business or properties or otherwise.

J. The Debtor has represented that neither the DIP Credit Agreement, the Postpetition Financing contemplated therein and as approved herein, including the granting of liens and security interests on the terms set forth herein to or for the benefit of the DIP Agent, for the benefit of the DIP Lenders, in the DIP Collateral, nor the exercise of any rights or remedies by or on behalf of the DIP Agent or the DIP Lenders in connection therewith, constitutes or will constitute any breach, violation or infringement of (i) any trademark, copyright or other intellectual property right of the Debtor or any third party or (ii) any material contract to which the Debtor or any of its properties is or may be subject.

K. Based on the record presented to this Court by the Debtor at the Preliminary Hearing and the Final Hearing, the terms of the Postpetition Financing are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and, when the Loans are funded, will be supported by reasonably equivalent value and fair consideration.

L. The Preliminary Hearing and the Final Hearing were held pursuant to Bankruptcy Rule 4001(c)(2), and notice thereof and of the relief requested in the Motion has been given

pursuant to §§ 102(1) and 364(c) and (d) and Bankruptcy Rules 2002 and 4001(c) to the parties set forth above.

M. The entry of this Order is in the best interest of the Debtor's estate and creditors as its implementation will, among other things, provide working capital necessary to sustain the operations of the Debtor's existing business and enhance the Debtor's prospects for a successful reorganization.

Based upon the foregoing findings and conclusions, and upon the record made before this Court, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Subject to the terms of this Order, the Motion is granted, and to the extent not inconsistent with this Order, the Debtor's entry into the DIP Credit Agreement and the other DIP Loan Documents is hereby approved.

2. The Debtor is expressly authorized to borrow from the DIP Agent and the DIP Lenders, on the terms and subject to the conditions set forth in the DIP Credit Agreement, the other DIP Loan Documents and this Order, an aggregate principal amount of $65,000,000. The Debtor is authorized to use the proceeds of all Loans made under the DIP Credit Agreement in the operation of its business, provided, that such Loans shall be used solely to pay when due expenses of the types (and in the amounts, subject to variances permitted by the DIP Credit Agreement) as are set forth in the Budget. Notwithstanding the foregoing, subject to Paragraph 17, the Debtor is expressly authorized and directed (i) to pay all Cash Collateral in its possession on the date of this Order to the Prepetition Agent, for application to the Prepetition Obligations; and (ii) to repay in full from the proceeds of the Initial Loans any remaining Prepetition

Obligations (including, without limitation, prepetition letters of credit, which shall be deemed to have been re-issued pursuant to the DIP Credit Agreement).

3. The Debtor is hereby authorized and directed without further order of this Court (x) to execute and deliver the DIP Credit Agreement, the other DIP Loan Documents and all other documents deemed necessary or desirable by the DIP Agent and the DIP Lenders to implement the DIP Credit Agreement, through one or more officers designated by them, including, without limitation, modifications and amendments to the DIP Credit Agreement and waivers with respect thereto which are not material in the judgment of the Debtor, the DIP Agent and the DIP Lenders and as may be agreed upon in writing by the Debtor, the DIP Agent and the DIP Lenders (after notice to counsel for the Committee), (y) to effect all transactions and take any actions provided for in the DIP Credit Agreement and the other DIP Loan Documents or deemed necessary or appropriate by the DIP Agent and the DIP Lenders to effect the terms and conditions of the DIP Credit Agreement, the other DIP Loan Documents and this Order, including, without limitation, the payment of any and all reasonable fees, costs, charges, commissions and expenses, including counsel fees (upon the submission of reasonably detailed invoices delivered to the Debtor with a copy to the Committee), payable under the DIP Credit Agreement, the other DIP Loan Documents or this Order, and (z) to comply with the provisions of the DIP Credit Agreement and the other DIP Loan Documents, including (without limitation) the payment and satisfaction in full of all DIP Obligations when due in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents.

4. Subject to Paragraph 5, all DIP Obligations under the DIP Credit Agreement or any other DIP Loan Document shall constitute allowed administrative expense claims in this Bankruptcy Case with priority under § 364(c)(1) over any and all other administrative expenses

of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), and 507(b), and shall at all times be senior to the rights of the Debtor and any creditor in the Bankruptcy Case. Subject only to the Carve-Out, no cost or expense of administration during the pendency of the Debtor's Bankruptcy Case under chapter 11 under Bankruptcy Code §§ 105, 346(c)(1), 503(b), 506(c), 507(b) or otherwise, shall be senior to, or pari passu with, the superpriority claims of the DIP Agent and the DIP Lenders arising out of the DIP Obligations.

5. Any provision of this Order or the DIP Credit Agreement to the contrary notwithstanding, the priority status of the DIP Obligations and the DIP Liens securing the same shall be subject to: (a) subject to Paragraph 6, professional fees and expenses allowed pursuant to §§ 330 and/or 331 in the chapter 11 case to the extent incurred prior to the occurrence of a Triggering Event (as defined in Paragraph 11), in an aggregate amount not to exceed $850,000; (b) subject to Paragraph 6, professional fees and expenses allowed pursuant to §§ 330 and/or 331 in the chapter 11 case and incurred after the occurrence of a Triggering Event, in an aggregate amount not to exceed $150,000, and (c) all fees payable to the Bankruptcy Administrator or Clerk of this Court pursuant to 28 U.S.C. § 1930(a)(6) ((a), (b) and (c) collectively being referred to herein as the "**Carve-Out**"). Except only to the extent of the Carve-Out and the Permitted Prior Liens, all claims of the DIP Agent and the DIP Lenders based upon the DIP Obligations shall at all times be senior, in this and any subsequent proceeding under the Bankruptcy Code, to the rights of the Debtor, and any claims of any creditor or other entity.

6. Notwithstanding anything herein to the contrary, no Loan nor any portion of the Carve-Out may be used without the prior written consent of the DIP Agent and the DIP Lenders for any fees or disbursements incurred by any professional or party in interest in this chapter 11

case in connection with objecting to or contesting in any manner or raising any defense to (x) the validity, perfection, first priority or enforceability of the DIP Obligations or the DIP Liens, or asserting any claims or causes of action against the DIP Agent or the DIP Lenders, (y) the validity, perfection, first priority or enforceability of the Prepetition Obligations or the Prepetition Liens on the Prepetition Collateral that secured the Prepetition Obligations, or asserting any claims or causes of action against the Prepetition Agent or the Prepetition Lenders, or (z) the finality or indefeasibility of the repayment of the Prepetition Obligations authorized hereunder, or asserting any subordination or avoidance claims or causes of action against any of the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders in respect of such repayment; provided, that the Loans and Carve-Out may include and be used to pay fees and expenses not to exceed $25,000 incurred by the Committee in connection with any investigation with respect to any of the foregoing.

7. Subject to the provisions of Paragraph 16 as to Prepetition Obligations and the Prepetition Liens on the Prepetition Collateral, all DIP Obligations and Prepetition Obligations at any time owing to the DIP Agent, the DIP Lenders, the Prepetition Agent or Prepetition Lenders are hereby decreed and adjudged to be secured by duly perfected, non-voidable, first priority liens on and security interests in the DIP Collateral and the Prepetition Collateral (which consists of all assets and property of the Debtor, real, personal or mixed, existing or arising before, at or after the commencement of the Bankruptcy Case, whether now owned or hereafter acquired, wherever located, including all proceeds and products thereof, together with such additional collateral as may be granted pursuant to the DIP Loan Documents from time to time), ranking senior and prior in all respects to all other liens, security interests, claims or encumbrances (other than Permitted Prior Liens) at any time existing or arising which may be asserted by any person

or entity pursuant to statute, lease, mortgage, deed of trust, security agreement, indenture or other contract or otherwise, subject only to the Permitted Prior Liens and the Carve-Out. Other than the DIP Liens and security interests in favor of the DIP Agent for the benefit of the DIP Lenders pursuant to the DIP Credit Agreement, the other DIP Loan Documents and this Order, the Permitted Prior Liens and the Carve-Out, and other than as provided in the Order Granting Replacement Liens in Favor of Bank of America, N.A., dated September 30, 2002, no other claims, liens or security interests shall attach to the DIP Collateral in this or any subsequent proceeding under the Bankruptcy Code without the express written consent of the DIP Agent and the DIP Lenders. The DIP Agent and the DIP Lenders may, at their option, release from their liens and security interests at any time any assets determined by them to have a risk of environmental liabilities that the DIP Agent and DIP Lenders, in their discretion, deem unacceptable.

8. No order shall be entered in this Bankruptcy Case authorizing the incurrence of indebtedness or other financial accommodations not permitted by this Order, the DIP Credit Agreement or other DIP Loan Documents unless (a) the DIP Agent and DIP Lenders consent in writing thereto or (b) the proceeds thereof are used first to satisfy in full and indefeasibly all DIP Obligations owing to the DIP Agent and the DIP Lenders under the DIP Credit Agreement and the other DIP Loan Documents in accordance with the terms of the DIP Credit Agreement, the other DIP Loan Documents and this Order.

9. Other than the Carve-Out, no cost or expense, including, without limitation, any cost or expense of administration of the Debtor's Bankruptcy Case shall be charged against the DIP Collateral pursuant to § 506(c) or otherwise, without the prior written consent of the DIP

Agent and the DIP Lenders, and no such consent shall be implied from any action, inaction or acquiescence by the DIP Agent and the DIP Lenders.

10. All liens and security interests on or in the DIP Collateral granted to the DIP Agent for the benefit of the DIP Lenders by this Order, the DIP Credit Agreement or the other DIP Loan Documents shall be, and they hereby are, deemed duly perfected and recorded under all applicable federal or state or other laws as of the date hereof, and no notice, filing, mortgage recordation, possession, further order or other act, shall be required to effect such perfection during this Bankruptcy Case or after conversion or dismissal of this Bankruptcy Case; provided, however, that notwithstanding the provisions of § 362, (i) the DIP Agent may, at its sole option, file or record or cause the Debtor to execute, file or record, at the Debtor's expense (which expense shall be deemed authorized under, and constitute an approved amendment to, the Budget), such Uniform Commercial Code ("**UCC**") financing statements, notices of liens and security interests, mortgages and other similar documents as the DIP Agent may require and (ii) the DIP Agent may require the Debtor to deliver to the DIP Agent any chattel paper, instruments or securities evidencing or constituting any DIP Collateral, and the Debtor is directed to cooperate and comply therewith. If the DIP Agent, in its sole discretion, elects for any reason to file or record any such notices, financing statements, mortgages, or other documents with respect to such security interests and liens, or if the DIP Agent in its sole discretion shall elect to take possession of any DIP Collateral, all such financing statements or similar documents or taking possession shall be deemed to have perfected such liens and security interests granted or recorded or taken in the Bankruptcy Case as of the commencement of such Case but with the priorities as set forth herein. The DIP Agent may (in its discretion) but shall not be required to file a certified copy of this Order in any filing or recording office in any

county or other jurisdiction in which any Debtor has real or personal property and such filing or recording shall be accepted and shall constitute further evidence of perfection of the DIP Agent's interest in the DIP Collateral. At the request of the DIP Agent and the DIP Lenders, this Court may entertain an order necessary to effectuate the provisions of this Paragraph 10.

11. Except as provided in this Order, the DIP Agent and the DIP Lenders are entitled to all of the rights, benefits, privileges and remedies set forth or provided herein or in the DIP Credit Agreement and the other DIP Loan Documents, including, without limitation, all of the rights, benefits, privileges and remedies available to the DIP Agent and the DIP Lenders upon (i) the occurrence and during the continuance of any Event of Default, (ii) any reversal, stay or modification of this Order without the written consent of the DIP Agent and the DIP Lenders, (iii) the appointment of an interim or permanent trustee in this Bankruptcy Case or the appointment of an examiner with expanded powers, or (iv) the conversion or dismissal of this Bankruptcy Case without the prior written consent of the DIP Agent and the DIP Lenders (any such event, a "**Triggering Event**"). Upon the occurrence of a Triggering Event, the automatic stay of § 362 (to the extent applicable) is deemed modified, without application or motion to the Court or further order of the Court, to permit the DIP Agent and the DIP Lenders, without any interference from the Debtor or any other party in interest, (i) to terminate the DIP Credit Agreement and the other DIP Loan Documents, (ii) to cease making Loans and suspend or terminate the Commitments under the DIP Loan Documents, (iii) to declare all DIP Obligations to be immediately due and payable and require that all Letter of Credit Accommodations be cash collateralized as provided in the DIP Credit Agreement, (iv) to revoke the Debtor's right, if any, under the DIP Loan Documents to use Cash Collateral, and (v) to take any actions reasonably calculated to preserve or safeguard the DIP Collateral or to prepare the DIP Collateral for sale.

Furthermore, following the occurrence of a Triggering Event, the DIP Agent and the DIP Lenders shall be entitled (i) to file an emergency motion for relief from the automatic stay for the purpose of foreclosing or otherwise enforcing their security interests in or liens on any or all of the DIP Collateral and to exercise any other default-related rights and remedies under the DIP Loan Documents, the Prepetition Loan Documents or applicable law, and (ii) to obtain an expedited hearing on such motion upon three (3) days' notice to counsel for the Debtor and counsel for the Committee (subject to the Court's calendar). If such Event of Default is monetary or otherwise material (a "**Specified Default**"), the DIP Agent and the DIP Lenders shall be entitled to such relief from the automatic stay upon a showing at the emergency hearing that such Specified Default has occurred and is continuing, and neither § 105 nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the DIP Agent or the DIP Lenders from exercising or enforcing such default-related rights and remedies, regardless of any change in circumstances (whether or not foreseeable). With respect to any motion for relief from the automatic stay by the DIP Agent and the DIP Lenders that is not based on a Specified Default, the movants' entitlement to relief from the automatic stay shall be governed by the applicable provisions of the Bankruptcy Code.

12. The DIP Agent and the DIP Lenders shall have no duty, express or implied, to any creditor of the Debtor's estate to take, or refrain from taking, any action with respect to the DIP Obligations, or any DIP Collateral securing the liens granted to the DIP Agent and the DIP Lenders in respect thereof, but the DIP Agent shall not be relieved of any duty imposed by any applicable provision of the Uniform Commercial Code to act in a commercially reasonable manner when exercising its remedies with respect to the DIP Collateral subject to the Uniform Commercial Code.

13. The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any other order which may be entered in this Bankruptcy Case, including any order (i) confirming any plan of reorganization, (ii) converting this Bankruptcy Case from chapter 11 to chapter 7, (iii) authorizing or approving the sale of assets constituting DIP Collateral or (iv) dismissing this Bankruptcy Case, and the terms and provisions of this Order as well as the priorities in payment, liens and security interests granted pursuant to this Order, the DIP Credit Agreement and the other DIP Loan Documents shall continue in full force and effect notwithstanding the entry of any such other order until such time as all DIP Obligations shall have been indefeasibly paid in full, in cash and all Commitments under the DIP Credit Agreement have been terminated.

14. Based upon the record before this Court, and the Court having found that the DIP Agent and the DIP Lenders are extending credit in good faith, the DIP Agent and the DIP Lenders shall be entitled to the full protection of § 364(e), and the DIP Obligations, DIP Liens, security interests and priorities created or authorized in this Order, the DIP Credit Agreement and the other DIP Loan Documents are created and authorized pursuant to §§ 364(c) and (d) and are entitled to the benefits and protections of § 364(e). If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed by subsequent order of this Court or any other court, such reversal, stay, modification or vacatur shall not affect the validity and enforceability of any DIP Obligations, debt or claim incurred, or any priority, security interest or lien that is or was incurred or granted pursuant to the DIP Credit Agreement, the other DIP Loan Documents or this Order, and notwithstanding any stay, reversal, modification or vacatur of this Order, any DIP Obligations owing to the DIP Agent or the DIP Lenders arising prior to the effective date of such stay, reversal, modification or vacatur shall be governed in all respects by

the original provisions of this Order, the DIP Credit Agreement or the other DIP Loan Documents, as the case may be. The DIP Agent and the DIP Lenders shall be entitled to all of their rights, privileges and benefits hereunder and under the DIP Credit Agreement or the other DIP Loan Documents, including, without limitation, the liens, security interests, priorities, rights and remedies granted herein and therein to or for its benefit with respect to all DIP Obligations owing to the DIP Agent or the DIP Lenders, all DIP Collateral securing the same and the priority granted thereto under §§ 364(c) and (d).

15. No provision of the DIP Credit Agreement, the other DIP Loan Documents, or the implementation thereof, including without limitation any provision with respect to officers, management, consultants or the composition of any board(s) of directors or managers of the Debtor or approval or disapproval of any budgets by the DIP Agent or the DIP Lenders, is intended to or shall be deemed to create any claim or cause of action against the DIP Agent, any DIP Lender or any of their affiliates or disallowance or subordination of any of the DIP Agent's, any DIP Lender's or any of their affiliates' claims based upon lender liability, equitable subordination or otherwise.

16. The findings contained in Paragraphs C and D of this Order shall be binding upon all parties in interest, including but not limited to the Debtor and the Committee unless (a) the Committee has properly filed an adversary proceeding or contested matter (subject to the limitation set forth in Paragraph 6) challenging the validity, enforceability, nonavoidability, perfection or priority of the Prepetition Obligations or Prepetition Liens, no later than the date that is 120 days after the date of appointment of the Committee, and (b) the Court rules in favor of the Committee in any such timely and properly filed adversary proceeding or contested matter. If no such adversary proceeding or contested matter is properly commenced as of such

date (i) the Prepetition Obligations shall be deemed to have been allowed claims on the Petition Date for all purposes in this Bankruptcy Case and any subsequent chapter 7 case, and the Prepetition Liens shall be deemed legal, valid, binding, first priority (except to the extent of the Permitted Prior Liens), perfected, not subject to subordination and unavoidable, and (ii) the Prepetition Liens shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtor's estate, including, without limitation, any successor thereto.

17. Subject to the terms of Paragraph 16 of this Order, the repayment of the Prepetition Obligations provided for under this Order and the DIP Credit Agreement shall be deemed and adjudged final and indefeasible; provided that, should any adversary proceeding or contested matter commenced by any Committee pursuant to Paragraph 16 be successfully prosecuted, the sole remedy shall be the reversal of the repayment of the Prepetition Obligations (together with interest accrued on the Prepetition Obligations actually paid from the Petition Date) and the restoration of the Debtor, Prepetition Agent and Prepetition Lenders to the position each party occupied with respect to the Prepetition Obligations immediately prior to the Petition Date, provided further, however, that the rights, priorities and liens of the DIP Agent and the DIP Lenders in respect of Loans made pursuant to the DIP Credit Agreement and other DIP Loan Documents in excess of those utilized to repay the Prepetition Obligations shall not be affected thereby. If the circumstance in the previous sentence arises, then the Debtor shall be prohibited from using Cash Collateral of the Prepetition Lenders until further order of the Court.

18. Notwithstanding anything contained in this Order to the contrary, neither the DIP Agent nor the DIP Lenders shall be required to marshal, or be subject to any argument seeking to

compel any of them to marshal, their rights in respect of the DIP Collateral and payment of the DIP Obligations.

19. The provisions of this Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders, the Debtor, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Bankruptcy Case as a legal representative of the Debtor or the Debtor's estate.

20. This Court retains and reserves jurisdiction to enforce all provisions of this Order.

Dated: October 17th, 2002

Tamara O Mitchell
UNITED STATES BANKRUPTCY JUDG