

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>IN RE:</b>	§	
	§	
<b>FIRED UP, INC.</b>	§	<b>CASE NO. 16-10816</b>
	§	<b>(Chapter 11)</b>
<b>DEBTOR</b>	§	

**MOTION FOR AUTHORITY TO SELL PERSONAL PROPERTY  
IN KATY, TEXAS FREE AND CLEAR OF LIENS**

Debtor hereby files this its *Motion to Sell Personal Property in Katy, Texas Free and Clear of Liens* (“Motion”) requesting the entry of an order pursuant to 11 U.S.C. § 363(f) to sell the personal property at its closed Katy location to Wholesale Restaurant Supply for \$17,105.00.

**JURISDICTION AND PROCEDURAL BACKGROUND**

1. On July 14, 2016 (the “Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (“Court”), thereby commencing this chapter 11 case (“Case”). Debtor continues in possession of its property and operating and managing its business as a debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

2. No trustee or examiner has been appointed in the Debtor’s Chapter 11 Case, nor has a creditors’ committee or other official committee been appointed pursuant to 11 U.S.C. § 1102.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The basis for the relief herein is primarily grounded in 11 U.S.C. §§ 105(a) and

363 as supplemented and amplified by Fed. R. Bank. P. 6004.

**FACTUAL BACKGROUND FOR RELIEF REQUESTED**

6. As part of its reorganization effort, the Debtor has identified locations which should be closed and their assets liquidated. The Debtor has already closed its Katy, Texas location and reached an agreement with the landlord to terminate that lease with no further financial or other obligations on the part of the Debtor. That agreement will be the subject of a separate motion.

7. The landlord intends to demolish the building in Katy. It is therefore necessary for the Debtor to remove its property on or before the demolition date, which is scheduled for September 9, 2016. Rather than incur the cost of moving and storing the property which could easily cost well in excess of \$5,000.00. Debtor solicited bids for the sale of such property *in situ*. Debtor has agreed to accept an offer from Wholesale Restaurant Supply, 1949 Bingle, Houston, TX 77055, (713) 465-8455, a copy of which is attached as Exhibit A. Wholesale Restaurant Supply will pay the Debtor the sum of \$17,105.00 for the equipment, which Debtor in its business judgment after selling personalty out of closed locations has determined is well within the range it would obtain from any manner of sale.<sup>1</sup> It will then conduct an auction at the site. Wholesale Restaurant Supply will receive the proceeds from the sale. The results of the auction will not affect the price to be paid to the Debtor.

8. The personal property at the Katy location is subject to a lien in favor of the Harris County taxing authorities in the estimated amount of \$2,820.86 according to a proof of claim filed by Harris County. It is also subject to blanket liens in favor of Prosperity Bank and FRG Capital.

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<sup>1</sup> Wholesale Restaurant Supply plans on conducting an auction at the site and will receive the proceeds from the sale. The results of the auction will not affect the price to be paid to the Debtor.

### **BASIS FOR THE RELIEF REQUESTED**

11. Section 363(f) of the Bankruptcy Code provides, in pertinent part that a debtor-in-possession may sell property free and clear of liens, claims and interests subject to certain conditions. The Debtor anticipates that FRG Capital and Prosperity Bank will consent to the sale. The sale will be a price which will exceed the amount of the Harris County taxes. Debtor proposes to sell such property with all liens to attach to the proceeds in the same priority, validity and amount as existed prior to the sale.

12. Debtor requests that the Court waive the fourteen (14) day stay of Rule 6004(h) to permit the sale to take place before the building housing the property is demolished.

### **CONCLUSION**

WHEREFORE, the Debtor respectfully requests entry of an order, (i) granting this Motion; (ii) approving the sale of the personal property in Katy, Texas free and clear of liens with all liens attaching to the proceeds in the same amount, validity and priority as existed prior to the sale, (iii) permitting the sale to proceed forthwith due to the exigencies cited herein; and (iv) granting the Debtor such other and further relief as this Court deems just.

DATED: August 27, 2016

Respectfully Submitted,

**BARRON & NEWBURGER, P.C.**

/s/ Stephen W. Sather

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**PROPOSED ATTORNEYS FOR THE DEBTOR**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Application was served by first class mail, postage prepaid and properly addressed, on August 27th, 2016, to all parties listed on the attached Service List and listed below and electronically by the Court's ECF system to all parties registered to receive such service.

/s/ Stephen W. Sather

**FIFTH MASTER SERVICE LIST**  
*(August 18, 2016)*

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Prosperity Bank  
c/o Lisa C. Fancher  
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Independent Bank of Waco  
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Barrett Daffin Frappier Turner, et al  
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Fifth Third Bank  
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Internal Revenue Service  
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**Twenty Largest Unsecured Creditors**

**(cont'd):**

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Austin, TX 78778-0001  
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Boise Spectrum – Dunlap, LLC  
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Huntington Beach, CA 92649  
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National Retail Properties  
450 S. Orange Ave., Ste. 900  
Orlando, FL 32801  
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Idaho State Tax Commission  
1349 E. Beechcraft Ct.  
Boise, ID 83716  
[taxrep@tax.idaho.gov](mailto:taxrep@tax.idaho.gov)

**Twenty Largest Unsecured Creditors**

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Commercial Net Lease Realty, Inc.  
450 S. Orange Ave., Ste. 900  
Orlando, FL 32801  
[kimberlie.cranford@nnnreit.com](mailto:kimberlie.cranford@nnnreit.com)

Hoppenstein Properties, Inc.  
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[vivian@hoppenstein.com](mailto:vivian@hoppenstein.com)

Kansas Dept of Revenue  
915 SW Harrison St.  
Topeka, KS 66612-1588  
[tac@kdor.ks.gov](mailto:tac@kdor.ks.gov)

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WHOLESALE RESTAURANT SUPPLY  
1949 BINGLE  
HOUSTON, TEXAS 77055  
713-465-8455

Creed Ford  
Carino's Italian Grill

August 15, 2016

Wholesale Restaurant Supply Houston, Texas submits the following offer for the used equipment located at 21875 Katy Freeway, Katy, Texas, 77450.

**Terms of Sale:**

Wholesale Restaurant Supply will conduct an auction on site at agreed time.  
Wholesale Restaurant Supply will remove equipment in a timely manner.  
Wholesale Restaurant Supply will assure that no damage to the building shall occur, other than what is necessary to remove said equipment. It is understood the building is to be demolished. Building to be left in safe condition. Equipment is purchase where is as is.

**It is agreed that the items are free and clear of any liens or encumbrances that would affect sale of listed equipment.**

**I have the authority to sale said equipment.**

**The bid price is \$17,105.00**

**Paid by Company Check. 50% at time of signed contract, balance day of sale.**

The following items are included in bid:

- |                        |               |                   |
|------------------------|---------------|-------------------|
| Walk-in Cooler/Freezer | Wire Shelving | S/S Sinks         |
| S/S Tables             | Vent Hoods    | Cooking Equipment |
| Refrigeration          | S/S Counter   | Small Wares       |
| Soda Stations          | Mixer         | E-Z Swing Doors   |
| Bar Equipment          | Tables        | Chairs            |
| Booths/Benches         | Décor         | Hanging Lights    |
| Margarita Machine      | Ice Machines  | Wood Burning Oven |

Items as viewed 8/15/16. Complete list provided at time of signed agreement.

Other items as agreed upon prior to sale.

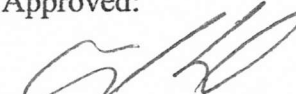
Date of auction September 6, 2016. Return to owner not later than September 10, 2016. If auction is cancelled by seller, seller to be responsible for incurred cost by WRS. WRS to have full access upon approved agreement. Utilities to remain on until completion of sale. Items may be added or removed prior to sell.

Sincerely,

*Katherine McNeal*

Gene Frazier / Katherine McNeal  
Owner Chief Financial Officer

Approved:



Date:

*8/12/2016*