

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

In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	Objection Deadline: May 12, 2009 at 4:00 p.m. (ET)
)	Hearing Date: May 19, 2009 at 1:00 p.m. (ET)

**MOTION OF DEBTOR TO APPROVE A
STIPULATION BY AND BETWEEN DEBTOR AND
THE DAVIS FAMILY TRUST PURSUANT TO FED. R. BANKR. PRO. 9019**

Forward Foods LLC (the “Debtor” or “Forward Foods”), the debtor and debtor in possession in the above-captioned chapter 11 case, by and through its undersigned counsel, hereby moves this Court for the approval of the Stipulation (the "Stipulation") by and between the Debtor and the Davis Family Trust (the “Trust”) (collectively, the Debtor and the Trust are referred to herein as the "Parties") pursuant to Fed. R. Bankr. Pro. 9019 (the "Motion"). In support of the Motion, the Debtor respectfully states as follows:

BACKGROUND

1. The Debtor and the Trust are parties to that certain lease dated August 18, 2006, as amended, pursuant to which the Debtor leases from the Trust a non-residential industrial facility (the “2542 Facility”) located at 2542 Business Parkway, Minden, Nevada (the “2542 Lease”).

2. The Debtor and the Trust are also parties to that certain lease dated August 18, 2006, as amended, pursuant to which the Debtor leases from the Trust a non-residential light industrial facility (the “2548 Facility”) located at 2548 Business Parkway, Minden, Nevada (the

“2548 Lease”) (the 2548 Facility and the 2542 Facility are collectively referred to as the “Premises”) (the 2548 Lease and the 2542 Lease are collectively referred to as the “Leases”).

3. On February 17, 2009 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) initiating the above-captioned case.

4. On April 22, 2009, the Debtor filed a motion (the “Rejection Motion”) seeking the entry of an Order authorizing, among other things, the Debtor to reject the Leases effective as of June 30, 2009 (the “Surrender Date”).

5. The Trust, through David B. Davis (the “Trustee”), raised certain informal objections to the Rejection Motion and the parties have agreed to resolve those objections on the terms and conditions set forth in the Stipulation, and as provided below.

JURISDICTION AND VENUE

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

7. Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is Fed. R. Bankr. Pro. 9019.

THE STIPULATION

8. The Stipulation, a true and correct copy of which is attached hereto as Exhibit A, provides in summary¹ as follows:

¹ To the extent that the summary contained herein differs from the Stipulation, the terms of the Stipulation shall control.

(a) The Debtor agrees to permit the Trust to place signage in form and amount, as determined in Forward Food's reasonable discretion, on the Premises prior to the Surrender Date.

(b) The Trust agrees to retain the services of a licensed real estate agent (the "Agent") to advertise and market the Premises to potential lessees ("Potential Lessees").

(c) Neither the Agent nor any Potential Lessee shall be allowed on the Premises without reasonable advance notice to the Debtor and at times mutually agreed upon by the Agent and the Debtor.

(d) The Trust agrees that if it incurs any damages arising from or related to the Debtor's proposed transaction with Edner of Nevada, Inc., neither the Trust nor the Trustee shall file a claim against any person or entity without first having received prior authorization to do so from the Bankruptcy Court.

RELIEF REQUESTED

9. By this Motion, the Trustee seeks approval of the Stipulation pursuant to Fed. R. Bankr. Pro. 9019. Rule 9019 provides that "[o]n motion by the [t]rustee and after notice and a hearing, the court may approve or compromise a settlement. Notice shall be given to creditors, the United States Trustee, the debtor ... and to any other entities the court may direct." Fed. R. Bankr. P. 9019(a); *see also In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996).

10. Section 362(a)(3) of the Bankruptcy Code stays all acts "obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

11. In order for the Debtor to retain the protections afforded under section 362 of the Bankruptcy Code, while similarly providing the Trust with an opportunity to market the

Premises in order for the Trust to more quickly find a replacement tenant, the Debtor and the Trust have arrived upon the terms set forth in the Stipulation.

12. A Bankruptcy Court has the authority to approve a settlement or compromise with a debtor under Bankruptcy Rule 9019 if it concludes that the settlement or compromise falls above "the lowest point in the range of reasonableness." *In re Pennsylvania Truck Lines, Inc.*, 150 B.R. 595, 598 (Bankr. E.D. Pa. 1992), *aff'd*, 8 F.3d 812 (3d Cir. 1993). In ascertaining the scope of this range of reasonableness, courts have considered, among other factors:

- (a) the probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation, and the expense, inconvenience and delay necessarily attending it; [and]
- (d) the paramount interests of the creditors and a proper deference to their reasonable views [.]

Id.

13. Additionally, Section 105(a) of the Bankruptcy Code grants broad authority to a Court to enforce the provisions of the Bankruptcy Code under equitable common law doctrines. This section provides, in relevant part, as follows:

The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.

11 U.S.C. § 105(a).

14. The Debtor avers the Stipulation is in the best interest of the Debtor's estate and all of the creditors. Approval of the Stipulation is an appropriate exercise of the Court's equitable powers and also falls well within the lowest point in the range of reasonableness and, accordingly the Stipulation should be approved.

15. The Official Committee of Unsecured Creditors (the “Committee”) has reviewed the substance of the Stipulation and the Debtor anticipates that the Committee will not file an objection hereto.

NOTICE

16. The Debtor has served notice of the Motion the objection date and the hearing date on: (a) the United States Trustee for this region; (b) the Committee; and (c) all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure via Hand Delivery, Electronic Notification and/or United States mail, first class and postage prepaid.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order approving the Stipulation and granting such other relief as is just and proper.

Dated: April 21, 2009

Respectfully submitted,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

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Counsel for Forward Foods LLC,
Debtor and Debtor in Possession

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

In re:)	Chapter 11
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Forward Foods LLC,)	Case No. 09-10545 (KJC)
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Debtor.)	Objection Deadline: May 12, 2009 at 4:00 p.m. (ET)
)	Hearing Date: May 19, 2009 at 1:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on April 29, 2009, Forward Foods LLC (the “Debtor”) filed a Motion to Approve a Stipulation By and Between the Debtor and the Davis Family Trust Pursuant to Fed. R. Bankr. Pro. 9019 (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed with the Clerk of Court at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 and simultaneously served on counsel for the Debtor, William I. Kohn, Esq., Benesch Friedlander Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, Ohio 44114 **so as to be filed and served no later than May 12, 2009;**

PLEASE TAKE FURTHER NOTICE that, if no objection to the Motion is timely filed and served, **the Court may grant the relief requested in the Motion without further notice or hearing thereon;** and

PLEASE TAKE FURTHER NOTICE that a **HEARING** will be held on the Motion before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, in the Judge’s usual courtroom, 824 North

Market Street, Wilmington, Delaware 19801 on **May 19, 2009 at 1 p.m. eastern time.**

Dated: April 29, 2009

Respectfully submitted,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

By: /s/ Bradford J. Sandler
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Counsel for Forward Foods LLC,
Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
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Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	
)	
)	

STIPULATION BY AND BETWEEN THE DEBTOR AND THE DAVIS FAMILY TRUST

This stipulation (the "Stipulation") is made by and between Forward Foods LLC (the "Debtor"), debtor and debtor in possession in the above-captioned chapter 11 case, by and through its undersigned counsel, and The Davis Family Trust (the "Trust"), by and through David B. Davis as Trustee on behalf of the Trust, (the Debtor and the Trust are referred to as the "Parties"). The Parties hereby stipulate and agree as follows:

RECITALS

WHEREAS, the Debtor and the Trust are parties to that certain lease dated August 18, 2006, as amended, pursuant to which the Debtor leases from the Trust a non-residential industrial facility (the "2542 Facility") located at 2542 Business Parkway, Minden, Nevada (the "2542 Lease");

WHEREAS, the Debtor and the Trust are parties to that certain lease dated August 18, 2006, as amended, pursuant to which the Debtor leases from the Trust a non-residential light industrial facility (the "2548 Facility") located at 2548 Business Parkway, Minden, Nevada (the "2548 Lease") (the "2548 Facility" and the 2542 Facility are collectively referred to as the "Premises") (the "2548 Lease" and the 2542 Lease are collectively referred to as the "Leases");

WHEREAS, on February 17, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on April 22, 2009, the Debtor filed a motion (the "Rejection Motion") seeking the entry of an Order authorizing, among other things, the Debtor to reject the Leases effective as of June 30, 2009 (the "Surrender Date"); and

WHEREAS, the Trust raised certain informal objections to the Rejection Motion, and the Parties have agreed to resolve those objections on the terms and conditions set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, UPON THE MUTUAL PREMISES AND THE PARTIES AGREEING TO BE LEGALLY BOUND HEREUNDER, AND OTHER GOOD AND VALID CONSIDERATION BEING EXCHANGED, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND THE RECITALS BEING INCORPORATED HEREIN, THE PARTIES DO AGREE AS FOLLOWS:


1. The Debtor agrees to permit the Trust to place signage in form and amount, as determined in Forward Food's reasonable discretion, on the Premises prior to the Surrender Date.
2. The Trust agrees to retain the services of a licensed real estate agent (the "Agent") to advertise and market the Premises to potential lessees ("Potential Lessees").
3. Neither the Agent nor any Potential Lessee shall be allowed on the Premises without reasonable advanced notice to the Debtor and at times mutually agreed upon by the Agent and the Debtor.

4. The Trust agrees that if it incurs any damages arising from or related to the Debtor's proposed transaction with Edner of Nevada, Inc., neither the Trust nor the Trustee shall file a claim against any person or entity without first having received prior authorization to do so from the Bankruptcy Court.

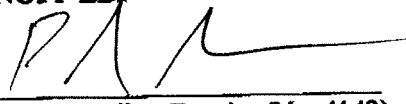
5. Each person signing below represents and warrants that he or she is authorized to act on behalf of the Party for whom he or she is purporting to act.

AGREED AND STIPULATED TO:

DAVIS FAMILY TRUST

By: 
David B. Davis, Esquire, Trustee for The
Davis Family Trust
P.O. Box 1360
Gardnerville, NV 89410-1360

**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**

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

In re:)	Chapter 11
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Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	RE: Docket No.
)	

**ORDER APPROVING STIPULATION BY AND BETWEEN DEBTOR AND
THE DAVIS FAMILY TRUST PURSUANT TO FED. R. BANKR. PRO. 9019**

This matter came before the Court for hearing on May 19, 2009, on the motion (the "Motion")¹ of Forward Foods LLC (the "Debtor" or "Forward Foods"), the debtor and debtor in possession in the above-captioned chapter 11 case for the approval of the Stipulation (the "Stipulation") by and between the Debtor and the Davis Family Trust (the "Trust") (collectively, the Debtor and the Trust are referred to herein as the "Parties") pursuant to Fed. R. Bankr. Pro. 9019; and due and proper notice of the Motion and the opportunity for a hearing thereon having been provided to the Office of the United States Trustee, counsel for the Official Committee of Unsecured Creditors (the "Committee"), and all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; the Court having reviewed the Motion hereby FINDS as follows:

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

B. Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is Fed. R. Bankr. Pro. 9019.

¹ Terms not defined in this Order have the definitions provided in the Motion.

C. Notice of the Motion and the opportunity for a hearing thereon were adequate and appropriate under the circumstances.

D. There were no objections to the Motion.

E. The relief requested is reasonable and in the best interests of the Debtor's estate and its creditors.

Accordingly, it is hereby ORDERED that:

1. The Motion is granted in its entirety and the Stipulation is hereby approved.

2. The Trust is authorized to place signage in form and amount, as determined in Forward Food's reasonable discretion, on the Premises prior to the Surrender Date.

3. The Trust shall retain the services of a licensed real estate agent (the "Agent") to advertise and market the Premises to potential lessees ("Potential Lessees").

4. Neither the Agent nor any Potential Lessee shall be allowed on the Premises without reasonable advance notice to the Debtor and at times mutually agreed upon by the Agent and the Debtor.

5. The Trust agrees that if it incurs any damages arising from or related to the Debtor's proposed transaction with Edner of Nevada, Inc., neither the Trust nor the Trustee shall file a claim against any person or entity without first having received prior authorization to do so from the Bankruptcy Court.

Dated: _____

Honorable Kevin J. Carey
Chief United States Bankruptcy Judge