

*Preliminary Draft  
Subject to Review and Approval of  
Benton County Attorney and  
Simmons Foods, Inc.*

**LEASE AGREEMENT  
BY AND BETWEEN  
BENTON COUNTY, ARKANSAS  
AND  
SIMMONS FOODS, INC.**

**Dated as of \_\_\_\_\_, 20\_\_**

**MITCHELL | WILLIAMS**

MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C.  
4206 SOUTH J.B. HUNT DRIVE, SUITE 200  
ROGERS, AR 72758

**LEASE AGREEMENT**

**TABLE OF CONTENTS**

**ARTICLE I  
DEFINITIONS**

Section 1.01. Definitions .....2  
Section 1.02. Use of Words.....4

**ARTICLE II  
ACQUISITION OF PROJECT**

Section 2.01. Acquiring of Project .....4  
Section 2.02. Itemization of Project Costs .....5  
Section 2.03. Certificate of Completion Date .....5

**ARTICLE III  
DEMISING CLAUSES, DURATION OF LEASE TERM  
AND RENTAL PROVISIONS**

Section 3.01. Demise of Leased Premises.....5  
Section 3.02. Term of Lease Agreement .....6  
Section 3.03. Basic Rent; Additional Rent; Absolute and Unconditional Obligation to  
pay Basic Rent and Additional Rent .....6  
Section 3.04. Method of Payment of Basic Rent and Additional Rent .....8  
Section 3.05. Home Office Payment Agreement .....8  
Section 3.06. Day for Payment.....8

**ARTICLE IV  
TAXES AND ASSESSMENTS (IMPOSITIONS)**

Section 4.01. Taxes and Assessments .....8  
Section 4.02. Leased Premises Exempt From Ad Valorem Taxes; Contest of  
Attempted Levy Authorized .....9

**ARTICLE V  
INSURANCE**

Section 5.01. Insurance Required.....9

**ARTICLE VI  
REPAIRS AND MAINTENANCE OF  
LEASED PREMISES AND ALTERATIONS**

Section 6.01. Lessee Obligated to Maintain Buildings and Improvements .....10  
Section 6.02. Lessee Has Right to Make Additions, Alterations and Changes.....10

Section 6.03.	Structural Improvements and Alterations Become Property of Lessor; Machinery, Equipment and Other Property Installed at Lessee’s Expense Remain Its Property With Right of Removal.....	10
Section 6.04.	Property on Leased Premises at Sole Risk of Lessee .....	11
Section 6.05.	Permitted Encumbrances .....	11

**ARTICLE VII  
USE OF LEASED PREMISES - COMPLIANCE WITH ORDERS, ETC.**

Section 7.01.	Permitted Use of Leased Premises and Compliance with Laws, Etc .....	11
Section 7.02.	Lessor’s Covenant Not to Impose Burdensome Laws, Etc .....	12
Section 7.03.	Lessor’s Covenant Not to Condemn .....	12

**ARTICLE VIII  
WORK PERFORMED BY LESSEE**

Section 8.01.	Obligations of Parties Concerning Work on Leased Premises and Obtaining Necessary Permits .....	12
---------------	----------------------------------------------------------------------------------------------------	----

**ARTICLE IX  
MECHANICS’ LIENS**

Section 9.01.	Lessee to Keep Leased Premises Free of Construction Liens.....	12
---------------	----------------------------------------------------------------	----

**ARTICLE X  
INDEMNIFICATION OF LESSOR**

Section 10.01.	Indemnification of Lessor .....	13
----------------	---------------------------------	----

**ARTICLE XI  
LESSOR MAY PERFORM LESSEE’S OBLIGATIONS**

Section 11.01.	Lessor May Perform Lessee’s Obligations; Lessee to Reimburse Lessor for Costs and Expenses Incurred in Doing So.....	13
----------------	-------------------------------------------------------------------------------------------------------------------------	----

**ARTICLE XII  
PUBLIC UTILITIES AND CHARGES**

Section 12.01.	Lessee to Pay Public Utility Charges .....	14
----------------	--------------------------------------------	----

**ARTICLE XIII  
INSPECTION OF LEASED PREMISES BY LESSOR**

Section 13.01.	Lessor to have Right of Inspection and Right to Perform Work Subject to Certain Restrictions .....	14
----------------	-------------------------------------------------------------------------------------------------------	----

**ARTICLE XIV  
DAMAGE AND DESTRUCTION**

Section 14.01. Lessee to Restore in Event of Damage or Destruction; Application of Insurance Moneys.....	14
Section 14.02. No Diminution in Lessee’s Obligation to Pay Basic Rent and Perform Other Covenants .....	15
Section 14.03. Lessee Not Obligated to Restore if Purchase Option Exercised or All Outstanding Bonds Paid .....	15

**ARTICLE XV  
CONDEMNATION**

Section 15.01. Rights of Parties in Event of Condemnation; Bonds Protected in Any Event.....	15
Section 15.02. Lessee Obligated to Continue Basic and Additional Rental Payments Until Condemnation Award Available.....	17
Section 15.03. Lessee’s Right to Exercise Purchase Option Continues in Force Notwithstanding Condemnation Proceedings .....	17
Section 15.04. Right of Lessee to Participate in Condemnation Proceedings.....	17

**ARTICLE XVI  
ASSIGNMENT**

Section 16.01. Assignment and Subletting Permitted But Lessee Not Relieved of Obligations; Assignment to Trustee Permitted .....	18
----------------------------------------------------------------------------------------------------------------------------------	----

**ARTICLE XVII  
PRIORITY OF LEASE**

Section 17.01. Lease Agreement Superior and Prior .....	18
---------------------------------------------------------	----

**ARTICLE XVIII  
REMEDIES ARE CUMULATIVE - NO IMPLIED WAIVER**

Section 18.01. Specific Relief; Remedies are Cumulative, No Implied Waiver.....	19
---------------------------------------------------------------------------------	----

**ARTICLE XIX  
DEFAULT PROVISIONS**

Section 19.01. Events of Default.....	19
Section 19.02. Remedies .....	20
Section 19.03. Remedies Not Exclusive .....	20
Section 19.04. Rental, Damages and Reletting Handled as Provided in Lease and Agreement and Indentures.....	21

**ARTICLE XX  
PURCHASE OPTION**

Section 20.01. Purchase Option .....21

**ARTICLE XXI  
NOTICES**

Section 21.01. Notices .....21

**ARTICLE XXII  
RECORDING**

Section 22.01. Recording .....22

**ARTICLE XXIII  
GENERAL**

Section 23.01. Arkansas Law Applicable .....22  
Section 23.02. Severability .....22  
Section 23.03. Captions for Reference Only .....22  
Section 23.04. Provisions Binding on Successors .....22  
Section 23.05. Consent Required for Modification .....22  
Section 23.06. Reasonable Consent .....23  
Section 23.07. Consolidation, Merger or Sale Permitted In Certain Circumstances .....23

**ARTICLE XXIV  
REMOVAL AND DISPOSAL OF PROPERTY**

Section 24.01. Lessee’s Rights and Obligations Concerning Removal and Disposal of  
Building Service Equipment .....23  
Section 24.02. Lessee’s Rights and Obligations Concerning Removal and Disposal of  
Project Machinery and Equipment .....24

**ARTICLE XXV  
RESERVED**

**ARTICLE XXVI  
REPRESENTATIONS AND WARRANTIES**

Section 26.01. Representations and Warranties of the Lessor .....25  
Section 26.02. General Representations and Warranties of the Lessee .....25

- EXHIBIT A** - MACHINERY, EQUIPMENT AND IMPROVEMENTS DESCRIPTION
- EXHIBIT B** - LEGAL DESCRIPTION
- EXHIBIT C** - OPTION AGREEMENT

## LEASE AGREEMENT

This LEASE AGREEMENT (the "Lease Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **BENTON COUNTY, ARKANSAS** ("Lessor" or "Issuer") and **SIMMONS FOODS, INC.**, a corporation organized under and existing by virtue of the laws of the State of Arkansas ("Lessee");

### WITNESSETH:

WHEREAS, Lessor is a duly organized and existing political subdivision, under the laws of the State of Arkansas with full and lawful power and authority to enter into this Lease Agreement, acting by and through its Quorum Court, in the public interest and for a public purpose in securing and developing industry, all pursuant to the provisions of Amendment 65 to the Constitution of the State of Arkansas and Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14-164-201 *et seq.* as amended (the "Act") and as interpreted by the Arkansas Supreme Court in *Wayland v. Snapp*, 233 Ark. 57, 334 S.W. 2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998); and

WHEREAS, the Issuer is authorized by the Act to issue the bonds for the purpose of financing the costs of acquiring, constructing and equipping lands, buildings or facilities for industrial enterprises as defined in the Act pursuant to a Trust Indenture dated as of \_\_\_\_\_, 20\_\_ (the "Indenture") by and between the Issuer and Regions Bank, as Trustee; and

WHEREAS, permanent financing of the Project Costs (as defined herein), necessary costs and expenditures incidental thereto and the cost of the issuance of bonds, is being furnished by the Issuer through issuance of its Taxable Industrial Development Revenue Bonds (Simmons Foods, Inc. Project) Series 20\_\_ (the "SFI Bonds" or the "Bonds") and its Taxable Industrial Development Revenue Bonds (Simmons Prepared Foods, Inc. Project) Series 20\_\_ (the "SPF Bonds"); and

WHEREAS, the Lessor and the Lessee desire to enter into this Lease Agreement in connection with the issuance of the Bonds under the Indenture; and

WHEREAS, Lessee is authorized under its Articles of Incorporation and Bylaws and under the laws of the State of its organization to enter into this Lease Agreement and to perform all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement; and

WHEREAS, Lessor is authorized by the Act and under the laws of the State to enter into this Lease Agreement and to perform all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement;

WHEREAS, Lessee is not prohibited under the terms of any outstanding trust indenture, deeds of trust, mortgages, loan agreements or other instruments or evidences of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease

Agreement (or if so, a proper waiver or consent has been obtained) and affirmatively so represents to Lessor; and

WHEREAS, the industrial undertaking will consist of the acquisition, construction, and equipping of an industrial facility within the corporate boundaries of the Issuer, including, but not limited to, acquisition of land and/or leasehold rights, construction of buildings, infrastructure and improvements, and acquisition and installation of equipment for the manufacture, preparation, processing, and packaging of poultry products to be located at the southeast corner of the intersection of Arkansas Hwy 59 and Y City Road in Benton County, Arkansas, all as financed with the proceeds of the Bonds (the “SFI Project”) which SFI Project shall otherwise exclude building, machinery and equipment financed with the proceeds of the SPF Bonds; and

WHEREAS, contemporaneous with the issuance of the Bonds and the execution and delivery of this Lease Agreement, the Issuer is issuing the SPF Bonds and entering into a lease agreement with Simmons Prepared Foods, Inc. for the purpose of financing the SPF Project (as defined in the Indenture) and such SPF Project will not be financed with proceeds of the SFI Bonds.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Lessor and Lessee, and in consideration of the mutual benefits and covenants herein contained, Lessor and Lessee agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.01. Definitions.** In addition to the words and terms otherwise defined in this Lease Agreement, the following words and terms as used in this Lease Agreement shall have the following meanings unless the context clearly indicates a different meaning or intent:

“Authorized Lessee Representatives” - The person or persons at the time designated to act on behalf of the Lessee by written certificate furnished to the Lessor containing the specimen signatures of any such person and signed on behalf of the Lessee. Such certificate may designate an alternate or alternates.

“Authorized Lessor Representative” - The person at the time designated to act in behalf of the Lessor by written certificate furnished to the Lessee containing the specimen signature of such person and signed on behalf of the Lessor. Such certificate may designate an alternate or alternates.

“Bond Fund” - The SFI Bond Fund created by Section 5.01 of the Indenture into which moneys are to be deposited and out of which disbursements are to be made for paying the principal of, premium, if any, and interest on the Bonds in the manner and for the purposes specified in the Indenture.

“Bonds” – The Benton County, Arkansas Taxable Industrial Development Revenue Bonds (Simmons Foods, Inc. Project) Series 20\_\_.

“Completion Date” – The date of completion of the acquisition, construction and equipment of the SFI Project as that date shall be determined by the Lessee and certified in writing to the Trustee.

“Home Office Payment Agreement” – The Home Office Payment Agreement between the Lessor, the Lessee, the Trustee, and the Purchaser evidencing the intent of the parties with respect to payment obligations under the Indenture, the bond purchase agreement between Lessor and the Purchaser relating to the Bonds, and this Lease Agreement.

“Lease Agreement” - This Lease Agreement between the Lessor and the Lessee.

“Lease Term” or “Term” - The term of the Lease Agreement set forth in Section 3.02.

“Leased Premises” – The land, facilities and related improvements covered by this Lease Agreement and defined in Section 3.01 hereof.

“Lessee”– Simmons Foods, Inc., an Arkansas corporation, and any assignee that assumes the obligations of the Lessee pursuant to the provisions of this Lease Agreement.

“Lessor” – Benton County, Arkansas.

“Loan” – The loan from the Lessor to the Lessee which permits Lessee to use Bond proceeds to finance Project Costs.

“Loan Fund” - The SFI Loan Fund created by Section 5.08 of the Trust Indenture into which the portion of the proceeds of the sale of the Bonds specified in Section 6.02 of the Indenture is to be deposited and out of which disbursements are to be made for Project Costs in the manner and for the purposes specified in Article VI of the Trust Indenture and Section 2.01 hereof.

“Option Agreement” – The Option Agreement attached hereto as Exhibit C.

“Permitted Encumbrances” - At any particular time (i) this Lease Agreement and Indenture, (ii) the encumbrances which affect the Leased Premises as set forth in a title commitment, (iii) utility, access and other easements and rights of way, restrictions, reversions and exceptions that the Lessee certifies will not interfere with or impair the operations being conducted in the SFI Project, (iv) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the SFI Project, and as do not materially impair the property affected thereby for the purpose for which it was acquired or held by the Lessor, (v) security interests, liens and mortgages in favor of creditors of Lessee as described in Section 6.05 hereof, and (vi) the Future Subleases, if any, as described in Section 6.05 hereof.

“Project Costs” - The costs of acquiring, developing, constructing and equipping the SFI Project described in Section 2.02 of this Lease Agreement.

“Purchaser” - The original purchaser of the Bonds, \_\_\_\_\_.

“Rent” or “Rents” - The Basic Rent (provided for in Section 3.03A(1) hereof) and the Additional Rent (provided for in Section 3.03B hereof ), unless the context clearly indicates both are not intended.

“SFI Project” - The acquisition of land and acquisition and installation of leasehold improvements and fixtures for the manufacture, preparation, processing, and packaging of poultry products and financed out of proceeds of the Bonds and leased under this Lease Agreement.

“State” - The State of Arkansas.

“Trust Indenture” or “Indenture” - The Trust Indenture to be executed between the Lessor and the Trustee separately securing the SFI Bonds and the SPF Bonds.

“Trustee” - The Trustee for the time being, whether original or successor, with the original Trustee being Regions Bank, a state banking corporation organized and operating under the laws of Alabama and authorized to exercise corporate trust powers in the State of Arkansas, and being duly qualified to accept and administer the trusts created by the Indenture, and having a corporate trust office located in Little Rock, Arkansas.

**Section 1.02. Use of Words.** Words of the masculine gender shall be deemed and construed to include the correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words shall include the plural, as well as the singular, number.

## **ARTICLE II ACQUISITION OF PROJECT**

**Section 2.01. Acquiring of Project.** The Lessee has undertaken and will complete the acquiring of a portion of the SFI Project and has executed, or will execute all necessary contracts therefor. The Lessee shall be reimbursed out of the Loan Fund for all qualifying expenditures made by it in connection with acquiring, developing, constructing and equipping its portion of the SFI Project in the manner set forth in Section 6.03 of the Indenture. Title to the machinery, equipment and facilities paid for with the proceeds of the Loan shall be transferred to the Lessor and become part of the Leased Premises described in Section 3.01. The same shall be subject to such liens or encumbrances as may be placed thereon by Lessee prior to such transfer.

Lessee, with the cooperation of Lessor when necessary, shall obtain all necessary approvals from any and all governmental agencies requisite to the acquisition, development, construction and equipping of its portion of the SFI Project, and its portion of the SFI Project shall be acquired, developed and constructed in compliance with all State and local laws, ordinances and regulations applicable thereto. All requests, approvals and agreements required on the part of Lessor and on the part of Lessee shall be in writing, signed by the authorized representative of the party making such request, granting such approval, or entering into such agreement. The Lessor and Lessee shall, concurrently with the delivery of this Lease Agreement, notify each other of the Authorized Lessor Representative and the Authorized Lessee Representative, respectively. It is agreed that each party may have more than one representative and may change the representative or representatives from time to time, with each

such change to be in writing forwarded to the other party. The representative of each party so designated shall be authorized to enter into and execute any contracts or agreements or to grant any approvals or to take any action for and on behalf of the party hereto represented by such person and the other party to this Lease Agreement shall be entitled to rely upon the representative as having full authority to bind the party hereto represented by such person.

**Section 2.02. Itemization of Project Costs.** Costs incurred by Lessor and Lessee under Section 2.01 hereof and in other sections of this Article II shall be referred to as “Project Costs” and it is agreed that if Project Costs exceed the available proceeds received from the sale of the Bonds, the Lessee shall pay the entire amount of any such excess. Project Costs, as that term is used in this Lease Agreement, include the costs incurred by Lessor, Lessee or others in acquiring, developing, constructing and equipping Lessee’s portion of the SFI Project and the costs of making the Loan and the issuance of the Bonds.

It is covenanted and agreed by Lessee that the proceeds of the Loan will be used for Project Costs.

Proceeds derived from the sale of the Bonds shall be deposited in the funds, handled, invested and disbursed in accordance with the provisions of the Trust Indenture. It is agreed that the Trust Indenture will be delivered and become effective after the delivery and effectiveness of this Lease Agreement and it is covenanted and agreed that so long as the Lessee is not in default under this Lease Agreement beyond any applicable notice and cure period, the Trust Indenture shall not be amended or supplemented without the approval of the Lessee of the amendment or supplement being made.

**Section 2.03. Certificate of Completion Date.** Promptly after the Completion Date, the Lessee shall submit to the Issuer and the Trustee a certificate, executed by an Authorized Lessee Representative, which shall specify the Completion Date and shall state that acquisition, construction and equipping of its portion of the SFI Project has been completed and the Project Costs have been paid or set aside for payment, except for any Project Costs which have been incurred but are not then due and payable, or the liability for the payment of which is being contested or disputed by the Lessee. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being.

### **ARTICLE III DEMISING CLAUSES, DURATION OF LEASE TERM AND RENTAL PROVISIONS**

**Section 3.01. Demise of Leased Premises.** Lessor, for and in consideration of the rents, covenants and agreements herein reserved, mentioned and contained, on the part of Lessee to be paid, kept and performed, agrees to and does hereby lease to Lessee, and Lessee agrees to, and does hereby lease, take and hire from Lessor, subject to the terms, conditions and provisions of this Lease Agreement expressed, the following:

The land, facilities and improvements described in **Exhibit A**, or elsewhere, which are located on the land described on **Exhibit B** (the “Real Property”),

including, without limitation, all replacements and substitutions which become the property of the Lessor, pursuant to the provisions of this Lease Agreement. If requested by Lessor in writing, such facilities and improvements shall be described in a ledger maintained by Lessee on the Leased Premises and shall be marked by an appropriate tag or other device as being the property of the Lessor; provided, however, the failure to so tag or mark shall not prevent any item of SFI Project machinery and equipment from becoming part of the SFI Project machinery and equipment if such machinery and equipment and other personal property is listed on the above described ledger in a manner sufficient to distinguish such machinery and equipment from Lessee's other property. Lessee shall not alter or remove such tags, nor shall Lessee permit or suffer any person to alter or remove such tags during the term of this Lease.

The properties described in this Section 3.01 are herein collectively referred to as the "Leased Premises."

TO HAVE AND TO HOLD the Leased Premises unto the Lessee for the term of this Lease Agreement as hereinafter set forth.

**Section 3.02. Term of Lease Agreement.** The initial term of this Lease Agreement shall commence as of \_\_\_\_\_, 20\_\_, and shall continue until \_\_\_\_\_, 20\_\_ and as long thereafter as the Lessee has failed to make all required payments of Basic Rent or Additional Rent.

**Section 3.03. Basic Rent; Additional Rent; Absolute and Unconditional Obligation to pay Basic Rent and Additional Rent.**

A. Basic Rent.

(1) Lessee covenants to pay to Lessor, in the manner hereinafter provided in Section 3.04, Basic Rent annually in the amounts necessary to pay interest and principal of all outstanding Bonds as the same become due under the provisions of the Indenture. Basic Rent shall be payable annually on \_\_\_\_\_ commencing on \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, or until the principal of and interest on the Bonds shall have been fully paid, or the required provision made for the payment thereof in accordance with the provisions of the Trust Indenture. In the event a Basic Rent payment date falls on a non-business day, the Basic Rent payment involved shall not be due and payable until the time of opening of business on the next succeeding day thereafter that is a business day.

(2) If, during any year while any of the Bonds shall be outstanding, the Basic Rent shall be insufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due, the amount of the insufficiency shall be paid by the Lessee as additional Basic Rent. If at any time the amount in the Bond Fund, hereinabove referred to and hereafter described in Section 3.04, is sufficient to pay in full the principal of, premium, if any, interest on, and, if

redemption is involved, redemption expenses in connection with, all of the outstanding Bonds, then no further Basic Rent shall be payable hereunder. If any moneys remain in the Bond Fund after payment or the making of provision for payment in accordance with the provisions of Article V of the Trust Indenture, of the principal of, premium, if any, interest on, and, if redemption is involved, redemption expenses in connection with, all outstanding Bonds, such remaining moneys shall be refunded to Lessee as excess Basic Rent.

B. Additional Rent. During the term hereof, Lessee shall pay as Additional Rent payable to the Lessor, any expenses which are required to be incurred by Lessor pursuant to the provisions of this Lease Agreement, the PILOT Agreement (as defined in Section 4.01), or the Trust Indenture the payment of which is not otherwise provided for by applicable provisions of this Lease Agreement or the Trust Indenture, and all impositions (as defined in Section 4.01), expenses, liabilities, obligations and other payments of whatever nature which Lessee has agreed to pay or assume under the provisions of this Lease Agreement; provided that, Lessor acknowledges that no such expenses are contemplated to be incurred on the date hereof and that Lessor will provide Lessee with notice of such expenses prior to being incurred by the Lessor. If at any time any amounts paid by Lessee as Additional Rent hereunder are or become in excess of the amounts required for the purposes for which they were paid, such excess amounts shall be refunded to the Lessee.

C. Payment. Until the principal of, premium, if any, and interest on the Bonds shall have been paid or provision for such payment shall have been made in accordance with the provisions of Article V of the Trust Indenture, Lessee's obligation to pay Basic Rent and Additional Rent shall be absolute and unconditional and the Basic Rent and the Additional Rent shall be payable on the dates or at the times specified, and without abatement or set-off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place, including, but without limiting the generality of the foregoing:

- (1) The unavailability of the Leased Premises, or any part thereof, for use by the Lessee at any time by reason of the failure to complete the SFI Project by any particular time or at all or by reason of any other contingency, occurrence or circumstances whatsoever;
- (2) Damage to or destruction of the Leased Premises, or any part thereof;
- (3) Legal curtailment of Lessee's use of the Leased Premises, or any part thereof;
- (4) Change in Lessor's legal organization or status;
- (5) Any assignment under the provisions of Article XVI including, without limitation, an assignment as part of a transaction involving merger,

consolidation or sale of all or substantially all of Lessee's assets, as provided in Section 16.01; subject, however, to the provisions of Section 16.01 that performance by an assignee or sublessee shall be considered as performance pro tanto by Lessee;

(6) Any termination of this Lease Agreement for any reason whatsoever, including, without limitation, termination under Article XIX;

(7) Failure of consideration or commercial frustration of purposes;

(8) Any default of the Lessor under this Lease Agreement, or any other fault or failure of the Lessor whatsoever.

Lessee covenants that it will not enter into any contract, indenture or agreement of any nature whatsoever which shall in any way limit, restrict or prevent Lessee from performing any of its obligations under this Lease Agreement.

**Section 3.04. Method of Payment of Basic Rent and Additional Rent.** Payments of Basic Rent shall be made to Lessor by Lessee remitting the same directly to the Trustee, for the account of Lessor, and shall be deposited by the Trustee in the SFI Bond Fund provided for in the Trust Indenture, to be used by the Trustee as provided in the Trust Indenture. Additional Rent specified in Section 3.03B shall be paid by Lessee remitting the same directly to the Lessor, in the case of the Lessor's expenses and charges, and either making direct payment in the case of impositions and other costs, expenses, liabilities and payments assumed and agreed to be paid by Lessee under this Lease Agreement, or reimbursing Lessor, if, pursuant to the provisions of this Lease Agreement, Trustee shall make payment thereof.

**Section 3.05. Home Office Payment Agreement.** Notwithstanding any provision of this Lease Agreement to the contrary, the Lessor, the Lessee, the Purchaser, the Trustee and any of their successors or assigns may enter into or accept the terms of a home office payment agreement providing for the making of all payments due under this Lease Agreement at a place and in a manner other than as provided in this Lease Agreement upon such conditions as shall be satisfactory to the parties thereto. Contemporaneous with the delivery of the Bonds and this Lease Agreement, the appropriate parties will enter into the Home Office Payment Agreement.

**Section 3.06. Day for Payment.** Whenever any payment to be made hereunder shall be stated to be due on a Saturday, Sunday or a day banks are closed under the laws of the State or the United States of America, such payment shall be made on the next business day.

#### **ARTICLE IV TAXES AND ASSESSMENTS (IMPOSITIONS)**

**Section 4.01. Taxes and Assessments.** Subject to the provisions of Section 4.02, Lessee shall pay all taxes and assessments, general and specific, if any, levied and assessed on the Leased Premises during the term, and all water and sewer charges, assessments, and other governmental charges and impositions whatsoever, foreseen and unforeseen, which if not paid when due, would impair the lien of the Trust Indenture on the Leased Premises or the security of the Bonds, encumber Lessor's title, or impair the right of the Lessor to receive the rent

hereunder or in any manner whatsoever diminish the amounts thereof, all of which are herein called "impositions;" provided, however, that any impositions relating to a fiscal period of the taxing authority, part of which extends beyond the term, shall be apportioned as of the expiration of the term. Lessor shall promptly forward to Lessee any notice, bill or other statement received by Lessor concerning any impositions. Lessee may pay any imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. Lessee may contest any imposition or the consent thereby by proper legal proceedings diligently conducted. It is anticipated that the only ad valorem taxes and assessments that may be paid by the Lessee relating to the Leased Premises will be controlled by the Payment in Lieu of Taxes Agreement dated \_\_\_\_\_, 20\_\_ (the "PILOT Agreement").

**Section 4.02. Leased Premises Exempt From Ad Valorem Taxes; Contest of Attempted Levy Authorized.** The Lessor covenants that it will not part with title to the Leased Premises or any part thereof during the term or take any other affirmative action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Leased Premises; provided, however, that Lessor shall not contest the exercise of the Purchase Option provided in Article XX pursuant to the terms thereof.

Lessor has represented to Lessee and the Lessor and the Lessee acknowledge that under their and other interpretations of present law, no part of the Leased Premises will be subject to ad valorem taxation by the State or by any political or taxing subdivision thereof, and these factors, among others, materially induced the Lessee to enter into this Lease Agreement. However, the Lessee will pay all impositions, if any, in connection with the Leased Premises, which may be lawfully levied or assessed upon the Leased Premises, when the same shall become due; provided, however, that Lessee may contest any such impositions and need not pay during the pendency of such contest, except that the Lessee shall in all events pay to prevent the Leased Premises from becoming subject to loss or forfeiture. The Lessor hereby agrees that it will cooperate with the Lessee in resisting any such impositions if and to whatever extent the Lessee may request. Lessee's compliance with the PILOT Agreement will constitute compliance with the terms of this Section 4.02 with regard to any ad valorem taxation affecting the Leased Premises.

## **ARTICLE V INSURANCE**

### **Section 5.01. Insurance Required.**

A. Lessee shall, at Lessee's sole cost and expense, keep the Leased Premises insured in a commercially reasonable manner and in commercially reasonable amounts.

B. At all times during the term, Lessee shall, at no cost or expense to Lessor, maintain or cause to be maintained:

- (i) Commercial General Liability insurance against claims for bodily injury or death occurring upon, in or about the Leased Premises, with such insurance to afford protection to the limits of not less than \$500,000 in respect of bodily injury or death to any one

person and to the limit of not less than \$1,000,000 in respect of any one accident; and

- (ii) Property damage insurance against claims for damage to property occurring upon, in or about the Leased Premises with such insurance to afford protection to the limit of not less than \$100,000 in respect of damages to the property of any one owner.

C. Copies or certificates of the insurance provided for by this Article or elsewhere in this Lease Agreement shall be delivered by Lessee to the Lessor upon the request of Lessor. And, in the case of expiring policies throughout the term, copies or certificates of any new or renewal policies shall be delivered by Lessee to Lessor upon the request of Lessor.

D. Reserved.

E. All insurance required by this Section 5.01 shall be effected with insurance companies qualified to do business in the State selected by the Lessee. The Lessee shall have the sole right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith.

## **ARTICLE VI REPAIRS AND MAINTENANCE OF LEASED PREMISES AND ALTERATIONS**

**Section 6.01. Lessee Obligated to Maintain Buildings and Improvements.** Lessee shall throughout the term, at no cost and expense to Lessor, maintain, or cause to be maintained the improvements now or at any time erected on the lands included in the Leased Premises.

**Section 6.02. Lessee Has Right to Make Additions, Alterations and Changes.** Lessee shall have the right from time to time to make additions, alterations and changes in or to the improvements constituting part of the Leased Premises and shall have the right to construct new improvements. Lessee shall maintain detailed records of the nature and cost of such additions, alterations and changes, which shall be available for inspection by Lessor's representatives and agents on reasonable notice. It is understood and agreed that in the event the Lessee makes any additions, alterations and changes in or to the improvements constituting part of the Leased Premises as authorized by this Section 6.02, the Lessee shall be under no obligation at the expiration of the term to restore the Leased Premises to their original condition prior to such additions, alterations or changes.

**Section 6.03. Structural Improvements and Alterations Become Property of Lessor; Machinery, Equipment and Other Property Installed at Lessee's Expense Remain Its Property With Right of Removal.** All structural improvements and alterations made on the Leased Premises by or on behalf of Lessee shall immediately upon completion thereof be and become the property of the Lessor without payment therefor by Lessor but subject to this Lease Agreement. Any machinery and equipment, trade fixtures, movable partitions, furniture and furnishings and other property installed at the expense of Lessee, without reimbursement from Bond proceeds, shall remain the property of the Lessee with the right of removal, whether

or not affixed and/or attached to the real estate, and the Lessee shall, so long as it is not in default hereunder, be entitled but shall not be obligated to remove the same, or any part thereof, during the term, or within a reasonable time thereafter, but Lessee shall at its own cost and expense repair any and all damages to the Leased Premises resulting from or caused by their removal therefrom.

**Section 6.04. Property on Leased Premises at Sole Risk of Lessee.** All property of any kind which may be on the Leased Premises (whether belonging to the Lessor, Lessee or to any third person) shall be at the sole risk of Lessee and those claiming by, through or under Lessee and Lessor shall not be liable to Lessee or to those claiming by, through or under Lessee or to said third persons for any injury, loss or damage to any person or property on the Leased Premises.

**Section 6.05. Permitted Encumbrances.** Lessor acknowledges that the Leased Premises will be subject to prior liens at the time title is transferred to the Lessor. Regardless of whether or not Lessor is permitted by Arkansas law to place a lien on the Leased Premises, the Lessor agrees that it is contractually prohibited from placing any lien or attempting to place any lien on the Leased Premises without the express written consent of Lessee which consent may be withheld in the sole discretion of Lessee, and any attempt by Lessor to impose a lien that is not consistent with this Section 6.05 or Arkansas law is void.

Lessor acknowledges that Lessee may sublease tracts within the Leased Premises pursuant to Section 16.01 of this Lease Agreement (each, a "Future Sublease"). Lessor agrees for the benefit of the lessee each sublessee under Future Subleases that if this Lease Agreement is terminated, or Lessor comes into possession of the Leased Premises without termination, then in either such event Lessor shall recognize the Future Subleases and the rights of the lessee and sublessees thereunder provided that such lessee and sublessees attorn to Lessor. Notwithstanding the foregoing, Lessor will not be (i) liable for any act or omission of Lessee, (ii) subject to any offsets or counterclaims that any such lessee or sublessee may have against Lessee, (iii) bound by any notices given to Lessee of which Lessor did not also receive notice, or (iv) obligated to commence or complete any construction or installation of any improvements or to make any contribution towards any construction or installation of any improvements relating to any Future Sublease. The liability of Lessor under any Future Sublease will continue only so long as Lessor is the owner of the property subject to any Future Sublease and such liability will not continue or survive with respect to claims accruing after further transfer of such interest.

## **ARTICLE VII**

### **USE OF LEASED PREMISES - COMPLIANCE WITH ORDERS, ETC.**

**Section 7.01. Permitted Use of Leased Premises and Compliance with Laws, Etc.** Subject to the following provisions of this Section 7.01, Lessor and Lessee agree that Lessee shall use the Leased Premises as a manufacturing facility and for any activities and purposes incidental thereto or in furtherance thereof or for any lawful purpose approved by Lessor. Lessor agrees and confirms that Lessee's intended use of the Leased Premises for the manufacture, preparation, processing, and packaging of poultry products and for any activities

and purposes incidental thereto or in furtherance thereof is a permitted use. Lessee shall during the term promptly comply with all valid statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or government authorities, now or hereafter applicable to the Leased Premises. Lessee shall, however, have the right to contest any of the foregoing, and if compliance therewith may legally be held in abeyance during such contest without incidence of any liens on the Leased Premises, Lessee may postpone compliance until final determination of such contest, provided such contest shall be prosecuted with due diligence; and even though a lien against the Leased Premises may be incurred by reason of such non-compliance, Lessee may nevertheless delay compliance therewith during contests thereof, provided Lessee, if required, furnishes Lessor reasonably satisfactory security against any loss by reason of such lien and effectively prevents foreclosure thereof. Lessee shall during the term comply with the mandatory requirement, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease Agreement.

**Section 7.02. Lessor's Covenant Not to Impose Burdensome Laws, Etc.** Lessor covenants that, to the full extent permitted by law, it will not attempt to impose upon the use or occupancy of the Leased Premises by the Lessee any laws, ordinances, rules or regulations more burdensome or restrictive than those in effect upon the date of execution of this Lease Agreement.

**Section 7.03. Lessor's Covenant Not to Condemn.** The Lessor covenants that during the Lease Term it will not take or condemn any part of the Leased Premises or attempt to do so.

## **ARTICLE VIII WORK PERFORMED BY LESSEE**

**Section 8.01. Obligations of Parties Concerning Work on Leased Premises and Obtaining Necessary Permits.** Lessee shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, alteration of or addition to the improvements constituting part of the Leased Premises unless Lessee shall have first procured and paid for all requisite municipal and other governmental permits and authorizations. Lessor shall join in the application for any such permit or authorization whenever required, but Lessee shall indemnify and hold Lessor harmless against and from all costs and expenses which may be thereby incurred by Lessor. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the reasonable requirements, rules and regulations of all insurers under the policies required to be carried by the provisions of this Lease Agreement.

## **ARTICLE IX MECHANICS' LIENS**

**Section 9.01. Lessee to Keep Leased Premises Free of Construction Liens.** If any lien shall be filed against the interest of Lessor or Lessee in the Leased Premises or asserted against any rents payable hereunder, by reason of work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises at the request or with the

permission of Lessee, or anyone claiming under Lessee, Lessee shall, within thirty (30) days after receipt of notice of the filing thereof or the assertion thereof against such rents, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof against the Leased Premises or such rents, by contest, payment, deposit, bond, insurance, order of Court or otherwise, the actual method being within Lessee's discretion. Nothing contained in this Lease Agreement shall be construed as constituting the express or implied consent to or permission of Lessor for the performance of any labor or services or the furnishing of any materials that would give rise to any such lien against Lessor's interest in the Leased Premises.

## **ARTICLE X INDEMNIFICATION OF LESSOR**

**Section 10.01. Indemnification of Lessor.** Commencing with the completion of the SFI Project or when the Lessee takes possession if prior to the completion, Lessee shall and agrees to indemnify and save Lessor and the Trustee and to hold them harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Leased Premises during the term, and against and from all claims arising during the term from (a) any condition of the Leased Premises, (b) any breach or default on the part of Lessee in the performance of any of its obligations under this Lease Agreement, (c) any act or negligence of Lessee or of any of its agents, contractors, servants, employees or licensees, or (d) any act or negligence of any assignee or sublessee of Lessee, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of Lessee. Lessee shall indemnify and save Lessor and the Trustee harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from any of them, Lessee shall defend them or either of them in any such action or proceeding. Provided, however, Lessee has no obligation related to and shall not indemnify or hold harmless the Lessor or Trustee for any claims resulting from the negligence or willful misconduct of either the Lessor or Trustee.

## **ARTICLE XI LESSOR MAY PERFORM LESSEE'S OBLIGATIONS**

**Section 11.01. Lessor May Perform Lessee's Obligations; Lessee to Reimburse Lessor for Costs and Expenses Incurred in Doing So.** If Lessee shall fail to keep or perform any of its obligations as provided in this Lease Agreement in respect of (a) maintenance of insurance; (b) payment of impositions; (c) repairs and maintenance of the Leased Premises; (d) compliance with legal or insurance requirements; (e) keeping the Leased Premises lien free; (f) completion of construction and equipping of the Leased Premises; or (g) making of any other payment or performance of any other obligations, then Lessor may (but shall not be obligated to do so), upon the continuance of such failure on Lessee's part for thirty (30) days after written notice to Lessee, or such longer period following notice as may be reasonably required to cure such failure, provided that corrective action is commenced within thirty (30) days thereafter and diligently pursued, and without waiving or releasing Lessee from any obligation, and as an additional but not exclusive remedy, make any such payment or perform any such obligation (not under circumstances where such payment or performance would defeat any rights, herein specifically given to Lessee, to withhold such performance or to contest such obligation to the

extent herein provided), and all sums so paid by Lessor and all necessary incidental costs and expenses incurred by any of them in making such payment or performing such obligation shall be deemed Additional Rent and shall be paid to Lessor on demand, or at Lessor's option may be added to any installment of Basic Rent thereafter falling due, and if not so paid by Lessee, Lessor shall have the same rights and remedies as in the case of default by Lessee in the payment of the Basic Rent.

## **ARTICLE XII PUBLIC UTILITIES AND CHARGES**

**Section 12.01. Lessee to Pay Public Utility Charges.** Lessee agrees to pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to or for the Lessee upon or in connection with the Leased Premises throughout the term of this Lease Agreement, and to indemnify Lessor and save it harmless against any liability or damage on such account.

## **ARTICLE XIII INSPECTION OF LEASED PREMISES BY LESSOR**

**Section 13.01. Lessor to have Right of Inspection and Right to Perform Work Subject to Certain Restrictions.** Lessee shall permit Lessor, by its authorized representative, to enter the Leased Premises at all reasonable times and on reasonable prior written notice during usual business hours for the purpose of inspection, and for the performance of any work therein made necessary by reason of Lessee's default under any of the provisions of this Lease Agreement. Provided, however, Lessor's ability to perform work shall be limited to repair of an unsafe condition that has not been remedied by Lessee after receipt of written notice by Lessee from Lessor and expiration of any cure period. Lessor may, during the progress of any such work, keep and store on the Leased Premises all necessary materials, supplies and equipment and shall not be liable for reasonable inconvenience, annoyance, disturbance, loss of business or other damage to Lessee suffered by reason of the performance of any such work or the storage of materials, supplies and equipment. Such inspection and repair shall be conducted in a manner consistent with the prior and on-going practices and procedures of the Lessee and Lessor in the conduct of their normal affairs.

## **ARTICLE XIV DAMAGE AND DESTRUCTION**

**Section 14.01. Lessee to Restore in Event of Damage or Destruction; Application of Insurance Moneys.**

A. Lessee covenants and agrees that in the event of damage to or destruction of the Leased Premises, or any part thereof, by fire or other casualty, the Lessee shall immediately notify the Lessor and shall promptly proceed, at no cost and expense to Lessor, to restore, repair, rebuild or replace the Leased Premises as nearly as possible to the condition they were in immediately prior to such damage or destruction, subject to such alterations as Lessee may elect to make in conformity with the provisions of Article VI hereof. Any item of machinery and equipment acquired as a replacement hereunder, or any item acquired, in whole or in part, out of

insurance proceeds under this Article XIV, whether or not a replacement of or substitute for any item of damaged or destroyed machinery and equipment, if the insurance proceeds with which such item of machinery and equipment was purchased, in whole or in part, were derived from insurance on property which was part of the SFI Project machinery and equipment, owned by Lessor, shall be and become the property of Lessor and shall be part of the SFI Project machinery and equipment and subject to this Lease Agreement. Such restoration, repairs, replacements or rebuilding shall be commenced promptly and prosecuted with reasonable diligence.

B. The Lessor shall have no responsibility as to the application by the Lessee of any insurance proceeds.

If the insurance money shall be insufficient to pay all costs of the restoration, the Lessee shall pay the deficiency and shall nevertheless proceed to complete the restoration and pay the cost thereof. Any balance of the insurance proceeds remaining over and above the cost of the restoration shall be retained by the Lessee.

**Section 14.02. No Diminution in Lessee's Obligation to Pay Basic Rent and Perform Other Covenants.** Lessee's obligation to make payment of the Basic Rent and all other covenants on the part of Lessee to be performed shall not be affected by any such destruction or damage, and Lessee hereby waives the provisions of any statute or law now or hereafter in effect contrary to such obligation of Lessee as herein set forth, or which releases Lessee therefrom.

**Section 14.03. Lessee Not Obligated to Restore if Purchase Option Exercised or All Outstanding Bonds Paid.** Notwithstanding the provisions of the foregoing sections of this Article XIV, Lessee shall not be required to repair, restore, replace or rebuild the Leased Premises, or any part thereof, (a) if Lessee, pursuant to the provisions of Article XX, shall elect to purchase the Leased Premises and shall proceed to pay the specified purchase price or (b) if the full amount necessary under the provisions of the Trust Indenture to pay or redeem all outstanding Bonds shall have been paid and Lessee has not elected to purchase the Leased Premises or (c) if the value of the SFI Project without restoration is at least equal to the outstanding principal amount of the Bonds. If Lessee shall so elect to purchase, the proceeds of all insurance may be used as part of the purchase price and upon the request of Lessee shall be so applied. If there be any excess insurance proceeds over and above the amount necessary to pay the purchase price, such excess shall be paid to and shall belong to the Lessee. If Lessee shall have paid the full amount necessary to pay or redeem all outstanding Bonds, any insurance proceeds shall be paid to and shall belong to Lessee.

## **ARTICLE XV CONDEMNATION**

**Section 15.01. Rights of Parties in Event of Condemnation; Bonds Protected in Any Event.**

A. If during the term of this Lease Agreement title to all or substantially all of the Leased Premises shall be taken or condemned by a competent authority for any public

use or purpose, the net amount awarded as damages or paid as a result of such taking (being the gross award less attorneys' fees and other expenses and costs incurred in the condemnation proceedings, hereinafter referred to as the "net award") shall be used on the next redemption date to pay in accordance with the provisions of the Trust Indenture, the entire principal, premium, if any, and interest on all Bonds outstanding under the Trust Indenture. If the net award together with the amount then in the Bond Fund, shall be insufficient to pay in full, on the next redemption date, the amount necessary to pay all principal, premium, if any, interest, and all other costs of redemption, on all Bonds outstanding under the Trust Indenture (all of which, for purposes of this Section, shall be called "total bond redemption expense"), Lessee agrees to pay, promptly upon payment of the net award, as Additional Rent hereunder, the amount by which the total bond redemption expense shall exceed the net award plus the amount then on deposit in the Bond Fund and available for payment and redemption of the Bonds outstanding under the Trust Indenture. For purposes of this Article and of Article XX, "title to all or substantially all of the Leased Premises shall be taken or condemned" shall be deemed to mean a taking of all of the Leased Premises or a taking of such substantial portion of the Leased Premises that the Lessee, as determined by the Lessee in its sole discretion, cannot reasonably operate the remainder in substantially the same manner as before. In the event the net award, together with any available amount in the Bond Fund, shall be in excess of the amount necessary to pay the total bond redemption expense, such excess shall belong to and be paid to the Lessee.

B. If less than substantially all of the Leased Premises shall be taken or condemned by a competent authority for any public use or purpose, neither the term nor any of the obligations of either party under this Lease Agreement shall be affected or reduced in any way, and

- (i) Lessee shall proceed to repair, rebuild and replace the remaining part of the Leased Premises as nearly as possible to the condition existing prior to such taking, to the extent that the same may be feasible, subject to the right on the part of the Lessee to make alterations which, in the reasonable judgment of Lessee (and in accordance with Article VI hereof), will improve the efficiency of the Leased Premises for the purposes of their intended use under this Lease Agreement; and
- (ii) The net award shall be paid to the Lessor and by it to the Lessee, and the Lessor hereby assigns the same to the Lessee for the use of the Lessee in repairing, rebuilding and replacing as provided in (i) above. The net award shall be transferred to the Lessee in the same manner as is provided in Section 14.01 with respect to insurance proceeds, provided that the words "insurance proceeds" there referred to shall for purposes of this subparagraph (ii) refer to "net award." If the net award is in excess of the amount necessary to repair, rebuild and replace as specified in (i) above, such excess shall be deposited in the Bond Fund or if there are no Bonds outstanding under the Trust Indenture the excess shall belong to

and shall be paid to the Lessee. If the net award is less than the amount necessary for the Lessee to repair, rebuild and replace as set forth in (i) above, the Lessee shall nevertheless complete the repair, rebuilding and replacement work and pay the cost thereof to the extent not covered by the net award.

C. In the event of a taking under either A or B above, the Lessee shall have the right to participate in and to submit proof in the condemnation proceedings and to receive any award (by way of negotiation, settlement or judgment) which may be made for damages sustained by Lessee by reason of the condemnation; provided, however, nothing in this subsection C shall be construed to diminish or impair in any way Lessee's obligation under subsection A of this Section 15.01 to pay as Additional Rent the amount of any insufficiency of the net award and the funds in the Bond Fund to pay the total bond redemption expense as therein defined.

D. If the temporary use of the whole or any part of the Leased Premises shall be taken by right of eminent domain, this Lease Agreement shall not be thereby terminated and the parties shall continue to be obligated under all of its terms and provisions and Lessee shall be entitled to receive the entire amount of the award made for such taking, whether by way of damages, rent or otherwise.

**Section 15.02. Lessee Obligated to Continue Basic and Additional Rental Payments Until Condemnation Award Available.** In the event of a taking of all or substantially all of the Leased Premises as provided in Section 15.01A, the Lessee agrees to continue to make payment of the Basic Rent and the Additional Rent until the condemnation award shall be actually received by the Lessor.

**Section 15.03. Lessee's Right to Exercise Purchase Option Continues in Force Notwithstanding Condemnation Proceedings.** Notwithstanding the fact that all or any part of the Leased Premises shall be taken by right of eminent domain, Lessee shall have the right to exercise the Purchase Option granted to it by the provisions of Article XX hereof and the foregoing provisions of this Article shall be construed in the light of the effect of the Purchase Option so exercised by Lessee. In the event of the exercise of the Purchase Option under Article XX and payment of the required purchase price, whether before or after such taking, the net award shall belong to Lessee.

**Section 15.04. Right of Lessee to Participate in Condemnation Proceedings.** Lessee shall have the sole right, proceeding in the name of the Lessor, to handle the defense of any condemnation proceeding pertaining to or affecting the Leased Premises or to handle the prosecution of any proceeding in connection with a condemnation, pertaining to or affecting the Leased Premises, and shall have the sole right, proceeding in the name of the Lessor, to negotiate any settlement or compensation for a taking pertaining to or affecting the Leased Premises and the Lessor agrees that it will cooperate with the Lessee in such manner as the Lessee requests with the end in view of obtaining the maximum possible amount justifiable as damages for the taking. The Lessee shall have the right, proceeding in its own name, to participate in the condemnation proceedings and to receive any award (by way of negotiation,

settlement or judgment) which may be made for damages sustained by Lessee by reason of the condemnation.

## **ARTICLE XVI ASSIGNMENT**

### **Section 16.01. Assignment and Subletting Permitted But Lessee Not Relieved of Obligations; Assignment to Trustee Permitted.**

A. With the written consent of Lessor, which consent may not be unreasonably withheld, Lessee may assign this Lease Agreement or sublet the Leased Premises or parts thereof provided that no such assignment or subletting and no dealings or transactions between the Lessor and any sublessee or assignee shall relieve the Lessee of any of its obligations under this Lease Agreement and Lessee shall remain as fully bound as though no assignment or subletting had been made, and performance by any assignee or sublessee shall be considered as performance pro tanto by Lessee; provided, however, that Lessee may assign this Lease Agreement, and be thereby relieved of further obligation hereunder, in connection with a transaction involving merger, consolidation or sale as permitted under Section 23.07 provided the requirements thereof are met. Except for the sublease approved by Lessor prior to the execution of this Lease Agreement, the Lessee shall give sixty (60) days prior notice of such assignment or subletting to the Lessor. Lessee may sell or assign its interest in this Lease Agreement and be relieved of its obligations under this Lease in situations other than those described in Section 23.07, but only with the written consent of Lessor.

B. The Lessor shall not assign, encumber, sell or dispose of all or any part of its rights, title and interest in and to the Leased Premises and this Lease Agreement, except to the Lessee or a creditor of Lessee to which Lessee has granted a security interest in either the Leased Premises or the Lease Agreement in accordance with the provisions of this Lease Agreement, but subject to the provisions of Article XVII hereof, without the prior written consent of the Lessee. Lessor may assign its interests in the Lease Agreement to the Trustee.

C. Anything in this Section 16.01 to the contrary notwithstanding, Lessee may sublease without Lessor's consent up to fifty percent (50%) of the Leased Premises, with such percentage based on value, in one or more subleases, in each case following written notice to the Lessor or otherwise in compliance with Section 6.05 hereof.

## **ARTICLE XVII PRIORITY OF LEASE**

**Section 17.01. Lease Agreement Superior and Prior.** This Lease Agreement (and any amendment or supplement hereto executed in accordance with and pursuant to the provisions of this Lease Agreement) and the estate of Lessee hereunder are and shall continue to be superior and prior to the Trust Indenture (and all supplements thereto).

**ARTICLE XVIII  
REMEDIES ARE CUMULATIVE - NO IMPLIED WAIVER**

**Section 18.01. Specific Relief; Remedies are Cumulative, No Implied Waiver.**

Lessor and Lessee shall each be entitled to specific performance, and injunctive or other appropriate equitable relief for any breach or threatened breach of any of the provisions of this Lease Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. The specific remedies provided for in this Lease Agreement are cumulative and are not exclusive of any other remedy. The failure of either party to insist in any one or more cases upon strict performance shall not be construed as a waiver or relinquishment for the future. No acceptance of rents with knowledge of any default shall be deemed a waiver of such default.

**ARTICLE XIX  
DEFAULT PROVISIONS**

**Section 19.01. Events of Default.** (a) The following shall be “events of default” under this Lease Agreement and the terms “event of default” or “default” shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

A. Failure by the Lessee to pay the rents or any part thereof when due so as to prevent timely payment on the Bonds.

B. Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection A of this Section, (i) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Lessor unless the Lessor shall agree in writing to an extension of such time prior to its expiration or (ii) for such longer period as may be reasonably necessary to remedy such default provided that the Lessee is proceeding with reasonable diligence, to remedy the same.

C. The dissolution of the Lessee or the filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Premises, or the commission by the Lessee of any act of bankruptcy, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under similar act which may hereafter be enacted. The term “dissolution or liquidation of the Lessee,” as used in this subsection, shall not be construed to include the cessation of the corporate or limited liability company existence of the Lessee resulting either from a merger or consolidation of the Lessee into or with another corporation or other entity or a dissolution or liquidation of the Lessee following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in this Lease Agreement.

(b) In the event that Lessee has granted a leasehold mortgage to any third party, the leasehold mortgagee shall have the right to cure any of the above-referenced defaults. Lessor shall provide timely written notice of all defaults to all leasehold mortgagees at the addresses provided by such leasehold mortgagees to Lessor. Such notices shall state the term of the cure period which shall not be less than the greater of ten (10) business days or the cure period granted to Lessee hereunder or otherwise.

**Section 19.02. Remedies.** Whenever any event of default shall happen and then be continuing, the Lessor may take any of the following remedial steps:

A. The Lessor may, at its option, declare all installments of rent payable for the remainder of the term to be immediately due and payable, whereupon the same shall become immediately due.

B. The Lessor may re-enter and take possession of the Leased Premises without terminating this Lease Agreement, and sublease the Leased Premises on commercially reasonable terms for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by the Lessee hereunder.

C. The Lessor may terminate the term, exclude the Lessee from possession of the Leased Premises and use its best efforts to lease the Leased Premises to another for the account of the Lessee, holding the Lessee liable for all rent and other payments due up to the effective date of any such leasing.

D. The Lessor shall have access to inspect, examine and make copies of the books and records relating to the Leased Premises.

E. The Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the rent and any other amounts payable by Lessee hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Trust Indenture.

Notwithstanding the above, before exercising any remedy granted therein, Lessor shall by written notice, grant Lessee the option to cure any default for a period of thirty (30) days, and Lessor agrees that it shall contemporaneously provide a copy of any such notice and the opportunity to cure a default to all leasehold mortgagees.

**Section 19.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time as often as may be deemed expedient.

**Section 19.04. Rental, Damages and Reletting Handled as Provided in Lease and Agreement and Indentures.** The foregoing provisions of this Article relating to the receipt of moneys by Lessor as the result of an acceleration, upon a reletting or otherwise are each to be construed as providing that all such payments by Lessee or others shall be handled as provided in this Lease Agreement and in the Trust Indenture.

**ARTICLE XX  
PURCHASE OPTION**

**Section 20.01. Purchase Option.** The Lessee shall have the right and option to purchase all or any part of the Leased Premises at any time (the "Purchase Option"). Contemporaneous with the execution of this Lease Agreement, Lessee and Lessor shall execute the Option Agreement attached hereto and incorporated herein as Exhibit C. Lessee and Lessor agree and acknowledge that the consideration for the Purchase Option includes, not only the stated consideration within the Option Agreement, but also the mutual benefits and covenants of this Lease Agreement, the issuance, purchase and repayment of the SFI Bonds, and the accomplishment of the Lessee's portion of the SFI Project, including, but not limited to, the SFI Project's construction and operation by the Lessee.

**ARTICLE XXI  
NOTICES**

**Section 21.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid addressed as set forth herein. The parties may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

If intended for Lessee: Simmons Prepared Foods, Inc.  
601 N. Nico Street  
Siloam Springs, AR 72761  
Attention: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If intended for Issuer: Benton County, Arkansas  
215 E. Central Avenue  
Bentonville, AR 72712  
Attn: County Judge

With a copy to: George Spence, County Attorney  
Clark & Spence  
121 S. Main Street  
Bentonville, AR 72712

Phone: (479) 273-2777

E-mail: [george@clarkandspence.com](mailto:george@clarkandspence.com)

Any party may change the address and the name of addressee to which subsequent notices are to be sent by notice to the other parties given as aforesaid.

## **ARTICLE XXII RECORDING**

**Section 22.01. Recording.** A Memorandum of this Lease Agreement and every assignment and modification thereof shall be recorded in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, upon the request of Lessee or Lessor.

## **ARTICLE XXIII GENERAL**

**Section 23.01. Arkansas Law Applicable.** This Lease Agreement shall be construed and enforced in accordance with the laws of the State. Wherever in this Lease Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation. All factual representations set forth in the whereas clauses of this Lease Agreement shall be construed as express representations and covenants on the part of the party to which each such recital is applicable to the same extent as though set forth as an express representation and covenant by that party.

**Section 23.02. Severability.** If any provision of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Lease Agreement and the application of its provisions to persons or circumstances other than those as to which it has been determined to be invalid or unenforceable, shall not be affected thereby, and each provision of this Lease Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

**Section 23.03. Captions for Reference Only.** The Article captions in this Lease Agreement are for convenience and reference only and shall in no way define, limit or describe the scope or intent of this Lease Agreement or any part thereof, or in any wise affect this Lease Agreement and shall not be considered in any construction thereof.

**Section 23.04. Provisions Binding on Successors.** The provisions of this Lease Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, assigns and sub-lessees (it being understood that assignments and subleasing are governed by the provisions of Article XVI hereof).

**Section 23.05. Consent Required for Modification.** It is agreed that the Lessor and the Lessee shall not alter, modify or amend any of the terms of this Lease Agreement except by mutual written agreement with the consent of the Trustee as required by the Indenture.

**Section 23.06. Reasonable Consent.** In each instance in this Lease Agreement where the consent or approval of Lessor is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

**Section 23.07. Consolidation, Merger or Sale Permitted In Certain Circumstances.** Notwithstanding any other provision of this Lease Agreement to the contrary, the Lessee will maintain its existence as a limited liability company and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or other entity or permit one or more other corporations or other entities to consolidate with or merge into it; provided, however, the Lessee may consolidate with or merge into another domestic corporation or other entity (that is a corporation or other entity organized and existing under the laws of one of the states of the United States of America), or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another domestic corporation or other entity all or substantially all of its assets as an entirety and thereafter dissolve on the condition that such surviving, resulting or transferee corporation or other entity shall expressly assume in writing all of the obligations of the Lessee contained in this Lease Agreement and that the net tangible assets of the other corporation or other entity after the consolidation, merger or sale be at least equal to the net tangible assets of Lessee immediately prior to such consolidation, merger or sale and qualifies to do business in the State. In the event of such consolidation, merger or sale, as permitted by this Section, and the assumption by the surviving, resulting or transferee corporation or other entity of the obligations hereof, the Lessee shall be relieved of all further obligations hereunder. As used herein, “net tangible assets” means all assets of the corporation or other entity (except there shall not be included goodwill) less all liabilities. Sixty (60) days prior to any such consolidation, merger or sale, the Lessee shall give notice thereof to Lessor.

## **ARTICLE XXIV REMOVAL AND DISPOSAL OF PROPERTY**

**Section 24.01. Lessee’s Rights and Obligations Concerning Removal and Disposal of Building Service Equipment.** The Lessee may, provided Lessee is not in default in the payment of Basic Rent or Additional Rent as required by the provisions of this Lease Agreement and has not received notice of any other default on its part hereunder, remove, free of any right or claim of Lessor, any building service equipment or other improvements (hereinafter defined), subject however, in all cases to the following:

A. Except as provided in Section 24.02, building service equipment or other improvements may be so removed upon the substitution thereof, then or theretofore, by Lessee of other building service equipment or other improvements of a utility or value at least equal to that, at the time of removal, of the building service equipment removed;

B. Lessee shall pay all the costs and expenses of any such removal.

The term “building service equipment” is intended to refer to such things as are affixed to or incorporated in a building for its operation, such as boilers, pumps, tanks, sprinklers, lighting equipment and wiring, heating, plumbing and ventilating equipment, elevators, escalators,

refrigerating, air conditioning and air cooling equipment, and items similar in general to any of the foregoing.

**Section 24.02. Lessee's Rights and Obligations Concerning Removal and Disposal of Project Machinery and Equipment.** The Lessor and the Lessee recognize that after the SFI Project machinery and equipment is installed portions thereof may become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Leased Premises. The Lessor shall not be under any obligation to renew, repair or replace any such inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary items of SFI Project machinery and equipment. In any instance where the Lessee in its sound discretion determines that any items of SFI Project machinery and equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Leased Premises,

A. The Lessee may remove such items of SFI Project machinery and equipment from the Leased Premises, and (on behalf of the Lessor) sell, trade-in, exchange or otherwise dispose of them without any responsibility or accountability to the Lessor therefor, provided that the Lessee substitute (either by direct payment of the cost thereof or by advance to the Lessor of the funds necessary there for, as hereinafter provided) and install anywhere in the Leased Premises other machinery or equipment having equal or greater utility (but not necessarily the same function) in the operation of the Leased Premises and provided further that such removal and substitution shall not impair the operating unit of the Leased Premises, and all such substituted machinery or equipment shall be the sole property of the Lessor, shall be and become a part of the SFI Project machinery and equipment subject to this Lease Agreement and shall be held by the Lessee on the same terms and conditions as items originally comprising SFI Project machinery and equipment; or

B. The Lessee may remove such items of SFI Project machinery and equipment from the Leased Premises and sell, trade-in or exchange them on behalf of the Lessor, either to itself or to another, or scrap them (in whole or in part), without being required to substitute and install in the Leased Premises other items of machinery or equipment in lieu thereof.

To the extent necessary to comply with the Trust Indenture and/or the PILOT Agreement, the Lessee will promptly report such removals, substitutions, sales and other dispositions of items of SFI Project machinery and equipment to the Lessor and will execute and deliver to the Lessor such documents as may from time to time be requested to confirm the title of the Lessor (subject to this Lease Agreement) to any items of machinery and equipment that under the provisions of this section are to become a part of SFI Project machinery and equipment. The Lessee will pay any costs (including counsel fees) incurred in subjecting to the lien of the Trust Indenture any items of machinery or equipment that under the provisions of this section are to become a part of SFI Project machinery and equipment. The Lessee will not remove or permit the removal of any of SFI Project machinery and equipment from the Leased Premises except in accordance with the provisions of this Section.

**ARTICLE XXV  
RESERVED**

**ARTICLE XXVI  
REPRESENTATIONS AND WARRANTIES**

**Section 26.01. Representations and Warranties of the Lessor.** The Lessor represents and warrants as follows:

A. The Lessor is a body corporate and politic, and is authorized pursuant to the provisions of the Act to enter into the transactions contemplated by this Lease Agreement.

B. The Lessor has full power and authority to enter into the transactions contemplated by this Lease Agreement and the Trust Indenture and to carry out its obligations hereunder and thereunder.

C. The Lessor is not in default under any provisions of the laws of the State material to the performance of its obligations under this Lease Agreement.

D. The Lessor is authorized by the Act to execute and deliver this Lease Agreement and the Trust Indenture and by proper action has duly authorized the execution and delivery hereof and thereof and as to the Lessor, this Lease Agreement and the Indenture are valid and legally binding and enforceable in accordance with their terms, except to the extent that the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, (ii) general principles of equity, and (iii) the exercise of judicial discretion in appropriate cases.

E. The loan of the proceeds of the Bonds for the financing or refinancing of the acquisition, construction, and equipping of the SFI Project by the Lessee, as provided by this Lease Agreement, will further the purposes of the Act.

**Section 26.02. General Representations and Warranties of the Lessee.** The Lessee represents and warrants as follows:

A. The Lessee is duly organized and existing under the laws of the State of Arkansas and has full power to enter into this Lease Agreement.

B. The making and performance of this Lease Agreement has been duly authorized by all necessary actions and does not contravene any law, regulation or decree or any contractual restriction binding on the Lessee.

C. Except for any Future Leases permitted by Section 6.05 and the lease between the Issuer and Simmons Prepared Foods, Inc., the Lessee is or will be the only Lessee of the SFI Project. Except for the Permitted Encumbrances, the SFI Project is free and clear of all mortgages, liens, charges and encumbrances, which constitute a lien or

charge against its property, real or personal, tangible or intangible (except for such liens, if any, as will be waived or discharged at the time of the execution of this Lease Agreement).

D. The making and performance of this Lease Agreement, and each and every other document required to be delivered, has received or will receive in due course all necessary governmental approvals, and does not contravene any law, regulation or decree or any contractual restriction (other than those which shall be waived or discharged at the time of the execution of this Lease Agreement) binding on or affecting the Lessee.

E. This Lease Agreement, any other security documents and each and every other document required to be delivered under Article II hereof, when duly executed and delivered for value, will be legal and binding obligations of the Lessee, enforceable in accordance with their respective terms.

F. Except as otherwise disclosed, there are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect the financial condition or operations of the Lessee.

G. The Lessee is not in default under any material provision of any lease or rental agreement.

H. The Lessee is not in default under the terms of any material instrument or undertaking with respect to its obligations to repay any borrowed money.

I. The Lessee is not aware of any claim, or purported claim, of any laborer, materialman, contractor or other person who might assert a lien against the Property by reason of the construction or other improvement, other than those shown on the title commitment of the approved title insurance company, which shall be fully paid and satisfied from the proceeds of the Loan.

J. Estimated project costs have been determined in accordance with sound engineering and accounting principles, and the Lessee estimates that all of the proceeds of the Bonds (exclusive of accrued interest, if any, paid by the original purchasers thereof) will be expended to pay or reimburse such Project costs.

K. All financial information, data, representations, exhibits, terms and conditions required or submitted to the Lessor, if any, are true, accurate and complete in all material respects on the date of delivery by the Lessee.

All of the above representations and warranties shall survive the execution of this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed in several counterparts, each of which may be considered an original without the presentation of the others, by their duly authorized officials and officers as of the day and year first hereinabove written.

**BENTON COUNTY, ARKANSAS, Lessor**

By: \_\_\_\_\_  
**Barry Moehring, County Judge**

ATTEST:

By: \_\_\_\_\_  
**Tena O'Brien, County Clerk**

(S E A L)

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed in several counterparts, each of which may be considered an original without the presentation of the others, by their duly authorized officials and officers as of the day and year first hereinabove written.

**SIMMONS FOODS, INC., Lessee**  
an Arkansas corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ARKANSAS            )  
                                          ) ss:                   **ACKNOWLEDGMENT**  
COUNTY OF BENTON            )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named **BARRY MOEHRING** and **TENA O'BRIEN**, being the persons authorized by said county to execute such instrument stating their respective capacities in that behalf, to me well known, who stated that they are the County Judge and County Clerk, respectively, of **BENTON COUNTY, ARKANSAS**, a political subdivision of the State of Arkansas, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and on behalf of said county, and further stated and acknowledged they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(S E A L)

STATE OF ARKANSAS

)

) ss:

**ACKNOWLEDGMENT**

COUNTY OF BENTON )

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named \_\_\_\_\_, to me personally well known, who stated that he was the \_\_\_\_\_ of **SIMMONS FOODS, INC.**, an Arkansas corporation, and was duly authorized in that capacity to execute the foregoing instruments for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(S E A L)

## **EXHIBIT A**

All fixtures, machinery, apparatus, equipment, fittings and appliances of every kind and nature whatsoever owned by Lessor, now or hereafter affixed or attached to or installed in the Leased Premises (except as hereafter provided), including all electrical, anti-pollution, heating, lighting (including hanging fluorescent lighting), incinerating, power, air cooling, air conditioning, humidification, sprinkling, plumbing, lifting, cleaning, fire prevention, fire extinguishing and ventilating systems, devices and machinery and all engines, pipes, pumps, tanks (including exchange tanks and fuel storage tanks), motors, conduits, ducts, steam circulation coils, blowers, steam lines, compressors, oil burners, boilers, doors, windows, loading platforms, lavatory facilities, stairwells, fencing (including cyclone fencing), passenger and freight elevators, overhead cranes and garage units, together with all additions thereto, substitutions therefor and replacements thereof, but excluding all personal property and all computers, trade fixtures, machinery, office, manufacturing and warehouse equipment which are not necessary to the operation of the buildings which constitute part of the SFI Project located on the Leased Premises and financed with the proceeds of the SFI Bonds.

**EXHIBIT B**

**Legal Description**

The Leased Premises is located in Benton County, Arkansas and described as follows:

[To be inserted]

**EXHIBIT C**  
**Option Agreement**  
(See Attached)

## OPTION AGREEMENT

This OPTION AGREEMENT (the "Option Agreement") is entered into and effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **BENTON COUNTY, ARKANSAS** ("Grantor") and **SIMMONS FOODS, INC.**, a corporation organized under and existing by virtue of the laws of the State of Arkansas ("Grantee").

WHEREAS, Grantor, as Lessor, and Grantee, as Lessee, have entered into a Lease Agreement (the "Lease Agreement") dated as of \_\_\_\_\_, 20\_\_ relating to the Leased Premises (as defined in the Lease Agreement), and

WHEREAS, pursuant to the Lease Agreement, Grantor has given Grantee the right and option to purchase all or part of the Leased Premises at any time.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor and Grantee, and in consideration of the mutual benefits and covenants herein contained, Grantor and Grantee agree as follows:

**1. Definitions.** In addition to the words and terms otherwise defined in this Option Agreement, capitalized words and terms shall have the definition given to them in the Lease Agreement.

**2. Grantee Option.** (a) The Grantee shall have the right and option to purchase all or part of the Leased Premises at any time if:

- (i) The Leased Premises shall sustain major damage or destruction; or
- (ii) Title to all or substantially all of the Leased Premises shall be condemned, by any competent authority other than the Grantor, as provided in Article XV of the Lease Agreement; or
- (iii) As a result of changes in the Constitution of the United States or of the State, or of legislative action, or by the final decree, judgment or order of any court or administrative body entered after Grantee's contest thereof in good faith, or change in Grantor's legal organization or status, the Lease Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in the Lease Agreement, or unreasonable burdens or excessive liabilities are imposed upon either party to it; or
- (iv) There is legal curtailment of Grantee's use and occupancy of all or substantially all of the Leased Premises for any reason other than condemnation referred to in subsection (ii); or
- (v) Grantee determines to do so in its sole and absolute discretion; or

- (vi) Grantee is directed or requested to do so by any lienholder to which the Leased Premises was pledged as security prior to the commencement of the Lease Agreement.

If the Lease is terminated as a result of a default pursuant to Article XIX therein or otherwise, Grantee shall have the right and option to purchase the Leased Premises at any time during the period ending ninety (90) days after the effective date of such termination, in which event the Purchase Price payable shall include all expenses and reasonable attorney's fees of Grantor in connection with such termination, in addition to the amounts described Section 4.

The term "major damage or destruction" as used in subsection (i) is defined to mean any damage or injury to or destruction of the Leased Premises or any part thereof (whether or not resulting from an insured peril) such that the Leased Premises cannot reasonably be restored to its condition immediately preceding such damage, injury or destruction within a period of six (6) months, or which would prevent Grantee from carrying on its manufacturing operations therein for a period of at least six (6) months or the restoration cost of which would exceed the total amount of insurance carried on the Leased Premises in accordance with the provisions of Article V of the Lease Agreement, or such that it would not be economically feasible for the Grantee to repair the Leased Premises, as determined by the Grantee in its discretion.

(b) **Exercise of Purchase Option.** The Purchase Option may be exercised by Grantee with respect to all of the Leases Premises giving written notice to Escrow Agent (hereinafter defined), with a copy to Grantor, of the exercise thereof specifying the time and place of closing. At the closing, Escrow Agent shall deliver the Conveyance Documents (hereinafter defined) to or upon the direction of Grantee or any leasehold mortgagee succeeding to the rights of Grantee. Grantor and Grantee agree and acknowledge that the Conveyance Documents shall transfer title to the Leased Premises free and clear of all liens and encumbrances except those identified as Permitted Encumbrances under the Lease Agreement or resulting from any failure of Grantee to perform any of its obligations under the Lease Agreement; provided, however, that if the Purchase Option is exercised under the provisions of Section 2(a)(ii) above, such title may be subject to the rights, titles and interests of any party having taken or who is attempting to take title to or use of all or substantially all or part of the Leased Premises by eminent domain.

**3. Obligation to Purchase.** At any time following or contemporaneous with the redemption of the Bonds in full, if the purchase option under the provisions of Section 2 has not been exercised, Grantee shall have the further unconditional right and obligation to purchase the Leased Premises for the Purchase Price (defined below).

**4. Purchase Price.** If the Grantee exercises Grantee's option to purchase the Leased Premises under the provisions of the Option Agreement:

- (i) if no Bonds shall be outstanding under the Trust Indenture at the time of purchase, the purchase price of the Leased Premises (the "Purchase Price") shall be One Hundred Dollars (\$100.00) or such portion thereof as is allocated to the portion of the Leased Premises that is being purchased; and
- (ii) if Bonds are outstanding under the Trust Indenture at the time of the purchase, the purchase price of the Leased Premises shall be One Hundred Dollars (\$100.00) or such portion thereof as is allocated to the portion of the Leased Premises that is being purchased, and in addition, if the entirety of the Leased Premises is being purchased, either (x) contemporaneous with or prior to the date determined in Section 2(b), the full amount necessary under the provisions of the Trust Indenture to pay or redeem (on the first date thereafter on which all outstanding Bonds may be paid and redeemed after giving the necessary notice) all Bonds outstanding under the Trust Indenture (including, without limitation, principal, interest, and expenses of redemption), but after deduction of any amount then in the SFI Bond Fund and available for such payment and redemption shall have been paid or otherwise satisfied pursuant to the terms of the Trust Indenture or (y) the Grantee shall assume all obligations with respect to repayment of the Bonds.

**5. Prepayment of Purchase Price; Consideration.** Contemporaneous with the execution of this Option Agreement, Grantee has paid One Hundred Dollars (\$100) to Grantor, and Grantor acknowledges receipt of such amount contemporaneous with the execution of the Option Agreement. Grantee and Grantor agree and acknowledge that the consideration for the Purchase Option and the Purchase Price for the Leased Premises includes the mutual benefits and covenants of the Lease Agreement, the issuance, purchase and repayment of the Bonds, and the accomplishment of the SFI Project, including, but not limited to, the SFI Project's construction and operation by the Grantee.

**6. Expiration of Lease Agreement.** Upon expiration of the Lease Agreement pursuant to its terms, Grantee shall have been deemed to have exercised its Purchase Option, and Escrow Agent shall deliver the Conveyance Documents to the Grantee.

**7. [Leasehold Mortgages.** Pursuant to Section 6.05 of the Lease Agreement, Grantor consented to the Grantee granting one or more leasehold mortgages on the Leased Premises. Grantor acknowledges and agrees that such leasehold mortgages will result in an assignment of the Purchase Option to any leasehold mortgagees, and upon succession to the rights of the Grantee hereunder, such leasehold mortgagees may exercise the Purchase Option granted hereunder in compliance with the terms of the Lease Agreement and this Option Agreement.]

**8. Escrow of Transfer Documents.** Contemporaneous with the execution of this Option Agreement, Grantor shall deliver into escrow a quitclaim deed, bills of sale

and other appropriate conveyance instruments transferring title to the Leased Premises in a form consistent with Section 2(b) (collectively, the "Conveyance Documents"). The "Escrow Agent" shall be the Trustee for the Bonds or any successor trustee appointed pursuant to the Trust Indenture. The Escrow Agent shall hold the Conveyance Documents in escrow until the Purchase Option for the entirety of the Leased Premises is exercised by the Grantee. Upon receipt of the notice specified in Section 2(b), the Escrow Agent is authorized to release the Conveyance Documents to or upon the direction of Grantee or any leasehold mortgagee succeeding to the rights of Grantee. Notwithstanding the escrow of the Conveyance Documents for all or part of the Leased Premises, upon exercise of the Purchase Option, Grantor shall execute and deliver new Conveyance Documents to Grantee at Grantee's request. It is agreed by Grantee and Grantor that the Escrow Agent shall be liable as a depository only and shall be and is hereby discharged from any and all liability for any act or omission done in good faith. The Escrow Agent may rely upon any paper, document or other writing reasonably believed to be authentic. The Escrow Agent shall not be required to construe this Option Agreement or any other instrument deposited herewith.

**9. Notices.** All notices, requests, demands or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by prepaid, first-class, certified or express mail, return receipt requested, postage prepaid, to the addresses specified in the Lease Agreement or the Trust Indenture, as applicable.

**10. No Recordation.** This Option Agreement shall not be recorded. Grantor and Grantee shall sign and record a Memorandum of Lease and Option Agreement as well as every assignment and modification of either the Lease Agreement or the Option Agreement in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas.

**11. General.** Time is of the essence with respect to this Option Agreement. This option to purchase shall be governed by and construed under Arkansas law and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Option Agreement to be signed in several counterparts, each of which may be considered an original without the presentation of the others, by their duly authorized officials and officers as of the day and year first hereinabove written.

**BENTON COUNTY, Lessor**

By: \_\_\_\_\_  
**Barry Moehring, County Judge**

ATTEST:

By: \_\_\_\_\_  
**Tena O'Brien, County Clerk**

(S E A L)

**SIMMONS FOODS, INC., Lessee**  
an Arkansas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged by Escrow Agent:

**REGIONS BANK**

By: \_\_\_\_\_  
\_\_\_\_\_, Corporate Trust Officer

STATE OF ARKANSAS        )  
                                          ) ss:               **ACKNOWLEDGMENT**  
COUNTY OF BENTON        )

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named **Barry Moehring** and **Tena O'Brien** to me personally well known, who stated that they are the County Judge and County Clerk, respectively, of **BENTON COUNTY, ARKANSAS**, and were duly authorized in those capacities to execute the foregoing instrument for and in the name and behalf of said County, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(S E A L)

