



Doc#: 1120646031 Fee: \$82.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/25/2011 01:08 PM Pg: 1 of 8

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT is made and entered into as of this 2nd day of June 2011, by and between CHIAPPETTI WHOLESALE MEAT CORPORATION ("Chiappetti"), DC PROPERTIES ACQUISITION, LLC ("DC Properties"), DEN-FRANCO CORPORATION ("Den-Franco") (unless referred to individually, collectively, the "Borrower"), DENNIS CHIAPPETTI, BRYAN CHIAPPETTI, and WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Lender"), acting through its WELLS FARGO BUSINESS CREDIT operating division.

28

RECITALS

A. Borrower and Lender entered into a Credit and Security Agreement dated as of June 29, 2007, as so supplemented and amended (the "Credit Agreement"). Capitalized terms used in this Forbearance Agreement have the meanings given to them in the Credit Agreement unless otherwise specified.

B. Dennis Chiappetti and Bryan Chiappetti (the "Guarantors") have guaranteed the obligations of Borrower to Lender pursuant to the terms of Individual Guarantees dated on or about June 29, 2007 and in conjunction with this Forbearance Agreement are executing a Restated and Amended Guaranty (the "Guarantees"). Guarantors hereby restate and reaffirm their obligations pursuant to said Guarantees. Said Guarantors hereby acknowledge and agree that Lender has made demand on the Borrower with respect to repayment of the Indebtedness owed by Borrower to Lender, and, further hereby acknowledges and agrees to all of the terms, conditions and provisions of this Forbearance Agreement, being fully advised in regard to the same.

FNF # 12012587 1/1

C. Borrower and Guarantors acknowledge that Events of Default exist pursuant to the Credit Agreement as stated in the default letters dated July 28, 2008 and December 3, 2008 and correspondence dated May 29, 2009 and the recitation therein are true and correct in all manners and in every respect.

D. Borrower and Guarantors acknowledge that demand is hereby properly made on the Borrower for all Indebtedness due and owing by them to Lender.

E. Borrower and Guarantors hereby acknowledge and agree that all actions taken by the Lender prior to this Forbearance Agreement were appropriate and proper.

F. Borrower and Guarantors acknowledge that the outstanding principal Indebtedness due to the Lender as of May 19, 2011 is \$355,311.23.

G. Borrower and Guarantors acknowledge that Lender has properly perfected its security interests against Borrower.

H. Borrower and Guarantors request the forbearance by the Lender as specified herein and the execution of this Forbearance Agreement pursuant to the terms and provisions as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises set forth above, the mutual promises contained therein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned parties agree as follows:

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1. The foregoing Recitals are true and correct and all of said Recitals are incorporated herein by reference as though fully set forth and made as terms and provisions of this Forbearance Agreement.

2. Except as explicitly amended by this Forbearance Agreement, all of the terms and conditions of the Credit Agreement shall remain in full force and effect and shall apply to any Advance thereunder.

3. Upon execution of this Agreement, Dennis and Bryan Chiappetti shall pay One Hundred Ten Thousand Dollars (\$110,000) to Lender which shall be credited against the outstanding Indebtedness and reduce the total outstanding Indebtedness to \$245,311.23, plus all future interest, costs and fees.

4. 3900 Emerald, LLC shall execute in favor of the Lender a deed in lieu of foreclosure regarding the property located at Parcel 3, PIN numbers 20-04-100-011-0000 and 20-04-100-012-0000 at 3900 South Emerald, Chicago, Illinois 60609 (the "Property"), acceptable in form and substance to Lender in its sole discretion. The deed in lieu of foreclosure shall be held in trust by Howard, Solochek & Weber, S.C., and shall be released to Lender at Lender's sole discretion, for Lender's use if all the Indebtedness due Lender from Borrower has not been paid in full by June 30, 2012 or an Event of Default under this Forbearance Agreement has occurred prior thereto.

5. Lender agrees to forbear in taking any action against the Borrower, Guarantors or any collateral for the Indebtedness until the earlier of an occurrence of an Event of Default after the execution of this Forbearance Agreement, or June 30, 2012 (the "Termination Date").

6. The deed in lieu of foreclosure as referenced herein shall not be merged into any mortgage held by the Lender; further, the tendering and/or delivery of the deed in lieu of foreclosure to Howard, Solochek & Weber, S.C. shall not constitute a transfer until the same has been filed and recorded by the Lender with the appropriate recording officer.

7. "Floating Rate" means with respect to all remaining Indebtedness an annual interest rate equal to the Prime Rate.

8. The Indebtedness pursuant to the Notes, shall be payable with interest at the Floating Rate as follows: equal monthly principal and interest payments of \$1,500.00 beginning on July 1, 2011 and continuing on the same day of each successive month thereafter, plus a final payment of the unpaid principal due on the Termination Date, provided, however, that if Borrower at any time prior to the Termination Date pays to Lender \$200,000 (inclusive of the principal portion of monthly payments) in addition to the payment of \$110,000 as called for herein, the remaining Indebtedness will be discharged, the Mortgage will be satisfied, and Borrower will release Bryan and Dennis Chiappetti from their obligations pursuant to their Guarantees.

9. Borrower, Dennis Chiappetti and Bryan Chiappetti acknowledge and agree that Borrower and Guarantors shall pay all charges and costs related to the title and transfer of the Property and Borrower and Guarantors further acknowledge and agree that the Borrower and Guarantors shall evidence clear title to the Lender which is acceptable to Lender.

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10. Borrower, Dennis Chiappetti and Bryan Chiappetti acknowledge and agree that Borrower and Guarantors shall pay all ongoing real estate taxes and any other property related expenses and that it is the sole responsibility of Borrower, Dennis Chiappetti and Bryan Chiappetti to maintain the Property and pay any costs related thereto.

11. Borrower shall maintain and evidence to Lender upon demand sufficient evidence of insurance coverage on the Property obtained at Borrower's expense; said insurance coverage shall name Wells Fargo as Lender Loss Payee and Mortgagee.

12. Lender shall have no obligation to advance funds to Borrower.

13. Borrower and Guarantors acknowledge that the Borrower is presently in default, and that this Forbearance Agreement shall not cure any default existing as of the date of this Forbearance Agreement, nor shall any default be deemed cured, notwithstanding any action pursuant to this Forbearance Agreement; but rather, defaults existing as of the date of this Forbearance Agreement shall be deemed to continue as existing defaults. Lender shall charge the Default Rate as provided in the Credit Agreement. Lender shall have the right to charge any termination fee as provided for in the Credit Agreement. This Forbearance Agreement is intended not to waive or terminate any existing defaults, but rather to afford a moratorium in favor of the Borrower and Guarantors by the Lender in executing upon such defaults until the terms and conditions of this Forbearance Agreement are fully complied with.

14. Borrower and Guarantors represent and warrant that, in order to induce the Lender to refrain from exercising its rights and remedies against the Borrower and Guarantors, as follows:

a. The Lender has acted in good faith in its dealings with the Borrower and Guarantors;

b. The Lender has made no agreement to extend this Forbearance Agreement beyond the Termination Date and nothing herein shall be deemed to establish a "course of conduct" requiring any extension of this Forbearance Agreement; and

c. Borrower and Guarantors acknowledge and agree that valid consideration exists for the Borrower and Guarantors to execute this Forbearance Agreement.

15. Default. The following or any one of them shall constitute an Event of Default ("Events of Default"):

a. There shall be a failure or perform any obligation, term or provision of this Forbearance Agreement or any term or provision of the Credit Agreement, performance of which is not suspended hereby;

b. The Borrower and/or Guarantors shall default in the performance or observance of any agreement, covenant, condition, provision, warranty, representation or term contained in this Forbearance Agreement or any document or instrument (as modified herein) collateralizing, guaranteeing or collateralizing the guarantee of the same;

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c. In the event any representation or warranty made by the Borrower or Guarantors herein or any financial statement delivered to the Lender heretofore or hereunder shall prove to have been false in any material respect at any time when made or given;

d. In the event the Borrower and/or Guarantors makes a general assignment for the benefit of creditors or an assignment to an agent authorized to liquidate any substantial amounts of property or becomes the subject of an "Order for Relief" within the meaning of the United States Bankruptcy Code or files an answer to a creditor's petition (admitting the material allegations thereof) for liquidation, reorganization; or applies to the Court for the appointment of a receiver for any assets or has a receiver appointed for any material assets (with or without consent) or otherwise becomes the subject of an insolvency proceeding;

e. In the event this Forbearance Agreement or any or any other document delivered to Lender in connection with this Forbearance Agreement shall, at any time after execution and delivery, and for any reason, cease to be in full force and effect or shall be declared null and void or be revoked or terminated or the validity or enforceability thereof or hereof shall be contested by the Borrower and/or Guarantors, or the Borrower and/or Guarantors shall deny further liability or obligation thereunder or hereunder, as the case may be; or

f. In the event of the occurrence of any other default as defined in any of the documents (as modified herein) identified in this Forbearance Agreement or an Event of Default occurs in any document or agreement executed by the Borrower and/or Guarantors in favor of Lender or any other party;

then and in any such event the Lender may, at its option, and in its sole discretion and without notice, declare the Indebtedness of the Borrower and Guarantors to be, and such Indebtedness shall thereupon become, immediately due and payable together with accrued interest thereon and the Lender shall be entitled to all of its rights and remedies set forth in this Forbearance Agreement and in any other document delivered to the Lender by the Borrower and/or Guarantors or by law. Presentment, demand, protest and notice of acceleration, non-payment and dishonor are hereby expressly waived.

16. **Release.** In order to induce the Lender to refrain from exercising its rights and remedies against the Borrower and Guarantors, the Borrower and Guarantors agree as follows:

a. The Borrower and Guarantors, each acting on behalf of its, his, her or their respective successors, assigns, heirs, and personal representatives, hereby give a full release from all claims, sums of money, accounts, actions, suits, proceedings, and demands whatsoever, which either of them or any of them at any time had or has up to the date of the execution of this Agreement, against the Lender, its officers, directors, related corporations, branches, attorneys, employees, agents, and successors for or by reason of or in respect to any act, cause, matter or thing; and

b. It is the express intention of the Borrower and Guarantors to provide the fullest possible release of all claims to the Lender. By its signatures below, the Borrower and Guarantors represent that they have read this release, had adequate opportunity to discuss it with their attorney of their choice and fully understand its terms.

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17. Miscellaneous.

a. The Borrower and Guarantors shall be responsible for the payment of all reasonable attorneys' fees and disbursements incurred by the Lender in connection with the preparation, execution, delivery, administration, and enforcement of this Forbearance Agreement and all other agreements.

b. Nothing herein shall in any way negate, modify, waive, alter, impair or release any document or provision contained therein executed by the Borrower and Guarantors except to the extent the same are inconsistent with the provisions of this Forbearance Agreement.

c. Representations, warranties and any and all agreements made herein shall survive the execution of this Forbearance Agreement. All provisions in any and all documents executed by Borrower and Guarantors, unless specifically modified in this Forbearance Agreement, shall survive the execution of this Forbearance Agreement.

d. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin except to the extent superseded by federal law.

e. The Borrower and Guarantors acknowledge that all documents referenced in this Forbearance Agreement and executed in connection with this Forbearance Agreement are for a business purpose.

f. At all times now or hereafter, Borrower and Guarantors shall retain sole and exclusive control over its business activities as well as its officers, employees and agents in all matters. Borrower and Guarantors acknowledge that Lender has not controlled or is not in control of Borrower or Guarantors in any manner. To the extent Borrower's and Guarantors' officers, employees and agents assist Lender in maintaining or disposing of the collateral, such actions will be deemed under Borrower's and Guarantors' sole and exclusive control, and rendered as a necessary incident to Borrower and Guarantors meeting its obligations to Lender under the loan agreements and applicable law. Furthermore, Borrower and Guarantors shall remain solely responsible for all obligations pertaining to its officers, employees and agents (including, but not limited to, any payroll tax withholdings and taxes, worker's compensation payment obligations and unemployment compensation payment obligations) however arising. Borrower and Guarantors represent to Lender that Borrower and Guarantors have paid all required payroll and withholding taxes through the date of this Forbearance Agreement. Borrower and Guarantors shall inform its officers, employees and agents that Lender is not to be considered an employer under any circumstances.

g. Borrower and Guarantors acknowledge that they have no defenses, offsets or counterclaims. In the event Borrower or Guarantors file a petition under the Bankruptcy Code or an involuntary petition is filed against Borrower or Guarantors, Borrower and Guarantors admit and agree that Lender shall have the right (and Borrower and Guarantors shall interpose no objection thereto and hereby waives its rights with respect thereto) to request and receive from the Bankruptcy Court or any other court of competent jurisdiction, immediate relief from the automatic stay imposed under §362 of the Bankruptcy Code or any stay or other restriction on Lender's rights hereunder, under any of the Court's equitable powers, except Borrower and Guarantors shall be afforded as an alternative to the foregoing, the right to provide adequate

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protection to Lender, providing that said adequate protection must be agreed and consented to by Lender, which agreement and consent shall not be unreasonably withheld a termination of the exclusive period under §1121 of the Bankruptcy Code and a dismissal of the Bankruptcy case or proceeding. Borrower and Guarantors have consulted with counsel and relied upon counsel's advice in connection with the negotiation and execution of this Forbearance Agreement. Borrower and Guarantors further acknowledge and agree that the representations, acknowledgements, agreements and warranties in this Forbearance Agreement have been made by Lender as a material inducement to Lender to enter into this Forbearance Agreement, that Lender is relying on such representations and warranties, has changed and will continue to change its position in reliance thereon and that Lender would not have entered into this Forbearance Agreement without such representations, acknowledgements, agreements and warranties.

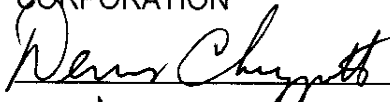
h. BORROWER AND GUARANTORS HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED MILWAUKEE COUNTY, STATE OF WISCONSIN, AS DESIGNATED BY LENDER AND WAIVE ANY OBJECTION BASED ON *FORUM NON CONVENIENS*, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS AGREEMENT, ANY DOCUMENT REFERENCED IN THIS AGREEMENT, ANY PROPERTY AND/OR COLLATERAL REFERENCED IN THIS AGREEMENT OR ANY TRANSACTION ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING.

i. BORROWER AND GUARANTORS HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS FORBEARANCE AGREEMENT, ANY DOCUMENT REFERENCED IN THIS FORBEARANCE AGREEMENT, ANY PROPERTY AND/OR COLLATERAL REFERENCED IN THIS FORBEARANCE AGREEMENT OR ANY TRANSACTION ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING. BORROWER AND GUARANTORS HEREBY REPRESENT THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.


j. This Forbearance Agreement may be executed in counterpart and by facsimile. Facsimile signatures shall have the same effect as originals signatures.

IN WITNESS WHEREOF, the undersigned have executed this Forbearance Agreement as of the day and year first above written.

CHIAPPETTI WHOLESALE MEAT
CORPORATION


By: Dennis Chiappetti
Its: President

DC PROPERTIES ACQUISITION, LLC


By: Dennis Chiappetti
Its: President - Managing Agent

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DEN FRANCO CORPORATION

Dennis Chiappetti

By: Dennis Chiappetti
Its: President

DENNIS CHIAPPETTI, GUARANTOR

Dennis Chiappetti
Dennis Chiappetti, Guarantor

BRYAN CHIAPPETTI, GUARANTOR

Bryan Chiappetti

Bryan Chiappetti, Guarantor

3908 EMERALD, LLC

Dennis Chiappetti

By: Dennis Chiappetti
Its: Managing Member

WELLS FARGO BANK, NATIONAL ASSOCIATION
acting through its WELLS FARGO BUSINESS
CREDIT OPERATING DIVISION

By: _____
Its: _____

PREPARED BY MAIL TO:
WELLS FARGO CAPITAL FINANCE
C/O BRIAN SPRINK
100 E. WISCONSIN AVE.
STE. 1400
MILWAUKEE WI

53202-4007

Property of Cook County Clerk's Office

FIDELITY NATIONAL TITLE INSURANCE COMPANY



ORDER NUMBER: 2010 012012587 OCF
STREET ADDRESS: 3900 AND 3928 SOUTH EMERALD

CITY: CHICAGO
TAX NUMBER: 20-04-100-011-0000

COUNTY: COOK COUNTY

LEGAL DESCRIPTION:
LOTS 1 TO 13 INCLUSIVE, IN THE SUBDIVISION OF BLOCK 4 OF SUPERIOR COURT PARTITION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office