

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: Bky. No. 16-32314  
Chapter 11 Case

Daniel D. Wozniak, Jr.,

Debtor.

**NOTICE OF HEARING AND MOTION  
FOR ORDER (1) AUTHORIZING THE  
DEBTOR TO SELL EQUIPMENT  
FREE AND CLEAR**

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TO: ALL PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3:

1. Mr. Daniel D. Wozniak, Jr. (the “Debtor”), by and through its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion in Courtroom 7W, U.S. Courthouse, 300 South Fourth Street, Minneapolis Minnesota, at 1:30 pm, or as soon thereafter as counsel may be heard on the 11th day of January, 2017, before the Honorable Michael E. Ridgway, United States Bankruptcy Judge.
3. Any response to the motion must be filed and delivered not later than January 6, 2017, which is five days before the hearing, all in accordance with Local Rule 9006-1. IF NO RESPONSES ARE FILED IN A TIMELY MANNER, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
4. A voluntary petition commencing this bankruptcy case was filed on July 26, 2016. The case is now pending before this Court.
5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, and Bankruptcy Rule 5005. This proceeding arises under 11 U.S.C. §§ 363 and 365, Bankruptcy Rules 6004, 9006 and Local Rule 9006-1.

Sale of Equipment

6. Debtor seeks to bring to sell that equipment, as set forth on Exhibit A, (the “Equipment”) pursuant to the terms of a Bill of Sale with MFF, LLC, in substantially the form attached as Exhibit B (the “Bill of Sale”).

7. Such Equipment is subject to the secured interest of Lake Area Bank (“Lake Area Bank”). Debtor currently owes Lake Area Bank pre-petition secured debt in the approximate amount of \$2 million.

8. It is Debtor’s belief that this sale is reasonable. There is no equity in the equipment. Proceeds of the sale will be paid to Lake Area Bank. Debtor no longer needs this equipment.

9. Debtor is now moving this court to enter an order allowing the Debtor to:

(a) Sell the Equipment described in Exhibit A, at the sale pursuant to the terms of the Bill of Sale, substantially in the form attached as Exhibit B.

10. The Proceeds of the sale shall be paid to Lake Area Bank, holding a first position security interest in the assets being sold. The Debtor seeks approval of this sale in good faith, and believes that it will receive the greatest possible value and benefit to the estate under the circumstances.

11. Should testimony be necessary at the hearing on this matter, Debtor reserves the right to testify concerning this, or call such other witness as may be appropriate.

12. This motion is further supported by the memorandum of law attached hereto and incorporated herein.

WHEREFORE, Debtor prays for an order of this court authorizing

- (1) The sale of that equipment identified in Exhibit A attached hereto pursuant to a Bill of Sale, substantially in the form attached as Exhibit B, free and clear of liens, with the proceeds being paid to first position secured lender, Lake Area Bank.
- (2) That this court grants such other and further relief as may be just and proper.

Respectfully submitted,

Dated: December 21, 2017

/e/ Thomas J. Flynn  
Thomas J. Flynn (30570)  
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.  
Attorneys for Debtor  
8300 Norman Center Drive, Suite 1000  
Bloomington, Minnesota 55437  
(952) 835-3800

4846-9165-1134, v. 1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Bky. No. 16-32314  
Chapter 11 Case

Daniel D. Wozniak, Jr.,

Debtor.

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR ORDER  
(1) AUTHORIZING THE DEBTOR TO  
SELL FREE AND CLEAR CERTAIN  
EQUIPMENT**

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Daniel D. Wozniak, Jr., the debtor in the above-referenced case (the “Debtor”), by its attorneys, submits this memorandum of law in support of its motion for authorization to (1) sell, free and clear, certain equipment subject to the security interest of Lake Area Bank. Pursuant to the terms of a Bill of Sale Agreement; attached is the Bill of Sale, and the Equipment List.

**FACTUAL BACKGROUND**

A voluntary petition for the Chapter 11 was filed by the Debtor on July 26, 2016. Debtor seeks to sell certain equipment (see Exhibit A) pursuant to a Bill of Sale substantially in the form of Exhibit B. The proceeds of such sale, (the “Proceeds”) will be paid to the first position secured lender having a lien in the Equipment – Lake Area Bank. The Debtor no longer needs this Equipment.

The Debtor currently owes Lake Area Bank pre-petition debt in the amount of approximately \$2.0 Million. Attached to the motion and marked as Exhibit A is a list of the Equipment to be sold. The Bill of Sale is marked as Exhibit B.

The Debtor believes that the sale proposed will return more than a fair and reasonable price for the Equipment. The Debtor no longer needs this Equipment, and its sale in this manner represents a reasonable business judgment. There is no equity in the Equipment

### **LEGAL ARGUMENT**

#### The Sale Free and Clear Is in the Best Interests of the Debtor and Its Estate.

Section 363(f) of the Bankruptcy Code provides:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if --- . . . .(2) such entity consents; . . .

Here, the Debtor has the consent of the affected secured party. (Debtor will be able to comply with § 363(f)(1) and (5) as well.) It is believed that the value achieved in this sale is greater than a forced liquidation.

### **CONCLUSION**

Based upon the foregoing, the Debtor respectfully requests this Court to:

1. Approve the sale of Equipment listed on Exhibit A, pursuant to the Bill of Sale, free and clear of liens. Lake Area Bank will receive the Proceeds of this sale.
2. That this Court grants such other and further relief as may be just and proper.

Dated: December 21, 2017

/e/ Thomas J. Flynn  
Thomas J. Flynn (30570)  
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.  
Attorneys for Debtor  
8300 Norman Center Drive, Suite 1000  
Bloomington, Minnesota 55437  
(952) 835-3800

## **BILL OF SALE**

### **EXHIBIT A**

#### **MACHINERY AND EQUIPMENT**

1. Eighty (80) Anets deep fryers and accessories
2. Ten (10) exhaust hoods with roof top mounted fans
3. Two (2) proprietary cutting machines
4. Two (2) Hobart potato peelers
5. One (1) conveyor belt
6. Two (2) stainless commercial dishwashers and attachments
7. Three (3) commercial clothes washing machines
8. One (1) commercial clothes dryer
9. One (1) standard clothes dryer
10. Miscellaneous currency counters, furniture etc.
11. All intellectual property, including the rights to the Company name and any d/b/a' s, including Fresh French Fries;
12. All websites and other intangible assets;
13. All materials, supplies, parts, and other related assets used in conjunction with the French Fry booth at the Minnesota State Fair.

**EXHIBIT B**

**Bill of Sale Agreement**

4827-8593-0046, v. 1

**THIS BILL OF SALE AGREEMENT** (the "Agreement"), is made by and between Daniel D. Wozniak, Jr. (the "Seller") and MFF, LLC, a Minnesota limited liability company (the "Buyer").

**RECITALS**

**WHEREAS**, Seller is currently in Chapter 11 Bankruptcy; and

**WHEREAS**, Buyer is willing to acquire all equipment used in the operation of the French fry business at the State Fair, including, but not limited to, those assets more fully described in the attached Exhibit A (hereafter, the "Acquired Assets"), and

**WHEREAS**, such Acquired Assets are subject to the Lien of Lake Area Bank (the "Sellers Secured Lender"); and

**NOW THEREFORE**, the parties hereto being fully informed of the premises are willing to enter into this Agreement, pursuant to the terms and conditions herein;

**AGREEMENT**

1. **RECITALS**. The Recitals set forth above are true and correct.
2. **TRANSFER AND SALE**. Subject to the terms and conditions of this Agreement, Seller does hereby grant, bargain, sell and convey to Buyer, all of Seller's right, title and interest in and to the Acquired Assets.
3. **CONSIDERATION**. In consideration of the transfer of the Acquired Assets, Buyer shall deliver to Sellers Secured Lender upon satisfaction of the pre-conditions set forth below, \$50,000.00 (the "Consideration") by certified check, wire or other readily available funds.
4. **PRE-CONDITIONS**. The transfer contemplated by the parties hereto, shall be pre-conditioned upon the following events:
  - (i) The sale of the Acquired Assets shall be approved by the Bankruptcy Court;
  - (ii) The Secured Lender shall have consented to the sale and transfer and agree that its lien will be released upon its receipt of the \$50,000.00 consideration, as set forth above.
5. **WARRANTIES**. Seller does hereby consent and agree to with Buyer, its successors and assigns, that the Seller is the lawful owner of, and has title to, the Acquired Assets, and that, Seller has the full right, power and authority to sell, convey and transfer the Acquired Assets, to Buyer, under the terms and conditions of this Agreement. Other than as specifically stated herein, the Acquired Assets are being sold, "AS IS" and "WHERE IS".
6. **SIGNATURE / COUNTERPART**. This Agreement may be signed in duplicate or separate counterpart, all of which together, shall constitute but one Agreement. Signature by fax, PDF, or electronic means, shall be as binding as an original signature.
7. **ENTIRE AGREEMENT / GOVERNING LAW**. This Agreement shall be governed and interpreted in accordance with the laws of the State of Minnesota. This Agreement contains the entire Agreement and understanding of the parties.

**IN WITNESS WHEREOF**, Seller and Buyer have executed and delivered the Agreement on the dates as set forth in their respective signatures below.

Date: \_\_\_\_\_, 2016

**SELLER**  
**DANIEL D. WOZNIAK, JR.**

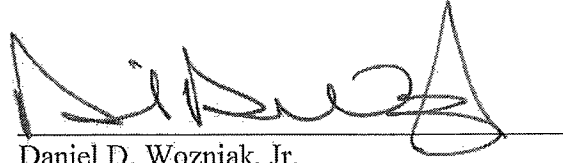
\_\_\_\_\_  
**BUYER**  
**MFF, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_



VERIFICATION

I, Daniel D. Wozniak, Jr., the Debtor named in the foregoing Notice of Hearing and Motion for Order and Memorandum of Law in Support of Motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "D. Wozniak, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Daniel D. Wozniak, Jr.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Bky. No. 16-32314  
Chapter 11 Case

Daniel D. Wozniak, Jr.

Debtor.

CERTIFICATE OF SERVICE

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Under penalty of perjury, I declare that on December 21, 2016, the following documents were served upon the parties listed on the attached service list in the manner indicated therein:

1. Notice of Hearing and Motion for Order Authorizing the Debtor to Sell Equipment Free and Clear;
2. Memorandum of Law in Support of Motion for Order Authorizing the Debtor to Sell Equipment Free and Clear;
3. Verification of Debtor;
5. Service Certificate.
6. Proposed Order.

Dated: December 21, 2016

/e/ Thomas J. Flynn  
Thomas J. Flynn

DANIEL WOZNIAK, JR.  
Chapter 11 Bky. Case No. 16-32314  
RULE 9013-3 SERVICE LIST

<b>DEBTOR</b>
Daniel D. Wozniak, Jr. Personal and Confidential MW Development 4999 France Avenue South, Suite 260 Minneapolis, MN 55410 Fax: (952-546-2049 <b>U.S. MAIL</b>
<b>DEBTOR'S COUNSEL</b>
Thomas J. Flynn Larkin Hoffman Law Firm 8300 Norman Center Drive, Suite 1000 Minneapolis, MN 55427-1060 <b>VIA ECF</b>
<b>UNITED STATES TRUSTEE</b>
Michael Fadlovich US Trustee 1015 US Courthouse 300 S. 4th Street Minneapolis, MN 55415 Ustregion12mn.ecf@usdoj.gov Michael.fadlovich@usdoj.gov <b>VIA ECF</b>
<b>TEN LARGEST UNSECURED CREDITORS</b>
Lake Area Bank 1400 East Highway 96 St. Paul, MN 55110 <b>U.S. MAIL</b>
RREF II BHB-MN WSP, LLC. c/o Rialto Capital 790 NW 107 Avenue, Ste. 400 Miami, FL 33172 <b>U.S. MAIL</b>
Internal Revenue Service Fresno, CA 93888 <b>U.S. MAIL</b>

First Farmers 332 Minnesota Street Saint Paul, MN 55101 <b>U.S. MAIL</b>
State of Minnesota 600 North Robert Street Saint Paul, MN 551010 <b>U.S. MAIL</b>
Richard Hauser c/o Capital Real Estate 50 South 6 <sup>th</sup> Street Minneapolis, MN 55402 <b>U.S. MAIL</b>
RSM US, LLP 801 Nicollet Mall Minneapolis, MN 55402 <b>U.S. MAIL</b>
Messerli and Kramer 3033 Campus Drive Minneapolis, MN 55441 <b>U.S. MAIL</b>
<b>SECURED CREDITORS</b>
Lake Area Bank 1400 East Highway 96 Saint Paul, MN 55110 <b>U.S. MAIL</b>
State of Minnesota 600 N. Robert Street Saint Paul, MN 55101 <b>U.S. MAIL</b>
<b>DISTRICT COUNSEL OF THE INTERNAL REVENUE SERVICE</b>
IRS District Counsel 650 Galtier Plaza 380 Jackson Street St. Paul, MN 55101 <b>U.S. MAIL</b>

<b>DISTRICT DIRECTOR OF THE INTERNAL REVENUE SERVICE</b>
Internal Revenue Service Wells Fargo Place 30 E 7th St, Mail Stop 5700 St Paul MN 55101 <b>U.S. MAIL</b>
<b>INTERNAL REVENUE SERVICE CENTRALIZED INSOLVENCY OPERATION</b>
IRS Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346 <b>U.S. MAIL</b>
<b>COLLECTION DIVISION OF THE MINNESOTA DEPARTMENT OF REVENUE</b>
MN Department of Revenue Collection Enforcement 551 Bankruptcy Section 600 North Robert Street PO Box 64447 St Paul MN 55101 <b>U.S. MAIL</b>
<b>UNITED STATES ATTORNEY FOR THE DISTRICT OF MINNESOTA</b>
US Attorney 600 US Courthouse 300 S Fourth St Minneapolis MN 55415 <b>U.S. MAIL</b>

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Bky. No. 16-32314  
Chapter 11 Case

Daniel D. Wozniak, Jr.,

Debtor.

**ORDER AUTHORIZING DEBTOR  
TO SELL EQUIPMENT FREE AND  
CLEAR OF LIENS**

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This matter came before the Court on January 11, 2017, before the Honorable Michael E. Ridgway, United States Bankruptcy Judge, upon the above-referenced debtor's motion seeking authority to approve sale proceeds and sell equipment free and clear. The debtor was represented by Larkin, Hoffman, Daly & Lindgren, Ltd. Other appearances were as noted on the record.

Based upon the motion, the arguments of counsel, files, and records herein,

**IT IS HEREBY ORDERED:**

1. Debtor may sell the Equipment as more fully described in Debtor's motion, free and clear of the liens and encumbrances, provided the proceeds of such sale shall be paid to Lake Area Bank.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable Michael E. Ridgway  
United States Bankruptcy Judge