

RESOLUTION NO. 2011 - 87

**A RESOLUTION AUTHORIZING A LEASE OF THE REAL PROPERTY LOCATED
AT 7781 MONTGOMERY ROAD IN SYCAMORE TOWNSHIP**

WHEREAS, the Board of Township of Sycamore Township is acquiring the real property located at 7781 Montgomery Road, Sycamore Township, Ohio 45236 (the "Real Property"; and

WHEREAS, the real property is subject to a lease of a portion of the property that expires in 2015; and

WHEREAS, as a result of such lease, the real property may not be exempted from real property taxes until such time as the lease expires; and

WHEREAS, also as a result of such lease, the full use of the real property will not become available to the township until 2015; and

WHEREAS, in order to defray the expenses of the Real Property and in order to provide a positive cash flow from the Real Property until such time as the aforementioned lease expires, the Board wishes to enter into an additional lease of the Real Property pursuant to the authority granted it under ORC 505.11;

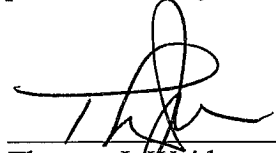
NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The Board hereby approves the lease of the Real Property with SDI Foods, Inc. in substantially the same form as the attached Exhibit A. The President of the Board, or the Township Administrator, or the Assistant Township Administrator is hereby authorized and directed to execute the lease agreement and any other documents necessary in order to put the lease into affect.

VOTE RECORD:

Mr. Bishop Aye Mr. Connor Absent Mr. Weidman Aye

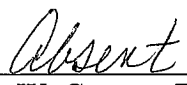
Passed at a meeting of the Board of Township Trustees of Sycamore Township this 15th day of September, 2011.



Thomas J. Weidman, President



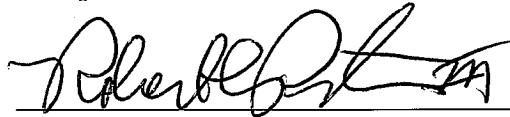
Cliff W. Bishop, Vice President



Dennis W. Connor, Trustee

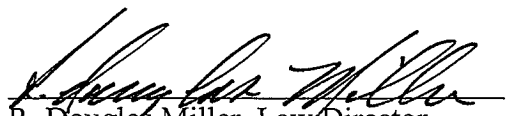
AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 15th day of September, 2011.



Robert C. Porter III, Fiscal Officer
Sycamore Township, Ohio

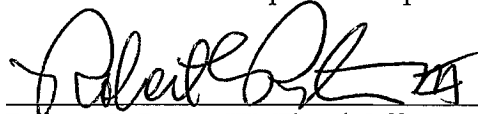
APPROVED AS TO FORM:



R. Douglas Miller, Law Director

PROOF OF PUBLICATION

I hereby certify that I have published this Resolution on _____ by posting in the five most public places as established by the Board of Township Trustees such places being the Sycamore Township Government Complex, Bob Meyer Park, Bechtold Park, the Robert L. Schuler Sports Complex, and the Clete McDaniel Sports Complex.

A handwritten signature in black ink, appearing to read "Robert C. Porter III", written over a horizontal line.

Robert C. Porter III, Fiscal Officer

AGREEMENT OF LEASE

This lease entered into this _____ day of September, 2011, by and between the Board of Township Trustees of Sycamore Township, Ohio, an Ohio township, hereinafter referred to as Lessor, and SDI Foods, Inc., a Tennessee corporation, hereinafter referred to as Lessee.

WITNESSETH:

Lessor, in consideration of the rents, covenants and agreements of the Lessee, hereinafter set forth and subject to the conditions in this Lease contained, does hereby lease unto the Lessee the premises described on the Exhibit "A" attached hereto; together with the appurtenances and all of the improvements now and at anytime hereafter located on the above described property except Lessee shall have no interest in the lease with Norton Outdoor Advertising, Inc. The premises described, and the appurtenances and improvements thereon, are sometimes hereinafter referred to as the "Demised Premises" which term includes all the property owned by the Lessor, and here and above described, and all of which property being included in the term "Demised Premises".

(1) **TERM:** The term of this lease is three (3) years commencing September _____, 2011 and to be fully completed and ended August 31, 2014.

(2) **RENT:** Lessee shall pay Lessor for the Demised Premises during each lease year of the term of this lease and any renewal terms, an annual base rent of Twelve Thousand Dollars (\$12,000.00) payable in twelve equal monthly installments of One Thousand Dollars (\$1,000.00), which installments shall be payable in advance on the first day of each successive calendar month during said term. The rental for the period from September _____, 2011 until September 30, 2011, shall be pro-rated and payable in advance as is the normal monthly rental.

(3) **DELIVERY OF RENTAL PAYMENTS:** All rental payments herein provided for shall be paid to the Lessor at 8540 Kenwood Road, Cincinnati, Ohio 45236, or to such other place as Lessor may from time to time designate by notice in writing to the Lessee.

(4) **REPAIR AND MAINTENANCE:**

(4.1) Lessee, at its sole expense, shall keep and maintain the Demised Premises, including all buildings or other improvements thereon, and also including, but not limited to, all heating, air conditioning, plumbing and electrical equipment and apparatus and furnishings and fixtures in good repair, attractive, and in a safe and sanitary condition, and make all necessary repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such repair and condition, and also Lessee shall make structural repairs and maintain the roof, parking lot and driveway.

(4.2) **Alterations:** The Lessee shall make no structural changes, alterations, modifications or additions to the Demised Premises or the building, or to any other improvements from time to time located upon the Demised Premises, or any part thereof, without

the Lessor's written consent first had, which consent shall not be unreasonably withheld. All alterations, additions or improvements which may be made by Lessee upon the premises, put in at the expense of the Lessee, shall not thereafter be removed but shall become and remain the property of the Lessor. Any alterations made by the Lessee shall comply with all federal, state or locale rules, regulations and ordinances. The consent of mortgagee is required for any interior improvements.

(4.3) **Quality of Alterations:** All alterations shall be made and performed by Lessee in a sound workmanlike first class manner and shall be equal in quality to the original work and shall be such so as not to weaken the structure of any building or improvements upon the Demised Premises.

(5) **USE OF PREMISES:** Lessee warrants that it will use the premises only for the lawful conduct of its restaurant business and will not generate, store, handle or otherwise deal with hazardous, toxic, or noxious waste, substance or materials or any oil, other than cooking oil, on the Demised Premises.

(6) **TAXES AND ASSESSMENTS:** Lessee shall pay and discharge when due, as part of the rental of the Demised Premises, all state, municipal and local taxes including real estate taxes; assessments, levies and other charges, general and special, ordinary and extraordinary, of whatever name, nature and kind that are or may be during the term hereof, accrued, levied, assessed, imposed or charged on the land or the premises hereby demised, or on the buildings and improvements now thereof or hereinafter to be built or made thereon, and all which may be levied, assessed, imposed or charged on or against the leasehold estate hereby created and on the reversionary estate in the Demised Premises during the term hereof or any renewal. Lessee shall pay such taxes even though such taxes may be imposed as a result of the structure erected under the lease with Norton Outdoor Advertising, Inc.

(7) **UTILITIES:** Lessee shall, at its sole cost and expense, obtain and promptly pay for all utilities services required for the operation of, furnished to, or consumed on or about the Demised Premises during the term of this lease, and any renewals hereof, including without limitation, electricity, natural gas, water, sewer, heat and telephone, and all assessments, charges and surcharges of any nature or type for or in connection with any of the foregoing. Additionally, Lessor will pay all costs, assessments or charges in connection with the installation of any of the foregoing if charged by the supplier, including installation of meters and initial hook-up or with regard to sewers, any tap-in charges, fees and assessments. If, under any circumstances, whether by default of the Lessee for vacation or remodeling purposes or otherwise, Lessee ceases doing business at the Demised Premises either temporarily or permanently, Lessor may cause sufficient utilities, including light or heat, to be supplied to the Demised Premises for security purposes and to avoid damage to the Demised Premises by weather or otherwise at Lessee' expense.

(8) **INSURANCE:** In addition to the monthly rental payments, Lessee shall carry fire and extended coverage insurance on the Demised Premises during the entire term of this lease in an amount equal to at least Four Hundred Thousand Dollars (\$400,000.00), written by a reliable insurance company or companies authorized to do business in the State of Ohio. The policies shall be written in the names of and for the benefit of Lessor.

Lessee shall also furnish Lessor contingent liability insurance at the expense of Lessee with a company authorized to do business in the State of Ohio, in the sum of One Million Dollars (\$1,000,000.00) in case of injury or damage to one person, Three Million Dollars (\$3,000,000.00) in the case of injury or damage to more than one person in the same accident or occurrence and One Million Dollars (\$1,000,000.00) for property damage.

This insurance shall be procured at the time of delivery of the possession of the premises to Lessee and shall be kept and maintained in full force during the entire term of this lease at the expense of the Lessee and shall contain a provision that the insurance may not be cancelled without thirty (30) days prior written notice to Lessor.

(9) **NET LEASE:** This Agreement of Lease is intended to be a "Net Lease" and it is the parties intention that Lessee shall pay for all costs of the operation of the property. All expenses to be paid by Lessee shall be considered as additional rent. If Lessee fails to pay any amount when due, or fails to make any necessary repairs or replacements, Lessor may, but shall not be required to, pay any such amounts or take any such actions and Lessee shall immediately reimburse to Lessor all sums expended by Lessor therefore.

(10) **FIRE OR OTHER DESTRUCTION:** If the building or other improvements located on the Demised Premises should be damaged or destroyed by fire or other casualty, Lessee will promptly notify Lessor of such casualty. If such casualty is insured against, Lessor will to the extent of the net proceeds of the insurance available, repair and restore the buildings and improvements so damaged or destroyed as nearly as may be to their condition immediately prior to such casualty. In the meantime, if the Demised Premises should be rendered partially or totally untenable there will be an equitable abatement of the rent as mentioned in the paragraph headed Rent, until the premises are again rendered tenable, but Lessee shall not be relieved during said period of untenability from its obligation to pay taxes and other charges and to keep the premises insured as provided in the paragraphs headed Taxes and Assessments, and Insurance hereof. In the case of such fire destruction, this lease shall not terminate unless the damage or destruction is so extensive that the damaged or destroyed building cannot reasonably be repaired and restored within a period of three (3) months following the date the Lessor receives written notice from the Lessee of the casualty; in which event this lease may be terminated at the option of the Lessor or Lessee exercisable only in the following manner: If either party to the lease feels that it is entitled to terminate the lease and desires to do so, it will notify the other in writing within thirty (30) days after the date of the casualty stating that such party elects to terminate the lease and thereupon the lease shall terminate at the end of the month of the term following the month in which the casualty occurred unless the other party, the one receiving the notice of termination shall in writing within ten (10) days after receipt of notice of termination notify the other that it disputes such party's right to terminate. In the event of such disagreement, the matter shall promptly be referred to arbitration under the rules of the American Arbitration Association and its decision shall be final and conclusive. Pending any such arbitration the Lessor may, but shall not be obligated, to repair or restore the building but shall be entitled to await the decision of the arbitrators.

(11) **ENVIRONMENTAL CONDITION:**

(a) Lessee shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Substances, as defined below, on, in or under the Demised Premises. Lessee shall not allow the storage or use of such substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances, nor allow to be brought onto the leased premises any such substances except to sue in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of (1) the identity of such substances, and (2) the method for preventing the escape of any such substances, and Lessor's prior written approval is granted. Lessee covenants and agrees that the leased premises will, at all times during its use or occupancy, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies and bodies applicable to the leased premises, pertaining to environmental matters, or regulating, prohibiting or otherwise having to do with Hazardous Substances or asbestos and all other toxic, or hazardous wastes (collectively called "Environmental Laws"). Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief without limiting any of the obligations of Lessee under the provisions set forth in this Lease, Lessee agrees to clean up all spills and discharges of Hazardous Substances on the leased premises in a manner which shall comply with all applicable environmental laws. Lessee shall notify Lessor in writing of all such incidents.

(b) Lessee shall immediately deliver to Lessor a copy of any summons, citation, directive, notice, complaint, letter or other communication from any federal, state or local environmental agency, concerning any alleged violations of any environmental laws or regulations on the leased premises, or concerning any investigation or request for information relating to the use, generation, handling, treatment, storage or disposal of Hazardous Substances in connection with the leased premises.

(c) On request, Lessee shall cooperate in obtaining evidence of compliance with any environmental law, regulation, order of any governmental authority, which cooperation may include, without limitation, providing affidavits, reports or responses to questions. Lessee shall provide access to the leased premises, on request, for inspections and testing of the leased premises regarding the presence of Hazardous Substances.

(d) Lessor and its engineers, technicians, and consultants (collectively the "Auditors") may, from time to time as Lessor deems appropriate, conduct periodic tests and examinations ("Audits") of the leased premises to confirm and monitor Lessee's compliance with the Lease. Such Audits shall be conducted in such a manner as to minimize the interference with Lessee's permitted activities on the leased premises; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Lessee's compliance with this Lease. Lessee shall fully cooperate with Lessor and its Auditors in the conduct of such Audits.

(e) Lessee shall indemnify, defend and hold Lessor, its officers, agents and employees, and other occupants of the leased premises (collectively, the "Indemnitees"), free,

harmless and indemnified from any expenses, penalties, fines, claims, demands, liabilities, costs, personal injuries, property damage, actions and causes of action, suits, debts, judgments, demands or charges whatsoever which the Indemnitees shall or may incur, or which any such party would otherwise incur, by reason of Lessee's failure to comply with this Lease including, but not limited to: (1) the cost of bringing the leased premises into compliance with all laws; (2) the reasonable cost of all appropriate tests and examinations of the leased premises to confirm that the leased premises has been brought into compliance with all laws; and (3) the reasonable fees and expenses of the Indemnitee's attorneys, engineers, and consultants incurred by the Indemnitees in enforcing and confirming compliance with this Lease.

(f) For the purposes of this Section 11, the Demised Premises shall include the real estate covered by this Lease; all improvements; all personal property used in connection with the Demised Premises (including that owned by Lessee); and the soil, groundwater and surface water of the Demised Premises.

(g) The covenants contained in this Section 11 shall survive the expiration or termination of this Lease, and shall continue for so long as Lessor and its successors and assigns, and the Indemnitees, may be subject to any expenses, obligations, penalties, fines, claims, demands, liabilities, costs, personal injuries, property damage, actions and causes of action, suits, debts, judgments, demands or charges whatsoever against which Lessee has agreed to indemnify the Indemnitees under this Lease.

(h) All terms, except as otherwise defined in this Section, shall have the meanings as set forth in the Lease. For purposes of this Section, Hazardous Substances shall mean (1) any "Hazardous Substance", "Pollutant" or "Contaminant" (as defined in the Comprehensive Environmental Response and Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. Section 9601(14) and (33)) or 40 C.F.R. Part 302; (2) any hazardous substance, hazardous waste or solid waste, as those terms are defined in applicable state or local law; (3) any substances containing petroleum as that term is defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. Section 6991(6) or 40 C.F.R. 280.12; or (4) any other substance for which any governmental entity requires special handling in its collection, storage, treatment or disposal.

(12) **EMINENT DOMAIN:** If the whole or any substantial part of the Demised Premises hereby leased shall be condemned or taken by any city, county, federal, state, or other authority for any purpose, then the term of this lease shall cease on the part so taken from the day the possession of that part shall be required for any purpose, and the rent shall be paid up to that day, and from that day Lessee or Lessor shall have the right either to cancel this lease and declare the same null and void or to continue in the possession of the remainder of the premises under the terms herein provided. All damage awarded for such taking or any public purpose shall belong to and be the property of the Lessor, whether such damage shall be awarded as compensation for the diminution in value to the leasehold or to the fee of the premises herein leased.

(13) **ASSIGNMENT:** Lessee shall not assign this lease or any interest herein or sublet the Demised Premises or any part thereof or any right or privilege appurtenant thereto or allow

any person other than the Lessee and his agents and employees, or a wholly owned subsidiary or other entity controlled, managed and operated by Lessee to occupy or use the premises or any part thereof without first obtaining Lessor's written consent thereto which consent may be withheld for any reason. Lessor's consent to one assignment, sub-lease or occupancy or use shall not be a consent to any subsequent assignment or sub-lease or to any occupancy or use by another person. Any unauthorized assignment or sub-lease shall be void and shall terminate the lease at the Lessor's option.

Lessor shall have full rights of assignment of this lease and if requested Lessee agrees to provide the assignee with any necessary estoppel agreements.

(14) **ATTORNMENT:** Lessee hereby agrees, in the event of Lender's foreclosure of the Mortgage, to continue to pay rent and perform Lessee's other obligations under the Lease, and to attorn to and recognize Lender, or any other purchaser at foreclosure sale or from Lender (collectively "Successor Purchaser"), as the successor to Lessor under the Lease. The Lease shall remain in full force and effect according to its terms, subject to the limitations set forth in the following paragraph.

Lender and any Successor Purchaser agree to be bound by and to perform Lessor's obligation under the Lease after succeeding to Lessor's interest under the Lease; provided, however, that Lender or a Successor Purchaser shall not be:

- (a) bound by or liable for any act or omission of Lessor occurring prior to Lender's or a Successor Purchaser's succeeding to Lessor's interest under the Lease, including without limitation any offsets or defenses claimed by Lessee to payment of rent arising from events occurring prior to Lender's or such Successor Purchaser's succeeding to Lessor's interest; or
- (b) bound by any rent or additional rent paid by Tenant to Lessor for more than one month in advance; or
- (c) responsible for any security deposit paid to Landlord; or
- (d) bound by any modification of the Lease entered into without Lender's consent. Lease will be subordinated to lien of mortgage.

(15) **QUIET ENJOYMENT:** Lessor covenants that upon Lessee paying the rent, taxes, assessments and insurance and observing and performing all of the terms, covenants and conditions of this lease on its part to be observed and performed, Lessee may peaceably and quietly enjoy the lease premises subject nevertheless to the terms and conditions of this lease.

(16) **DEFAULT AND WAIVER:** If the rent or any part thereof shall at any time be in arrears and unpaid for a period of ten (10) days after it shall become due, and after written demand has been made therefor, or if the Lessee shall fail to keep and perform any of the other covenants and agreements required under this lease to be kept and performed, or if Lessee shall abandon the Demised Premises during the term hereof, or if Lessee or any assignee of this lease

shall make an assignment for the benefit of its creditors or be adjudicated a bankrupt, or if Lessee shall file an application in Federal District Court for reorganization seeking a compromise or settlement of its indebtedness or if the interest of Lessee shall be sold under execution or other legal process, or if a receiver or trustee be appointed for the property of Lessee or any assignee, Lessor may re-enter into upon the Demised Premises and again have, repossess and enjoy the same with all the improvements located thereon as if this lease had not been made, and thereupon this lease and everything herein contained on the part of the Lessor to be kept and performed shall cease, determine and be utterly void without prejudice however, to Lessor's right of action for arrears of rent and breach of covenant. In case of any such default and re-entry, Lessor may re-let said premises for the remainder of the term and may recover from the Lessee any damages sustained by it and shall gain such additional rights as may be available under Ohio law.

The waiver by the Lessor by the breach of any of the covenants or conditions by the Lessee, or the consent by the Lessor to assignment by the Lessee shall not affect the right or remedy of the Lessor for any future breach or assignment without consent, but such right or remedy may be pursued if no such waiver or consent had been given.

(17) **CONDITION OF THE PREMISES:** Except as herein provided, Lessee shall occupy the Demised Premises after examination without any representations on the part of the Lessor or of his agent. Unless specifically agreed upon in writing before occupancy, at the end or other termination of this lease, Lessee shall deliver the Demised Premises to the Lessor in the present condition, reasonable and ordinary wear and tear excepted.

(18) **BINDING EFFECT:** This lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.

(19) **ENTIRE AGREEMENT:** This lease shall be governed by the laws of the State of Ohio. This lease contains the entire agreement between the parties and executory agreement hereinafter made shall be ineffective to change, modify, discharge or affect an abandonment of it in whole or in part unless such executory agreement is in writing and is signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

(20) **SEVERABILITY:** If any term or provision of this lease or the application thereof to any person and circumstance to any extent be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons in circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this lease shall be affected thereby, and each term and provision of this lease shall be valid and shall be enforceable to the fullest extent permitted by law.

(21) **MEMORANDUM OF LEASE:** The parties hereto mutually agree upon the written request of either one to the other to execute a short form memorandum of this lease in recordable form for filing for record in the office of the registrar or recorder of deeds in Hamilton County, Ohio.

(22) **NOTICES:** All notices, communications, requests, approvals, consents and demands herein required to be given or made shall be in writing and shall be deemed to be served

when deposited in the United States Mail, registered or certified, postage prepaid, return receipt requested, addressed as follows:

To the Lessor: Sycamore Township
 8540 Kenwood Road
 Cincinnati, Ohio 45236
 Attn: Township Administrator

To the Lessee: SDI Foods, Inc.
 6389 N. Quail Hollow Rd., Suite 101
 Memphis, TN 38120

(23) **ARBITRATION CLAUSE:** In the event that the Lessor and Lessee are unable to agree on any of the issues or provisions relative to this lease within fifteen days (15) of the request by either party, the matter shall be formally submitted to arbitration by an arbitrator selected by the American Arbitration Association, who shall thereafter determine the question or questions in dispute. Any fees or costs of said arbitration shall be borne equally by the Lessor and the Lessee.

IN WITNESS WHEREOF, the parties hereunto set their hands on the day and year first above written.

**LESSOR: The Board of Township Trustees of
Sycamore Township, Ohio**

By: _____
 Thomas J. Weidman, President

LESSEE: SDI Foods, Inc.

By: _____
 Sean A. Tuohy, President

STATE OF OHIO)
 SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Thomas J. Weidman, President of the Board of Township Trustees

of Sycamore Township, Ohio, here and above referred to as Lessor, who acknowledges that he is duly authorized in the premises, and the same is the free act and deed of the Township.

Notary Public

STATE OF _____)
SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Sean A. Tuohy, President of SDI Foods, Inc., who acknowledges that he is duly authorized in the premises by separate corporate resolution and that the same is his free act and deed as such officer and the free act and deed of the corporation.

Notary Public