

*Preliminary Draft
Subject to Review and Approval of
Benton County Attorney and
Other Parties Hereto*

BENTON COUNTY, ARKANSAS

Issuer

and

[AFFILIATE]

Purchaser

BOND PURCHASE AGREEMENT

Dated _____, 20__

Not to Exceed

\$50,000,000

Benton County, Arkansas

Taxable Industrial Development Revenue Bonds

(Simmons Foods, Inc. Project)

Series 20__

and

\$350,000,000

Benton County, Arkansas

Taxable Industrial Development Revenue Bonds

(Simmons Prepared Foods, Inc. Project)

Series 20__

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(Simmons Prepared Foods, Inc. Project)
Series 20__

_____, 20__

[Affiliate]

Ladies and Gentlemen:

Benton County, Arkansas (the "Issuer"), a political subdivision organized and existing under the laws of the State of Arkansas, hereby agrees with you as follows:

**SECTION 1.
PURCHASE AND SALE OF BONDS**

1.1. Issuance of Bonds. The Issuer has authorized the issuance of its Taxable Industrial Development Revenue Bonds (Simmons Foods, Inc. Project), Series 20__ in a principal amount not to exceed Fifty Million and No/100 Dollars (\$50,000,000) (the "SFI Bonds") and its Taxable Industrial Development Revenue Bonds (Simmons Prepared Foods, Inc. Project), Series 20__ in a principal amount not to exceed Three Hundred Fifty Million and No/100 Dollars (\$350,000,000) (the "SPF Bonds," and collectively with the SFI Bonds, the "Bonds"), pursuant to and in accordance with Amendment 65 to the Constitution of the State of Arkansas ("Amendment 65"), 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 ("Act 9"), and Ordinance 20__-____ of the Issuer (the "Ordinance"), duly adopted by its Quorum Court on [_____, 20__], such Bonds to be dated, to bear interest and to be payable as set forth in, and to be issued pursuant to the terms of a Trust Indenture (the "Indenture") dated as of _____, 20__, by and between the Issuer and Regions Bank, as trustee (the "Trustee"). The SFI Bonds shall be issued as a single

typewritten drawdown bond with a stated maximum principal of \$50,000,000; provided, however, that the principal amount due thereon shall be only such amount as has been drawn by Simmons Foods, Inc. (“SFI”) as reflected on the Schedule of Draws and Redemptions attached to the SFI Bonds. The SPF Bonds shall be issued as a single typewritten drawdown bond with a stated maximum principal of \$350,000,000; provided, however, that the principal amount due thereon shall be only such amount as has been drawn by Simmons Prepared Foods, Inc. (“SPF”) as reflected on the Schedule of Draws and Redemptions attached to the SPF Bonds. The Bonds shall bear interest on the principal amount drawn by SFI and SPF, respectively, at the rate of _____% per annum, payable annually on [_____, 20__]. The Bonds will mature on [_____, 20__]. The proceeds from the sale of the Bonds shall be applied to acquire land and/or leasehold rights, construct buildings, infrastructure and improvements, and acquire and install 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 relating to the operations of SFI and SPF, respectively, within the corporate boundaries of the Issuer (or to reimburse SFI and SPF, respectively, for said costs) (with the respective projects defined as the SFI Project and the SPF Project in the Indenture). The Issuer shall lease the SFI Project to SFI, pursuant to the terms of a Lease Agreement dated as of _____, 20__ (the “SFI Lease Agreement”). The SFI Bonds will be secured by (i) the assignment by the Issuer to the Trustee for the benefit of the owner(s) of the SFI Bonds of the rights of the Issuer under the SFI Lease Agreement, and (ii) such other specific funds, accounts and revenues as are described in the Indenture. The Issuer shall lease the SPF Project to SPF, pursuant to the terms of a Lease Agreement dated as of _____, 20__ (the “SPF Lease Agreement”). The SPF Bonds will be secured by (i) the assignment by the Issuer to the Trustee for the benefit of the owner(s) of the bonds of the rights of the Issuer under the SPF Lease Agreement, and (ii) such other specific funds, accounts and revenues as are described in the Indenture.

1.2. Closing. The Issuer hereby agrees to sell the SFI Bonds to [Affiliate] and, subject to the terms and conditions herein set forth, you hereby agree to purchase from the Issuer, from time to time, all or any portion of the SFI Bonds at 100% of the principal amount drawn by SFI pursuant to a Draw Certificate as provided in the Indenture. The Issuer hereby agrees to sell the SPF Bonds to [Affiliate] and, subject to the terms and conditions herein set forth, you hereby agree to purchase from the Issuer, from time to time, all or any portion of the SPF Bonds at 100% of the principal amount drawn by SPF pursuant to a Draw Certificate as provided in the Indenture. The closing of the purchase of the Bonds shall be at 10:00 A.M. local time, on [_____, 20__] (the “Closing Date”), at the offices of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., 4206 South J.B. Hunt Drive, Suite 200, Rogers, Arkansas 72758, or at such other time and place as shall be subsequently agreed upon by the parties. At the closing and upon each subsequent draw, SFI and SPF, respectively, will deliver a duly executed Draw Certificate to the Trustee on behalf of the Issuer, you will deliver to the Trustee, in immediately available funds, the principal amount specified in the Draw Certificate, and the Trustee will deliver to SFI and SPF, respectively, or its order, in immediately available funds, the principal amount specified in the Draw Certificate.

Notwithstanding any provision of this Bond Purchase Agreement (the “Agreement”) to the contrary, the Issuer, [Affiliate], SPF, SFI, and the Trustee, respectively, may enter into or accept the terms of a home office payment agreement for the making of all payments due under

this Agreement and other documents contemplated by this Agreement upon such conditions as shall be satisfactory to the parties thereto contemporaneous with the issuance of the Bonds (the “Home Office Payment Agreements”).

SECTION 2.
WARRANTIES, REPRESENTATIONS AND
AGREEMENTS OF THE ISSUER

The Issuer warrants, represents and agrees to and for your benefit and the benefit of SFI and SPF that:

2.1. Organization and Authority. The Issuer is a duly organized and validly existing political subdivision of the State of Arkansas and has all requisite power and authority under Amendment 65 and Act 9 to issue, sell and deliver the Bonds as provided herein and to consummate all other transactions involving the Issuer contemplated by this Agreement, the SFI Lease Agreement, the SPF Lease Agreement, the Indenture, the Home Office Payment Agreements, an Agreement for Payment in Lieu of Taxes to be dated as of the date of its delivery by and between the Issuer and SFI (the “SFI PILOT Agreement”), and an Agreement for Payment in Lieu of Taxes to be dated as of the date of its delivery by and between the Issuer and SPF (the “SPF PILOT Agreement”).

2.2. Pending Litigation. There is no action, suit, proceeding or investigation pending or threatened against or affecting the Issuer, or, to the best knowledge of the Issuer, any basis therefor, wherein an unfavorable decision or finding would adversely affect the transactions contemplated by this Agreement, or which in any way would adversely affect the validity or enforceability of the Bonds, this Agreement, the SFI Lease Agreement, the SPF Lease Agreement, the Indenture, the Home Office Payment Agreements, the SFI PILOT Agreement, and the SPF PILOT Agreement.

2.3. Sale and Other Transactions are Legal and Authorized. The sale of the Bonds, the execution, delivery and due performance of this Agreement, the SFI Lease Agreement, the SPF Lease Agreement, the Indenture, the Home Office Payment Agreements, the SFI PILOT Agreement or the SPF PILOT Agreement, and all transactions contemplated by this Agreement and those agreements are within the purposes, powers and authority of the Issuer, and have been done in full compliance with the provisions of the Ordinance, Amendment 65 and Act 9, as applicable, and all other applicable laws of the State of Arkansas. When delivered to you in accordance with this Agreement, the Bonds being purchased by you hereunder will be duly authorized, executed, issued and delivered and will constitute the legal, valid and binding obligation of the Issuer payable solely from the revenues and other funds pledged in the Indenture therefor, and the owner(s) of the Bonds and their assigns will be entitled to the benefits of this Agreement, the SFI Lease Agreement or the SPF Lease Agreement, as applicable, the Indenture, the Home Office Payment Agreements, and the SFI PILOT Agreement or the SPF PILOT Agreement, as applicable.

2.4. Governmental Consents. All consents, approvals, authorizations and orders of, or filings, registrations or qualifications with, any governmental or regulatory authorities which are required to be obtained by the Issuer for the consummation of the transactions contemplated

by this Agreement have been duly and validly obtained or performed and are in full force and effect.

2.5. Use of Proceeds for Public Purposes. The Issuer has determined that the SFI Project and the SPF Project and the use of the proceeds from the sale of the Bonds therefor will accomplish the public purposes set forth in Act 9 and that under Article 16, Section 5 of the Constitution of the State of Arkansas (as currently interpreted by the Arkansas Supreme Court), the SFI Project and the SPF Project will be exempt from ad valorem taxes because they are owned by the Issuer.

SECTION 3. CONDITIONS OF CLOSING

Your obligation to purchase and pay for the SFI Bonds or the SPF Bonds, as applicable, to be delivered to you on the Closing Date and on the dates of any subsequent draws thereunder shall be subject to the following conditions precedent:

3.1. Opinion of Counsel. Your receipt from Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., bond counsel, of an approving opinion satisfactory to you.

3.2. Warranties and Representations True as of the Closing Date. You shall not have received notice from the Issuer that any of the warranties and representations of the Issuer contained in Section 2 hereof shall be untrue in any material respect as of the Closing Date or as of the date of any subsequent draw; there shall exist no “event of default” (as defined in the SFI Lease Agreement or the SPF Lease Agreement, as appropriate, and the Indenture) on such date; and you shall have received a certificate of Issuer to such effect upon your request.

3.3. Execution and Delivery of Documents. The SFI Lease Agreement or the SPF Lease Agreement, as applicable, the Indenture, the Home Office Payment Agreements, and the SFI PILOT Agreement or the SPF PILOT Agreement, as applicable, shall each have been duly executed and delivered by the respective parties thereto, and each shall be in full force and effect on the Closing Date and on the date of each subsequent draw under the Bonds.

3.4. Filings. All recordations and filings appropriate or required by law in order fully to perfect, preserve and protect the assignment of the SFI Lease Agreement or the SPF Lease Agreement, as appropriate, and the lien of the Indenture and the security interests created by the SFI Lease Agreement or the SPF Lease Agreement, as appropriate, and the rights of the Trustee thereunder shall have been performed.

3.5. Proceedings Satisfactory. All corporate and other proceedings taken or to be taken in connection with the transactions relating hereto and all documents incident thereto shall be satisfactory in substance and form to you and your counsel, and you and your counsel shall have received such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

3.6. No Litigation. No litigation or proceeding shall be threatened or pending in any court or other official body (i) to restrain or enjoin the issuance or delivery of the Bonds, (ii) which in any way questions or affects the validity of the Bonds, any provisions thereof, any

provisions of the Ordinance, this Agreement, the SFI Lease Agreement, the SPF Lease Agreement, the Indenture, the Home Office Payment Agreements, the SFI PILOT Agreement, and the SPF PILOT Agreement or any proceedings taken with respect to the foregoing, or (iii) which questions the Issuer's creation, organization or existence or the titles to office of any of its officers, or its powers to acquire, finance and lease the SFI Project and the SPF Project.

SECTION 4. SPECIAL COVENANTS

4.1. Delivery Expenses. Payment of all costs of issuance in connection with the preparation, execution, printing and delivery of the Bonds to the place of closing and all fees and expenses of Bond Counsel, Issuer's counsel and your counsel shall be paid, or caused to be paid, from the proceeds of the Bonds or otherwise at the election of the SFI or SPF, as appropriate.

4.2. Special Obligations. Notwithstanding anything herein to the contrary, all covenants and agreements contained in this Agreement on behalf of the Issuer shall be subject to the provisions of this Section 4.2. The Bonds shall be special limited obligations of the Issuer as provided in Act 9, the principal of and interest on which are payable solely from revenues or other receipts, funds, monies and property specifically pledged or mortgaged therefor under the Indenture, and any amounts payable by the Issuer under this Agreement, the SFI Lease Agreement, the SPF Lease Agreement or the Indenture are payable solely therefrom. Neither the State of Arkansas nor any political subdivision thereof shall in any event be liable for the payment of the principal of or interest on the Bonds.

SECTION 5. MISCELLANEOUS

5.1. Expenses. SFI and SPF shall pay and indemnify the Issuer for the amount of all expenses reasonably incurred in connection with the issuance of the Bonds and not otherwise paid from Bond proceeds.

5.2. Notices. All communications provided for hereunder shall be sent by fax or by first class or certified mail and, if to you, addressed to you in the manner in which this letter is addressed; if to the Issuer, at 215 E. Central Avenue, Bentonville, Arkansas 72712, Attention: County Judge; with a copy to George Spence, County Attorney, Clark & Spence, 121 S. Main Street, Bentonville, AR 72712; and if to either SFI or SPF, to 601 N. Nico Street, Siloam Springs, Arkansas 72761, Attention: President or to such other address with respect to any party as such party shall notify the others in writing.

5.3. Survival of Representations and Warranties. All representations and warranties contained herein or made in writing by the Issuer in connection herewith shall survive the execution and delivery of this Agreement and the Bonds.

5.4. Successors and Assigns. All covenants and agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not. The provisions of this Agreement are intended to be for the benefit of all owner(s) from time to time of the Bonds, and shall be enforceable by any such owner, whether or not an express assignment

to such owner of rights under this Agreement has been made by you or your successors or assigns. You may not assign any portion of your rights and obligations hereunder without the written consent of the Issuer and SFI or SPF, as appropriate, which consent shall not be unreasonably withheld or delayed.

5.5. Responsibility of Individuals. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any director, officer, employee or agent of the Issuer in his or her individual capacity.

5.6. Satisfaction Requirement. If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to you, the determination of such satisfaction shall be made by you in your sole and exclusive judgment exercised in good faith.

5.7. Representation of Purchasers. You specifically understand and agree that, prior to the sale of the Bonds to you, you will be required to execute and deliver a letter in substantially the form attached hereto as Exhibit A. You further understand and acknowledge that your obligation under Section 1.2 hereof to purchase from time to time an amount of the Bonds up to the entire authorized principal amount will survive and be unaffected by any transfer or purported transfer by you of any interest in the Bonds.

5.8. Governing Law. This Agreement is being delivered and is intended to be performed in the State of Arkansas, and shall be construed and enforced in accordance with the laws of such State.

5.9. Modifications. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

5.10. Descriptive Headings. The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

5.11. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

[Signature Pages Follow]

If you are in agreement with the foregoing, please sign the form of acceptance on the enclosed counterpart of this document and return the same to the undersigned, whereupon this shall become a binding agreement between you and the undersigned.

Very truly yours,

BENTON COUNTY, ARKANSAS

By: _____
County Judge

ATTEST:

By: _____
County Clerk

ACCEPTED:

[Affiliate]

an _____ [limited liability company/corporation]

By: _____
an _____ limited liability company,
Its sole Member

By: _____
Name: _____
Title: _____

APPROVED:

SIMMONS FOODS, INC.

an Arkansas Corporation

By: _____
Name: _____
Title: _____

SIMMONS PREPARED FOODS, INC.

an Arkansas Corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF INVESTOR LETTER

[Prepared on Letterhead of Bond Purchaser]

_____, 20__

Mitchell, Williams, Selig,
Gates & Woodyard, P.L.L.C.
4206 South J.B. Hunt Drive, Suite 200
Rogers, Arkansas 72758

Regions Bank
Attention: Corporate Trust Department
400 West Capitol, 7th Floor
Little Rock, AR 72201

Benton County, Arkansas
Attention: County Judge
215 E. Central Avenue
Bentonville, AR 72712

[Simmons Prepared Foods, Inc./Simmons
Foods, Inc.] [as applicable]
Attention: President
601 N. Nico Street
Siloam Springs, AR 72761

Not to Exceed
\$50,000,000

Benton County, Arkansas
Taxable Industrial Development Revenue Bonds
(Simmons Foods, Inc. Project)
Series 20__

and

\$350,000,000
Benton County, Arkansas
Taxable Industrial Development Revenue Bonds
(Simmons Prepared Foods, Inc. Project)
Series 20__

Ladies and Gentlemen:

In connection with the purchase by us of the above-described bonds (the “Bonds”), we hereby certify as follows:

1. We understand that we will not receive from Benton County, Arkansas (the “Issuer”), [Simmons Foods, Inc./Simmons Prepared Foods, Inc.] (the “Company”), Regions Bank (the “Trustee”), their governing bodies, their members or any of their officers, employees or agents or Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. (“Bond Counsel”) any information with respect to the use of the proceeds of the Bonds

and the [SFI/SPF] Project, as defined in the Trust Indenture dated as of _____, 20__ (the “Indenture”), the Bonds themselves, the provisions for payment thereof, the security therefor or the sufficiency of such provisions for payment thereof and security therefor, except (a) in the documentation executed in connection with the issuance of the Bonds, copies of which have been provided to us and reviewed by us prior to our purchase of the Bonds (the “Bond Documents”), and (b) as has been specifically requested by us from the Company and which has been provided to us and reviewed by us prior to our purchase of the Bonds (the “Additional Information”).

2. Neither the Issuer, the Company, the Trustee, their governing bodies, their members nor any of their officers, employees or agents nor Bond Counsel will have any responsibility to us for the accuracy or completeness of information obtained by us from any source regarding the [SFI/SPF] Project, the Issuer, the Company or its assets, business, circumstances, financial condition and properties, or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Bond Documents. We acknowledge that, as between us and all of such parties: (a) we have assumed responsibility for obtaining such information and making such review as we have deemed necessary or desirable in connection with our decision to purchase the Bonds, and (b) the Bond Documents and the Additional Information constitute all the information and, with the investigation made by us (including specifically our investigation of the Company and the [SFI/SPF] Project) prior to our purchase of the Bonds, review that we have deemed necessary or desirable in connection with our decision to purchase the Bonds.

3. We have been offered copies of or full access to all documents relating to the issuance of the Bonds and all records, reports, financial statements and other information concerning the Issuer, the Company and the [SFI/SPF] Project and pertinent to the source of payment for the Bonds which we, as a reasonable investor, have requested and to which we, as a reasonable investor, would attach significance in making investment decisions. We have been afforded the opportunity to ask such questions of representatives of the Company as we have deemed necessary in making our investment decisions; and we have based our decision to invest in the Bonds solely on our own investigation, including, without limitation, our review of such documents, records, reports, financial statements and other information concerning the Company and the [SFI/SPF] Project and discussions with representatives of the Company.

4. We are either (a) a bank, registered investment company, insurance company or other “accredited investor” as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission, or (b) described in paragraph 5. If described in this paragraph 4, we are duly and validly organized under the laws of our jurisdiction of incorporation or organization, and we can bear the economic risk of the purchase of the Bonds and have such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph 2. If I am a natural person described in this paragraph 4: (i) I have a net worth, or joint net worth with my spouse,

of at least \$1,000,000, or (ii) I had an individual income in excess of \$200,000 in each of the two most recent years or joint income with my spouse in excess of \$300,000 in each of those years and have a reasonable expectation of reaching the same income level in the current year.

5. If not described in paragraph 4, we are a registered investment advisor purchasing the Bonds for inclusion in the portfolio of a registered investment company advised by us and over whose transactions we have discretionary power. If described in this paragraph 5, we have such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph 2, and the investment company for which we are purchasing the Bonds is duly and validly organized under the laws of its jurisdiction of incorporation or organization and can bear the economic risk of the purchase of the Bonds.

6. The Bonds have been purchased for our own account for investment and not with a view to the distribution, transfer or resale thereof, provided that the disposition of the Bonds shall at all times be within our sole control.

7. We are duly and legally authorized to purchase obligations such as the Bonds.

8. Except as otherwise set forth in the representations and warranties of the Issuer contained in the Bond Purchase Agreement relating to the Bonds, we have not and will not rely on any action taken by the Issuer of the Bonds, including, but not limited to, issuance of the Bonds, as evidence that the Bonds or the [SFI/SPF] Project financed with the proceeds of the Bonds comply with the provisions of any legislation.

9. We have satisfied ourselves that the Bonds are a lawful investment for this organization under all applicable laws.

10. We have carefully read the Bond Documents and the Additional Information in its entirety and understand the risks described therein and understand and acknowledge that there may exist other risks with respect to the Bonds that are not described therein.

11. We acknowledged that no credit rating has been sought or obtained with respect to the Bonds, and we acknowledged that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

12. We acknowledge that we have read the form of approving opinion of Bond Counsel regarding the Bonds.

[AFFILIATE]
[a/an] _____ limited liability
company/corporation
Bond Purchaser

By: _____
[a/an] _____ limited liability
company/corporation,
Its sole Member

By: _____
Name: _____
Title: _____