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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

<p>In re:</p> <p>JACKALOPE ESTATES, LLC</p> <p style="text-align: center;">Debtor.</p>	<p>Bankruptcy Number: 09-10000</p> <p>Chapter 11</p> <p>Judge R. Kimball Mosier</p>
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**MEMORANDUM DECISION**

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The matters before the Court are the Motion for Relief From Automatic Stay (Motion for Relief) filed by Darth Family Fund (Darth) and Debtor's Motion to Approve Sale of Real Property Free and Clear of Liens, Claims, Encumbrances, and Interest (Motion to Sell). The Court, having considered the record in this matter, having received evidence and having heard the arguments of counsel, enters the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. Debtor filed its voluntary petition on June 15, 2009, the day prior to a scheduled foreclosure sale by Darth. No trustee has been appointed, and Debtor is operating as a debtor-in-possession.

2. Debtor owns the Jackalope Estates, a 25 acre real estate development located on the outskirts of Grantsville, Utah (Jackalope).

3. Debtor's primary asset is a real estate development located on the outskirts of Grantsville, Utah known as Jackalope Estates (the Real Property). The Real Property consists of (a) 20 fully entitled and buildable vacant lots, and (b) 25 lots on which a completed home has been constructed.

4. Debtor purchased the Real Property for \$2,000,000 in 2006. The purchase of the Real Property was financed with a \$1,500,000 loan from Texas American Republic People's Bank (TARP Bank), secured by a deed of trust against Jackalope.

5. Paul's Paving filed a mechanics lien on July 31, 2007 in the amount of \$500,000 based on its provision of asphalt and cement to the development of Jackalope and for which it has not been paid. Paul's Paving failed to file a pre-lien notice as required by Utah Code Ann. § 38-1-32.

6. On November 1, 2007, Paul's Paving commenced a state court action to foreclose its mechanics' lien but has not filed a lis pendens as required by Utah Code Ann. § 38-1-11.

7. Paul's Paving asserts a claim as of May 29, 2009, in the sum of \$537,783.57.00 including interest, attorneys fees and costs.

8. In July of 2008, the Debtor borrowed \$3,500,000 from Darth for the purpose of providing funding for the completion of the development of Jackalope. Darth's loan is secured by a lien against the Real Property reflected by a deed of trust recorded with the Tooele County, Utah recorder's office on July 15, 2008.

9. The Darth loan provided for interest only payments beginning August 15, 2008, with the loan maturing on January 15, 2008, at which time all unpaid principal and interest became due and payable.

10. Debtor was in default to TARP Bank on the date of the bankruptcy filing, as evidenced by a Notice of Default recorded by TARP Bank with the Tooele County, Utah Recorder on June 1, 2009. The amount owed to TARP Bank as of the date of the bankruptcy filing was no less than \$1,500,000.

11. As of the date of the Debtor's bankruptcy filing, the Debtor owed Darth the sum of \$3,800,000, consisting of \$3,500,000 in principal, \$250,000 in interest at the default rate from January 16, 2009 to the date of the bankruptcy filing, plus late charges and appraisal fees of \$10,000, and attorneys fees of \$40,000.

12. Debtor's Motion to Sell seeks approval of the sale of the Real Estate to the Vulture Real Estate Fund ("Vulture") for a total sale price of \$5,500,000.

13. Paul's Paving has objected to the Debtor's Motion to Sell on the following grounds:

- i. Paul's Paving has not consented to the sale and because the sale price is for less than the face amount of the liens against the Real Property the Court may not authorize the sale of the Real Property free and clear of liens and interests.

ii. Paul's Paving is entitled to credit bid the amount of its lien and the Court should approve the sale of the Real Property to Paul's Paving for the amount equal to Paul's Paving's lien plus cash of \$5,500,000.

14. Paul's Paving has not objected to proposed sale price of \$5,500,000.

15. Darth has filed a Motion for Relief alleging that there is no equity in the Real Property and that the Real Property is not necessary for an effective reorganization.

16. Darth has not formally objected to the Motion to Sell and has not contested Paul's Paving's lien.

#### CONCLUSION OF LAW

The proposed sale price of \$5,500.00 constitutes fair value for the Real Property.

Alternative I. Sale Approved as Proposed. Paul's Paving's lien is in bona fide dispute and Real Property may be sold pursuant to §363(b) & (f)(4). Motion for Relief denied.

Alternative II. Sale Approved as Proposed. Paul's Paving lien is not in bona fide dispute but the sale price is equal to the aggregate value of liens on the real Property and may be sold pursuant to §363(f)(3). Motion for Relief denied.

Alternative III. Sale to Paul's Paving Approved Provided Paul's Paving Lien is Extinguished. Even though Paul's Paving's lien is in bona fide dispute, sale to Paul's Paving is a

higher and better offer because it results in the same amount of cash but resolves Paul's Paving's lien. Motion for Relief denied.

Alternative VI. Sale to Paul's Paving Approved Provided Paul's Paving Lien is Extinguished. Paul's Paving lien is not in bona fide dispute and Real Property may not be sold without Paul's Paving's consent. Sale to Paul's paving is a higher and better offer because it results in the same amount of cash but resolves Paul's Paving's lien. Motion for Relief denied.

Alternative V. Sale as Proposed is Not Approved. Paul Paving's lien is not in bona fide dispute and sale price is less than the value of the aggregate liens against the Real Property. Motion for Relief Granted.

Alternative VI. Sale as Proposed is Not Approved. Paul Paving's lien is in bona fide dispute but Darth's lien is not in bona fide dispute. Potential impact on Darth's lien prohibits sale. If Paul's Paving's lien is valid sale price is less than the value of the aggregate liens against the Real Property and Darth has not consented to the sale. Motion for Relief denied, Darth has not established lack of equity.

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