

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY DIVISION**

**In re:**

**FARMLAND INDUSTRIES, INC.**

**Debtor**

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**Case No. 02-50557-JWV  
Chapter 11**

**MOTION TO ESTABLISH TIME WITHIN WHICH DEBTOR AS  
LESSOR MUST ASSUME OR REJECT CERTAIN UNEXPIRED LEASES  
AND REQUEST FOR HEARING ON NOVEMBER 26, 2002**

Shawn K. Brown, the interim trustee (the “Trustee”) for Country Home Milling, L.P. (“Country Home”), Case No. 02-40432-BJH-7, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (“Texas Bankruptcy Court”), by and through counsel, Joanne B. Stutz of Evans & Mullinix, P.A., files this Motion to Establish Time Within Which Debtor, as Lessor, must Assume or Reject Certain Unexpired Leases, and would respectfully show that:

**Jurisdiction**

1. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for relief requested herein is § 365 of the Bankruptcy Code.

**Background Facts**

2. Country Home, a limited partnership, was formed on May 13, 1998, for the purpose of constructing and operating a 6,000 hundredweight flour mill located in Saginaw, Texas (the “Mill”). Country Home’s limited partners are Bay State Milling Company (“Bay

State”), the Debtor Farmland Industries, Inc. (“Farmland”), and Southwest Grain Marketers, LLC (“Southwest”) (collectively the “Limited Partners”). Each limited partner has a thirty three percent (33%) interest in the Debtor. Country Home’s general partner is Southwest Bay Farms, Inc., which is also proportionately owned by Bay State, Farmland and Southwest. The Mill was constructed adjacent to a grain elevator owned and operated by Farmland (“Elevator”). The Mill ceased operations in the fall of 2001.

3. On January 18, 2002, an involuntary petition was filed in the Texas Bankruptcy Court against Country Home pursuant to §303 of the Bankruptcy Code. On February 14, 2002, the Trustee was appointed by the Office of the United States Trustee, Region 6, as the interim trustee pursuant to §§ 303(g) and 701 of the Bankruptcy Code. On February 28, 2002, the Texas Bankruptcy Court entered an Order for Relief Under Chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee.

4. On May 13, 1998, the Debtor, as lessee, and Farmland Industries, Inc. (“Farmland”), as lessor, executed and entered into an Elevator Storage Lease (the “Silo Lease”) as regards twelve (12) grain storage bins capable of storing approximately 20,000 bushels each. The Silo Lease, in addition, (1) grants the Lessee various options for additional bin space and temporary bin space; (2) require the Lessee to pay fixed charges for rent, truck and car unloading fees; turning, conditioning, blending and transfer fees; fumigation fees; and charges for use of the Elevator’s truck scale; and (3) sets an agreed shrinkage factor. The Silo Lease has a term of ninety- nine (99) years with an annual base rental obligation of \$24,000. The Silo Lease further requires Farmland to provide certain services to the Lessee, including: (1) truck and car

unloading; (2) turning, conditioning, blending and transfers; (3) fumigation; and (4) use of the elevator truck scale.

5. The storage bins that are the subject of the Silo Lease are part of a larger grain elevator (the “Elevator”) which is located adjacent to the Debtor’s flour mill. Farmland is the owner of the Elevator.

6. Farmland and ADM Farmland, Inc. (“ADM/Farmland”), a wholly owned subsidiary of the Archer Daniels Midland Company, entered into a series of transactions, the apparent purpose of which was to transfer to ADM/Farmland all of Farmland’s grain inventory, domestic grain handling facilities, and all assets related to Farmland’s grain business. ADM Farmland purchased the grain inventories pursuant to a Purchase Agreement between Farmland and ADM Farmland dated May 4, 2001. In addition, one of the defined “Assets” in that Purchase Agreement was the Silo Lease. Therefore, Farmland’s rights, obligations and interest in the Silo Lease were sold, transferred, and assigned to ADM/Farmland. The Purchase Agreement also contained the following language at section 2.01:

“and ADM [ADM/Farmland] shall not assume pursuant to this Agreement or otherwise any liabilities or obligations of Farmland (except with respect to contracts included in the Assets)”.

The Silo Lease was one of the contracts included in the Assets for which ADM/Farmland assumed liabilities and obligations. In a related transaction of the same date as the Purchase Agreement, Farmland entered into a Master Lease Agreement with ADM/Farmland, pursuant to which Farmland leased the Elevator to ADM/Farmland (and Farmland’s other owned grain

handling facilities). The basic term of the lease is five years, through June 30, 2006, with options to renew another four separate five year terms. The Master Lease Agreement also grants to ADM/Farmland an option to purchase the facilities, including the Elevator, in the event Farmland elects to sell or otherwise transfer or dispose such facilities to a third party.

7. By order entered by the Texas Bankruptcy Court, the Trustee obtained authority to a) sell the Mill and related business assets to the winning bidder at auction, ConAgra Foods, Inc. ("ConAgra") for a sale price of \$5,220,000.00, and b) assume and assign the Silo Lease to ConAgra at closing. In accordance with that sale order, the Trustee will be able to close when ConAgra receives reasonable assurance in writing that the Elevator will be operated for the term of the Silo Lease by ADM/Farmland, Farmland, or a third party acceptable to ConAgra.

8. To the Trustee's knowledge, Farmland has not assumed or rejected the Silo Lease or the Master Lease Agreement. This Court, on July 26, 2002, signed an order granting an extension of the time for the Debtor to assume or reject unexpired leases of nonresidential real property in which the Debtor is the lessee, through to the date of confirmation of a plan of reorganization. That order was without prejudice to any party moving to shorten the time for good cause shown. That order does not apply to the Silo Lease or the Master Lease Agreement, as the Debtor is the lessor.

9. The Trustee seeks to establish a date by which the Debtor must assume or reject the Debtor's interest in the Silo Lease and in the Master Lease Agreement. The Trustee requests an order of this Court that requires the Debtor to assume or reject the Silo Lease and the Master Lease Agreement within ten (10) days after the date of entry of an order granting this request.

The Trustee asserts that good cause exists to establish this date as:

- a. The Trustee and ConAgra require certainty regarding the Elevator operation in order to close their sale.
- b. The Mill has been idle since November 2001.
- c. The Silo Lease is a valuable asset of the Country Home bankruptcy estate and is a vital and integral component of the Mill.
- d. ConAgra intends to operate the Mill, hire employees, produce flour to the markets, pay property taxes and generally deploy the Mill and related assets to productive use.

10. The Trustee and ConAgra, as applicable, intend to exercise their §365(h) rights as tenant to remain in possession of the Mill in the event Farmland rejects whatever interest it has in the Silo Lease. Therefore, rejection would not materially benefit Farmland. As stated, Farmland has sold the Silo Lease. As such, it is not clear whether Farmland is required to provide current timely performance of its landlord obligations pursuant to §365(d)(3).

8. Cause also exists to establish a certain time within which the Debtor must assume or reject the Master Lease. ADM/Farmland, as landlord by assignment of the Silo Lease, must provide elevator space and related service to Country Home Milling and its assigns.

ADM/Farmland will have the option to exercise its §365(h) rights to possession or termination respecting the Master Lease Agreement. Absent a decision by the Debtor and a decision by ADM/Farmland concerning its 365(h) rights, the Trustee is unable to redeploy the Mill into productive use.

9. Further delay does not benefit the Farmland bankruptcy estate. Farmland filed its petition May 31, 2002. It has now had well over five months to analyze its plans concerning these leases.

10. The Trustee requests that this Motion be heard on November 26, 2002, in conjunction with the Farmland hearing docket and the Debtor's motion to extend its exclusivity periods, to which the Trustee has filed a limited objection relating to this Motion.

WHEREFORE, the Trustee prays that the Court enter an order setting a date not later than ten (10) days after entry of the order requiring Farmland to either assume or reject the Silo Lease and the Master Lease Agreement, and for such further relief as the Court deems appropriate.

Respectfully Submitted:

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Western District of Missouri, Kansas City Division  
In re: Farmland Industries, Inc.  
Case No.: 02-50557-JWF  
Motion of Country Home Milling to Assume or Reject Lease

### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Motion will be mailed in the United States Mail, postage prepaid, on the 8<sup>th</sup> day of November, 2002, to the following parties to whom electronic notice has not been provided:

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