SIGNED: June 22nd, 2021
THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Paul M. Black
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re:

PANTHERA ENTERPRISES, LLC,

Debtor.

Case No.: 2:19-bk-00787
Chapter 7
Judge Paul M. Black

STIPULATION AND AGREED ORDER MODIFYING PROPOSED PAYMENTS TO CREDITOR WEST VIRGINIA PAVING, INC. FROM PROCEEDS OF SALE

COMES NOW West Virginia Paving, Inc., a secured creditor in this proceeding, hereinafter WVP, and Aaron C. Amore, the Chapter 7 Trustee, and do agree and stipulate, and do propose this Stipulation and Agreed Order with respect to the distribution of the proceeds of sale as the same are embodied in the Trustee's "*Motion For An Order Approving The Sale Of The Debtor's Real Property And Novating Certain Government Contracts Free And Clear Of Liens, Claims, Interests, And Encumbrances Pursuant To 11 U.S.C. § 363*" (hereinafter referred to as "the *Sale Motion*"), and agreeing to certain other relief as to the Trustee. In support thereof the parties would say, allege and show unto the Court as follows:

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on September 13, 2019. By Order entered on July 21, 2020, the proceeding was converted to one under Chapter 7 of the Bankruptcy Code, and Aaron C. Amore was appointed the Chapter 7 Trustee.

2. WVP is a secured party under a Deed of Trust in the principal amount of $500,000 dated August 21, 2013 and recorded in the Office of the Clerk of the Hardy County Commission in Trust Deed Book 277 at page 355 upon the Debtor's 689.40 acre parcel of real property. WVP's lien is subordinate to West Virginia Economic Development Authority's duly perfected first lien Deed of Trust against the 689.40 acre parcel. WVP is also the holder of a Judgment Lien docketed on June 30, 2017, in the amount of $631,647.53 plus costs in the amount of $278.00, plus interest thereon upon both of the Debtor's parcels of real property, as the same are set forth in Judgment Lien Docket 30 at page 143, and as corrected in Judgment Lien Docket 30 at page 156. Such Judgment Lien is subordinate in priority to the consensual liens of the West Virginia Economic Development Authority, its own Deed of Trust, Howard Shockey & Sons Inc., Virginia Heritage Bank, and a tax lien in favor of the State of West Virginia State Tax Department.

3. The *Sale Motion* of the Trustee seeks an Order of and from this Court allowing for the sale of the Debtor's real property free and clear of liens, with such liens attaching to the proceeds of sale, as set forth is Sections 363(f)(2), (4) & (5) of the Bankruptcy Code.

4. The undersigned counsel for WVP has been in discussions with the Trustee regarding the extent of the payments which would flow to WVP as a result of the proposed sale, and specifically as to the rights of WVP to object to the said sale and to the Trustee's proposed distributions to parties which hold junior liens without first satisfying the claims of WVP.

5. Counsel for WVP and the Trustee have stipulated and agreed that, in lieu of the filing of an *Objection* by WVP to the *Sale Motion* which might impair the Trustee's ability to consummate the sale, WVP will consent to the proposed sale upon condition that the amounts proposed to be distributed to WVP as the same are set forth in paragraph 69 of the *Sale Motion*,

and paragraph numbered 4.3(c) of the Asset Purchase Agreement (the "APA") attached to the *Sale Motion*, be modified and amended to provide that WVP shall receive cash at closing in the amount of Thirty Thousand Dollars ($30,000.00); and an additional Twenty Thousand Dollars ($20,000) from the "Note" referenced in paragraph 73 of the *Sale Motion*, and paragraph numbered 4.3(f) of the APA, shall be payable as an administrative expense as the Trustee receives payments upon the Note, provided, however, that either WVP or the Trustee shall have the right to seek relief from the Court at any time. In addition, WVP shall have an unsecured deficiency claim upon its claim number 8 filed with the Clerk of the Court in the amount of $625,318.65, to be paid as a general unsecured claim.

6. The terms of this Stipulation and Agreed Order are conditioned upon entry of the Sale Order approving the proposed terms of sale except as modified herein.

Accordingly, it is therefore ORDERED and ADJUDGED that the Trustee's "*Motion For An Order Approving The Sale Of The Debtor's Real Property And Novating Certain Government Contracts Free And Clear Of Liens, Claims, Interests, And Encumbrances Pursuant To 11 U.S.C. § 363*" is deemed to be modified by this STIPULATION AND AGREED ORDER.

Respectfully submitted,

/s/ Stephen L. Thompson
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