

Instrument Prepared By:

Matthew G. DeLaruelle  
ICE MILLER LLP  
One American Square, Suite 2900  
Indianapolis, IN 46282

## ASSIGNMENT AND ASSUMPTION AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this **"Agreement"**) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008 (the **"Effective Date"**), by and among Nestle Prepared Foods Company, a Pennsylvania corporation (**"Assignee"**), Millard Refrigerated Services, Inc., a Georgia corporation (**"Assignor"**), the City of Jonesboro, Arkansas (the **"Issuer"**) and The Bank of New York Trust Company, N.A., (**"Trustee"**).

### RECITALS

A. Assignor is the lessee of certain land located in Craighead County, Arkansas (the **"County"**) described in Exhibit A hereto (the **"Land"**). The Land is currently improved with a refrigerated warehouse facility containing approximately 172,000 square feet (the **"Improvements"**, and together with the Land, the **"Project"**).

B. Issuer issued its Taxable Industrial Development Bond (Millard Refrigerated Services, Inc. Project), Series 2002 (the **"Bond"**) in the original principal amount of up to \$35,000,000 pursuant to the Trust Indenture, dated as of June 1, 2002, between Issuer and Bank One Trust Company, N.A. (**"Original Trustee"**) (the **"Indenture"**) and a Lease Agreement, dated as of June 1, 2002, between Issuer and Millard Acquisitions-Jonesboro, Inc. (as assigned to Assignor pursuant to that certain Assignment and Assumption of Ground Lease, dated November 15, 2002, and as modified by that certain First Amendment to Lease Agreement, dated \_\_\_\_\_, 2008, by and between Issuer and Assignor, the **"Lease"**).

C. Assignor also executed and delivered a Guaranty Agreement, dated as of June 1, 2002, in favor of Original Trustee (the **"Guaranty Agreement"**) and a Home Office Payment Agreement, dated as of June 1, 2002, between Assignor and Original Trustee (the **"Payment Agreement"**).

D. The Assessor of the County and other government officials executed and delivered to Assignor a Payment in Lieu of Taxes Agreement, dated March 7, 2001 (the **"PILOT Agreement"**).

E. Assignor purchased the Bond from Issuer.

F. Assignor wishes to assign to Assignee all right, title and interest in and to, and the Assignee wishes to assume all obligations of Assignor, under the following documents: the Indenture, the Lease, the Guaranty Agreement, the Payment Agreement, the PILOT Agreement and the Bond (collectively, the **"Documents"**).

G. At the direction of Assignor, as the current owner of the Bond and Assignee, as new owner of the Bond, Trustee, as successor trustee to Original Trustee, is willing to consent to the sale, transfer or assignment of the Project and the Documents to Assignee and to the execution and delivery of this Agreement.

## STATEMENT OF AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

**1. Assignment and Assumption.** Assignor hereby sells, transfers and assigns to Assignee all of Assignor's rights, title and interests, under or with respect to the Documents. Assignee does hereby accept the foregoing assignment of the Documents, and does hereby assume and agree to perform, fulfill and observe all of the duties and obligations to be performed, fulfilled or observed by Assignor under or with respect to the Documents, arising after the Effective Date. Assignee shall defend, indemnify and hold Assignor harmless from and against any liability, damages, causes of action, expenses, and attorneys' fees incurred by Assignor by reason of the failure of Assignee to fulfill, perform, discharge, and observe its obligations with respect to the Documents after the Effective Date. Assignor shall defend, indemnify and hold Assignee harmless from and against any liability, damages, causes of action, expenses and attorneys' fees incurred by Assignee by reason of the failure of Assignor to fulfill, perform, discharge, and observe its obligations with respect to the Documents prior to and including the Effective Date.

**2. Representations, Warranties, and Covenants of Assignor.**

(a) Assignor hereby represents to Assignee, Issuer and Trustee, as of the Effective Date hereof, that: (i) the current amount outstanding on the Bond is Eight Million Four Hundred Eighty-One Thousand Six Hundred Ninety-Nine Dollars (\$8,481,699); (ii) no default by it has occurred and is presently continuing under the provisions of the Documents and no condition exists that, upon the giving of notice or the passage of time or both, would result in a default of any of Assignor's obligations under the Documents; (iii) there are no defenses, set-offs or rights of defense, set-off or counterclaim whether legal, equitable or otherwise to the obligations evidenced by or set forth in the obligations of the Documents; (iv) the Documents are in full force and effect, no rights therein have been previously assigned, encumbered or otherwise transferred by Assignor, nor has the Project or any part thereof been sublet by Assignor; (v) there are no mechanics' liens or liens for delinquent taxes or assessments encumbering the Project, nor has notice of a lien or notice of intent to file a lien been received, and (vi) upon full execution of this Agreement, Assignee shall be the sole holder of the Bond.

(b) Assignor hereby covenants and agrees that: (i) from and after the Effective Date hereof, Trustee and Issuer may deal solely with Assignee in all matters relating to the Documents and the Project; (ii) it shall not at any time hereafter take a mortgage encumbering the Project from Assignee to secure any sums to be paid or obligations to be performed by Assignee so long as any portion of the Bond remain unpaid; (iii) Trustee has no further duty or obligation of any nature relating to the Bond or the Documents to Assignor; and (iv) it hereby releases Trustee, and each of its predecessors in interest, together with any officers, directors,

partners, employees and agents of each of the foregoing, from all claims and liabilities relating to the transaction evidenced by the Documents through and including the Effective Date.

(c) This Agreement and the Documents constitute the legal, valid and binding obligations of Assignor, enforceable in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally or general principles of equity. Neither the entry into nor the performance of and compliance with this Agreement or the Documents by Assignor has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assignor or any property of Assignor is bound or any statute, rule or regulation applicable to Assignor.

Assignor understands and intends that Trustee, Issuer and Assignee shall rely on the representations, warranties and covenants contained herein.

### **3. Representations, Warranties, and Covenants of Assignee.**

(a) Assignee hereby represents and warrants to Issuer and Trustee as of the Effective Date, that it has not granted to Assignor a mortgage or other lien upon the Project to secure any debt or obligations owed to Assignor.

(b) Assignee hereby covenants and agrees that from and after the Effective Date it: (i) hereby assumes the obligations contained in the Documents; (ii) shall pay when due all sums due under the Documents; and (iii) shall perform all obligations imposed upon Assignor under the Documents. Assignee shall not hereafter, without Trustee's prior consent in accordance with the terms of the Documents, further encumber the Project or sell or transfer the Project or any interest therein, except as may be specifically permitted in the Documents.

(c) Assignee is a corporation duly organized and validly existing under the laws of the State of Pennsylvania. Assignee's registered office is as set forth in its Articles of Incorporation or most recent amendments thereto. Assignee has full power and authority to enter into and carry out the terms of this Agreement and to assume and carry out the terms of Documents. Assignee is in good standing under the laws of the State of its formation and the State of Arkansas.

(d) This Agreement constitutes the legal, valid and binding obligation of Assignee, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally or general principles of equity. Neither the entry into nor the performance of and compliance with this Agreement by Assignee has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assignee or any property of Assignee is bound or any statute, rule or regulation applicable to Assignee.

Assignee understands and intends that Issuer, Assignor and Trustee shall rely on the representations, warranties and covenants contained herein.

**4. Consent to Conveyance and Assumption.** Subject to the terms and conditions set forth in this Agreement, Trustee and Issuer hereby consent to: (a) the conveyance, assignment and transfer of the Project (or a portion thereof) and the Documents by Assignor to Assignee; and (b) the assumption by Assignee of the obligations of Assignor under the Documents arising from and after the Effective Date. Issuer's and Trustee's consent to such transfer shall, however, not constitute its consent to any subsequent transfers of the Project. Trustee and Issuer represent, covenant and agree that: (i) upon full execution of this Agreement, Assignee shall be substituted for Assignor in all respects under the provisions of the Documents, (ii) the Documents have not been modified (except for the Lease, which has been amended pursuant to the First Amendment referenced above) and are in full force and effect, and (iii) to their knowledge, Assignor has complied with all of the terms and provisions of the Documents, no payment from Assignor is currently due under the Documents, and no default or event for which the giving of notice or the passage of time or both would constitute a default under the Documents has occurred or will occur by reason of the execution and delivery of this Agreement.

**5. Incorporation of Recitals.** Each of the Recitals set forth above in this Agreement are incorporated herein and made a part hereof.

**6. Project Remains as Security for Trustee.** All of the Project as described and defined in the Documents (except such property retained by Assignor) shall remain in all respects subject to the provisions of the Documents and, except as expressly set forth herein, nothing herein contained and nothing done pursuant hereto shall affect or be construed to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Documents, nor shall anything herein contained or done in pursuance hereof affect or be construed to affect any other security, if any, held by Trustee.

**7. No Waiver by Trustee.** Nothing contained herein shall be deemed a waiver of any of Trustee's rights or remedies under the Documents.

**8. References.** From and after the Effective Date: (a) references in any of the Documents to any of the other Documents will be deemed to be references to such of the Documents, as assumed pursuant to this Agreement; and (b) references in the Documents to Assignor shall hereafter be deemed to refer to Assignee, provided that Assignee shall have no liability or responsibility to Issuer or Trustee, whether arising out of the Documents, by operation of law, or otherwise, for any cause of action or matter that accrued prior to the Effective Date.

**9. Relationship with Documents.** To the extent that this Agreement is inconsistent with the Documents, this Agreement will control and the Documents will be deemed to be amended hereby.

**10. Captions.** The headings to the Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

**11. Partial Invalidity.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable,

and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

**12. Entire Agreement.** This Agreement and the documents contemplated to be executed herewith constitutes the entire agreement among the parties hereto with respect to the assumption of the obligations of the Assignor under the Documents and shall not be amended unless such amendment is in writing and executed by each of the parties. The Agreement supersedes all prior negotiations regarding the subject matter hereof.

**13. Binding Effect.** This Agreement and the documents contemplated to be executed in connection herewith shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**14. Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be an original, but any of which, taken together, will constitute one and the same Agreement.

**15. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Agreement to be effective as of the Effective Date.

**MILLARD REFRIGERATED SERVICES, INC.**

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

On this the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself to be the \_\_\_\_\_ of Millard Refrigerated Services, Inc., a corporation, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as \_\_\_\_\_.

Notary Public

My Commission Expires:

# SIGNATURE PAGE

TO

## ASSIGNMENT AND ASSUMPTION AGREEMENT

**ASSIGNEE:**

**NESTLE PREPARED FOODS COMPANY**

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

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

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

STATE OF \_\_\_\_\_)

)

SS.

COUNTY OF \_\_\_\_\_)

On this the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself to be the \_\_\_\_\_ of Nestle Prepared Foods Company, a corporation, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as \_\_\_\_\_.

In witness whereof I hereunto set my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

SIGNATURE PAGE  
TO  
ASSIGNMENT AND ASSUMPTION AGREEMENT

**TRUSTEE:**

**THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee**

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

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

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

STATE OF \_\_\_\_\_)

)

SS.

COUNTY OF \_\_\_\_\_)

On this the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared \_\_\_\_\_, of the State of \_\_\_\_\_, known to me (or satisfactorily proven) to be the person described in the foregoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[SEAL]

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

My Commission Expires:



SIGNATURE PAGE  
TO  
ASSIGNMENT AND ASSUMPTION AGREEMENT

**THE CITY OF JONESBORO, ARKANSAS**

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

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

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

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

SS.

On this the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared \_\_\_\_\_, of the State of \_\_\_\_\_, known to me (or satisfactorily proven) to be the person described in the foregoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[SEAL]

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

My Commission Expires:

## **EXHIBIT A**

### **Legal Description of Land**

The following described land situated in Craighead County, to-wit:

A PART OF THE NORTH HALF OF SECTION 29, TOWNSHIP 14 NORTH - RANGE 5 EAST, CRAIGHEAD COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF NORTHEAST QUARTER OF THE NORTHWEST QUARTER SECTION 29 TOWNSHIP 14 NORTH - RANGE 5 EAST CRAIGHEAD COUNTY, ARKANSAS; THENCE S01° 39' 17" E ALONG THE FORTY ACRE LINE - 86.57' TO THE NEW SOUTH RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY NO. 18; THENCE N87° 49' 03" E ALONG SAID RIGHT OF WAY LINE - 881.63'; THENCE N87° 10' 28" E ALONG SAID RIGHT OF WAY LINE - 976.17' TO THE POINT OF BEGINNING PROPER; THENCE N87° 10' 28" E ALONG SAID RIGHT OF WAY LINE 709.29' TO THE WEST RIGHT OF WAY LINE OF B P WAY (ALSO KNOWN AS GREAT DANE DRIVE); THENCE S01° 33' 32" E ALONG SAID RIGHT OF WAY LINE - 1704.12'; THENCE S87° 13' 43" W - 671.62'; THENCE N02° 49' 32" W - 1703.07' TO THE POINT OF BEGINNING PROPER CONTAINING 27.00 ACRES MORE OR LESS.

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