

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Best Foods & Farm Supply, Inc.

- Individual(s)
- General Partnership
- Corporation-State Pennsylvania
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Asset Purchase Agreement
- Merger
- Change of Name

Execution Date: October 7, 2003

2. Name and address of receiving party(ies)

Name: Milk Specialties Company

Internal

Address:

Street Address: Illinois & Water Streets

City: Dundee State: IL Zip: 60118

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1621519; 1602663; 615414; 1605849; 1748761; 1067355; 1341297

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Kelly Teelin

Internal Address: Michael Best & Friedrich LLP
Suite 700

Street Address: 1 South Pinckney Street

City: Madison State: WI Zip: 53703

6. Total number of applications and registrations involved:

7

7. Total fee (37 CFR 3.41) \$ 190.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:


50-0842

DO NOT USE THIS SPACE

9. Signature.

Rob V. Petershack, Esq.

Name of Person Signing



Signature

August 16, 2004

Date

Total number of pages including cover sheet, attachments, and document: 24

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

ASSET PURCHASE AGREEMENT

dated as of October 7, 2003,

by and among

MILK SPECIALTIES COMPANY

as the Buyer,

BEST FEEDS & FARM SUPPLY, INC.,

as the Seller

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EXHIBITS:

- Exhibit A Form of Assignment, Assumption and Bill of Sale
- Exhibit B Form of Employment Agreements

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of October 7, 2003, by and among MILK SPECIALTIES COMPANY, a Delaware corporation (the "Buyer"), and BEST FEEDS & FARM SUPPLY, INC., a Pennsylvania corporation (the "Seller").

RECITALS

WHEREAS, the Seller is engaged in the business of manufacturing and selling animal pet feed known as the Joy Pet Food product line (the "Business"); and

WHEREAS, the Buyer and the Seller previously entered into an Agreement and Bill of Sale (the "Bill of Sale") whereby the Seller sold to the Buyer a part of its saleable finished products and ingredients, raw materials and packaging used for inventories of merchandise of the Business in an amount equal to approximately one-half (1/2) of the inventory then existing; and

WHEREAS, the Buyer and the Seller also previously entered into a Toll Manufacturing Agreement (the "Toll Manufacturing Agreement") whereby the Seller continued to manufacture, package, solicit and make sales of, and ship animal feed products, consistent with its past practice, on behalf of the Buyer while the Buyer evaluated the Seller to determine whether to acquire certain assets of the Seller related to the Business; and

WHEREAS, the Buyer desires to purchase certain of the assets related to the Business and the Seller desires to sell and transfer to the Buyer certain of the assets related to the Business, all as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and the Seller hereby agree as follows:

**ARTICLE I
PURCHASE AND SALE OF ASSETS**

1.1 Defined Terms. Capitalized terms used herein have the meanings set forth in Appendix A hereto.

1.2 Purchased Assets. Subject to the terms and conditions of this Agreement, and in reliance upon the representations, warranties, covenants and agreements made in this Agreement by the Seller, the Buyer shall purchase, accept and acquire from the Seller, and the Seller shall sell, transfer, convey, assign and deliver to the Buyer, the assets of the Business, whether tangible or intangible, real, personal or mixed, and wherever located, listed as follows (collectively, the "Purchased Assets"):

- (a) All saleable raw materials, saleable finished inventory and work-in-process (the "Inventories");
- (b) The agreements of Seller relating to the Business and listed on Schedule 1.2(b) hereto (the "Contracts");
- (c) All Intellectual Property associated with the Business and goodwill associated with respect thereto, all licenses and sublicenses granted and obtained with respect thereto and rights thereunder, all remedies against infringements thereof and rights to protection of interests therein under the laws of all jurisdictions (including, without limitation, all Intellectual Property listed on Schedule 1.2(c) hereto);
- (d) The vehicles owned by the Seller and listed on Schedule 1.2(d) hereto;
- (e) The Seller's goodwill related to the Business;
- (f) All sales, marketing and development and expansion plans, promotional and sales materials, finished goods purchased from third parties, strategic plans, projections, studies, reports and other documents and data (including, without limitation, creative materials, advertising and promotional matters and current and past lists of customers, suppliers, vendors and sources) relating to the Business, and all marketing and sales materials related to the Business;
- (g) All of the Seller's rights and remedies on and after the Closing Date, under warranty or otherwise, against a manufacturer, vendor or other Person for any defects in any Purchased Asset;
- (h) All deposits held by the Seller with respect to products to be delivered by Buyer after the Closing; and
- (i) All causes of action, choses in action and rights of recovery with respect to any of the foregoing.

1.3 Excluded Assets. The Purchased Assets shall not include, and the Seller shall retain, all other assets of the Business and of the Seller not listed in Section 1.2, including, without limitation: (i) use of the name "Best Feeds" for all purposes other than the manufacture, marketing and sale of dog and cat food, (ii) all assets relating to the Seller's garden center business, and (iii) all equipment, buildings and real estate relating to the Seller's manufacturing plants (the "Excluded Assets").

1.4 Non-Assumption of Liabilities.

- (a) The Buyer shall, on the Closing Date, by its execution and delivery of the Assignment, Assumption and Bill of Sale, assume and agree to pay and perform those liabilities, claims or obligations of Seller resulting from, caused by or arising out of: (i) the Contracts, and (ii) the use, sale or ownership of any Purchased Asset by Purchaser, provided, however, that such

liabilities, claims or obligations described in (i) and (ii) arise out of and are based on events occurring after the Closing Date

(b) Except as stated in Section 1.4(a) above, the Buyer shall not be responsible for, assume, pay, perform, discharge, or accept any liabilities, debts or obligations of the Seller of any kind whatsoever, whether actual, contingent, accrued, known or unknown, including, without limitation, accrued expenses, indebtedness and other long term liabilities and liabilities relating to taxes, any bulk sales requirements, employee compensation, pension, profit-sharing, vacation, health insurance, disability insurance or other employee benefits programs, worker's compensation, breach or negligent performance of any contract, or breach of warranty relating thereto, liabilities resulting from breach of contract, torts, illegal activity, unlawful employment or business practice or any other liability or obligation whatsoever.

ARTICLE II PURCHASE PRICE

2.1 Closing. The closing (the "Closing") of the purchase and sale of the Purchased Assets shall take place at the Seller's office at Oakdale, Pennsylvania, at 11:00 a.m. local time, on October 7, 2003 (the "Closing Date"), or at such other time and place as may be mutually agreed to by the Buyer and the Seller.

2.2 Payment of the Purchase Price. The aggregate consideration to be paid on the Closing Date for the Purchase Assets shall be Five Hundred Thousand Dollars (\$500,000) plus the Inventory Value as determined on the Effective Date, which aggregate consideration is determined by the parties hereto to be, in aggregate, Eight Hundred Seventeen Thousand Eight Hundred Seventy-One Dollars (\$817,871) (the "Purchase Price"). The Purchase Price shall be paid as follows:

- (a) a check payable to the Seller in an amount equal to Two Hundred Ninety-Six Thousand Eight Hundred Twenty-Six Dollars (\$296,826) Dollars;
- (b) a check payable to Cornerstone Capital Advisors, Ltd. in an amount equal to Twenty-Five Thousand Dollars (\$25,000);
- (c) a check payable to Sky-Bank in an amount equal to Four Hundred Ninety-Six Thousand Forty-Five Dollars (\$496,045).

2.3 Closing Deliveries by the Seller. At the Closing, the Seller shall deliver the following documents to the Buyer:

- (a) An executed copy of the Assignment, Assumption and Bill of Sale in substantially the form of Exhibit A (the "Assignment, Assumption and Bill of Sale");
- (b) An executed copy of the Employment Agreement between the Buyer and Russell N. Kohser and the Employment Agreement between the Buyer and Robert Gueldner, in substantially the forms of Exhibit B (collectively, the "Employment Agreements");

- (c) A certificate of the President of the Seller certifying as to: (i) the incumbency of the Seller's officers; (ii) the accuracy of the Seller's organizational documents (with copies attached thereto); and (iii) the resolutions of the Seller's Board of Directors authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby;
- (d) All consents for the assignment of all Contracts, which are necessary in order for said Contracts to be assigned to the Buyer upon their present terms and the Seller shall pay all fees, charges and other costs that are required or imposed in connection with obtaining any such consent;
- (e) Payoff letter and lien release from Sky-Bank releasing all Sky-Bank liens and encumbrances on the Purchased Assets; and
- (f) Legal opinion in form reasonably satisfactory to the Buyer and the Seller.

2.4 Closing Deliveries by the Buyer. At the Closing, the Buyer shall deliver the following documents to the Seller:

- (a) Payment of the Purchase Price in accordance with Section 2.2(a);
- (b) An executed copy of the Assignment, Assumption and Bill of Sale;
- (c) An executed copy of the Employment Agreements; and
- (d) A certificate of the President of the Buyer certifying as to: (i) the incumbency of the Buyer's officers; and (ii) the resolutions of the Buyer's Board of Directors authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

2.5 Sales and Transfer Taxes. The Buyer shall pay any and all transfer, sales, purchase, use, value added, excise or similar tax imposed under the laws of the United States, or any state or political subdivision thereof, which arises out of the transfer by the Seller to the Buyer of any of the Purchased Assets up to \$10,000.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER

In order to induce the Buyer to enter into this Agreement, the Seller makes the following representations and warranties to the Buyer, each of which shall be deemed to be independently material and relied upon by the Buyer, regardless of any investigation made by, or information known to, the Buyer.

3.1 Organization; Authorization. The Seller is a corporation duly organized and in good standing under the laws of the Commonwealth of Pennsylvania. The Seller has all necessary power and authority to enter into and perform the transactions contemplated hereby in accordance with the terms and conditions hereof. The execution and delivery of this Agreement,

and the performance by the Seller of each of its obligations contained herein, have been duly approved by all requisite corporation action.

3.2 **Enforceability.** This Agreement and all other agreements of the Seller contemplated hereby are or, upon the execution and delivery thereof will be, the valid and binding obligations of the Seller enforceable against it in accordance with their terms.

3.3 **Conflicting Obligations.** The execution and delivery of this Agreement do not, and the consummation of the sale and purchase of the Purchased Assets contemplated hereby will not: (a) conflict with or violate any provisions of the articles of organization or other organic documents of the Seller, in each case as amended and in effect on and as of the date hereof and on and as of the Closing Date; or (b) conflict with or result in breach of any provisions of, or result in the maturation or acceleration of, any obligations under any contract, agreement, instrument, document, lease, license, permit, indenture, or obligation, or any law, statute, ordinance, rule, regulation, code, guideline, order, arbitration award, judgment or decree, to which the Seller is subject or to which the Seller is a party.

3.4 **Title to Assets.** The Seller and the Buyer understand that, prior to the Closing, some or all of the Purchased Assets are subject to a Lien in favor of Sky-Bank, Seller's lender, which Lien shall be released as part of the transaction represented by this Agreement and as a condition to the obligations of the Seller and the Buyer to complete this Agreement. Upon such release, the Seller has good and marketable title to all of the Purchased Assets, free and clear of any Lien or restrictions on transfer.

3.5 **Third Party Consents.** Except as stated on Schedule 3.5, which shall be provided upon Closing, no third party consents, approvals or authorizations are necessary for the execution and consummation of the transactions contemplated hereby, nor are any such consents, approvals or authorizations required in order for any of the Purchased Assets, including without limitation, the Contracts, to be assigned to the Buyer.

3.6 **Litigation.** Except as described in Schedule 3.6, there is not now, any litigation, claim, proceeding or investigation pending, or, to the Seller's Knowledge, threatened against or relating to the Seller's ability to perform its obligations under this Agreement.

3.7 **Tax Matters.** Other than for Taxes described in Section 2.5, the Seller has filed all Tax Returns (as defined below) that it was required to file under the applicable tax laws affecting Seller. "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

3.8 **Brokerage.** The Seller has incurred brokerage fees in connection with the transaction contemplated by this Agreement to Cornerstone Capital Advisors, Ltd. in an amount equal to five percent (5%) of the Purchase Price. The payment of such brokerage or similar fee shall be the sole responsibility of the Seller and earned, due and payable at Closing (and may be deducted from the Seller's proceeds at Closing) and the Seller has not incurred any other obligations to pay brokerage or similar fees.

3.9 Intellectual Property. The Intellectual Property listed on Schedule 1.2(c) is all of the Intellectual Property that is used in or necessary for the conduct of the Business, as presently or previously conducted. The Seller is the sole owner of all right, title and interest in the Intellectual Property. There are no interference, opposition or cancellation proceedings pending or threatened against the Seller or the Intellectual Property. The use of the Intellectual Property does not infringe upon the rights of any third party. No claim, suit or action is pending or, to the Seller's Knowledge, threatened alleging that the Seller is infringing upon the intellectual property rights of others.

3.10 Contracts. All Contracts are valid, subsisting and enforceable in accordance with their terms and in full force and effect. Seller has provided to the Buyer a true and complete copy of all written Contracts and a true and a complete description of all oral Contracts, with all amendments and modifications thereto. Neither the Seller nor, to the Knowledge of the Seller, any other party to any of the foregoing has violated or breached any provision of, nor is the Seller or, to the Knowledge of the Seller any other party in default (nor is any such default alleged to exist) in any respect under the terms of, any of the Contracts. To the Knowledge of the Seller, there exists no event or condition which, with the giving of notice, the lapse of time, or both, would become a default under any Contracts. The Seller knows of no event, happening, set of circumstances, threat or fact which would lead it to believe that any party to Contracts will terminate its contractual relationship with the Seller. Each of the Contracts were entered into by Seller in the ordinary course of business and Seller has not waived, or agreed to waive, any rights under any of the same.

3.11 Full Disclosure. The representations and warranties contained herein, and all other documents, certifications, materials and statements or information given to the Buyer by or on behalf of the Seller, or disclosed in this Agreement, do not include any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein in order to make the statements herein or therein, in light of the circumstances under which they are made, not misleading.

3.12 Quality. The Inventory conform to and meet or exceed the standards required by all applicable laws, ordinances and regulations now in effect and are of commercially reasonable and saleable quality.

**ARTICLE IV
REPRESENTATIONS OF THE BUYER**

In order to induce the Seller to enter into this Agreement, the Buyer makes the following representations and warranties to the Seller, each of which shall be deemed to be independently material and relied upon by the Seller, regardless of any investigation made by, or information known to, the Seller.

4.1 Organization; Authorization. The Buyer is a corporation duly organized and validly existing under the laws of the State of Wisconsin. The Buyer has all necessary power and authority to enter into and perform the transactions contemplated herein in accordance with the terms and conditions hereof. The execution and delivery of this Agreement, and the

performance by the Buyer of its obligations contained herein, have been duly authorized by all corporation actions.

4.2 **Enforceability.** This Agreement and all other agreements of the Buyer contemplated hereby are or, upon the execution thereof, will be the valid and binding obligations of the Buyer enforceable against it in accordance with their terms.

4.3 **Conflicting Obligations.** The execution and delivery of this Agreement do not, and the consummation of the sale and purchase of the Purchased Assets contemplated hereby will not: (a) conflict with or violate any provisions of the incorporation of the Buyer; or (b) conflict with or violate any provisions of, or result in the maturation or acceleration of, any obligations under any contract, agreement, instrument, document, lease, license, permit, indenture, or obligation, or any law, statute, ordinance, rule, regulation, code, guideline, order, arbitration award, judgment or decree, to which the Buyer is subject to or which the Buyer is a party.

4.4 **Litigation.** There is no litigation, claim, proceeding or investigation pending, or to the Buyer's Knowledge, threatened against the Buyer relating to its ability to perform its obligations under this Agreement.

4.5 **Brokerage.** The Buyer has not incurred, nor made commitment for, any brokerage, finders or similar fee in connection with the transactions contemplated by this Agreement.

4.6 **Full Disclosure.** The representations and warranties contained herein, and all other documents, certifications, materials and statements or information given to the Seller by or on behalf of the Buyer or disclosed in this Agreement, do not include any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein in order to make the statements herein or therein, in light of the circumstances under which they are made, not misleading.

ARTICLE V MISCELLANEOUS

5.1 **Survival; Benefit and Assignment; Further Assurances.** The representations and warranties of the parties contained in this Agreement shall not survive the Closing hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assignees, and beneficiaries in interest; provided, however, that this Agreement may not be assigned by the Seller without the prior written consent of the Buyer. The parties agree to cooperate with one another, and at the reasonable request of the other, to take such further action as the other party may reasonably request to consummation the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

5.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania (regardless of such

Commonwealth's conflict of laws principles), and without reference to any rules of construction regarding the party responsible for the drafting hereof.

5.3 Expenses. Except as otherwise herein provided, all expenses incurred in connection with this Agreement or the transactions herein provided for shall be paid by the party incurring such expenses and costs.

5.4 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party at the earlier of (i) when actually delivered to such party or (ii) when mailed to such party by registered or certified U.S. Mail (return receipt requested) or sent by overnight courier, confirmed by receipt, and addressed to such party at the address designated below for such party (or to such other address for such party as such party may have substituted by notice pursuant to this Section 5.4):

(a) If to MSC: "Important Notice"
Milk Specialties Company
Illinois & Water Streets
P.O. Box 278
Dundee, IL 60118
Attn: Mr. William P. Herrington
President

With a copy to: "Important Notice"
Michael Best & Friedrich LLP
One South Pinckney Street
Suite 700
Madison, WI 53703
Attn: Gregory J. Lynch, Esq.

(b) If to Best Feeds: "Important Notice"
BEST FEEDS & FARM SUPPLY, Inc.
P.O. Box 246
Oakdale, PA 15071
Attn: Mr. Russell N. Kohser
President and Chief Executive Officer

With a copy to: "Important Notice"
Conway, Hoffman and Associates
53 Old Clairton Road
Pittsburgh, PA 15236
Attn: George Hoffinan, Esq.

5.5 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto.

5.6 Headings. All Section headings herein are inserted for convenience only and shall not modify or affect the construction or interpretation of any provision of this Agreement.

5.7 Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of all the parties hereto. Any party may waive in writing any term or condition contained in this Agreement and intended to be for its benefit; provided, however, that no waiver by any party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition. Each amendment, modification, supplement or waiver shall be in writing signed by the party or the parties to be charged.

5.8 Entire Agreement. This Agreement and the Exhibits and Schedules attached hereto represent the full and complete agreement of the parties with respect to the subject matter hereof and supersede and replace any prior understandings and agreements among the parties with respect to the subject matter hereof and no provision or document of any kind shall be included in or form a part of such agreement unless signed and delivered to the other party by the parties to be charged.

5.9 Third-Party Beneficiaries. No third parties are intended to benefit from this Agreement, and no third-party beneficiary rights shall be implied from anything contained in this Agreement.

5.10 Interpretation. Unless otherwise expressly provided or unless the context requires otherwise, (a) all references in this Agreement to Articles, Sections, Schedules and Exhibits shall mean and refer to Articles, Sections, Schedules and Exhibits of this Agreement; (b) all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations; (c) words using the singular or plural number also shall include the plural and singular number, respectively; (d) references to "hereof," "herein," "hereby" and similar terms shall refer to this entire Agreement (including the Schedules and Exhibits hereto); and (e) references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of a Governmental Authority, Persons succeeding to the relevant functions of such Person).

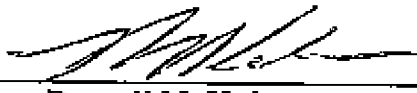
[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written.

MILK SPECIALTIES COMPANY

By: 
William P. Herrington
President

BEST FEEDS & FARM SUPPLY, INC.

By: 
Russell N. Kohser
President and Chief Executive Officer

APPENDIX A
DEFINITIONS

Certain Defined Terms. As used in this Agreement, the following terms shall have the meanings specified in this Appendix A unless the context otherwise requires.

“Agreement” means this Asset Purchase Agreement, together with all Exhibits and Schedules hereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Assignment, Assumption and Bill of Sale” has the meaning set forth in Section 2.3(a).

“Bill of Sale” has the meaning set forth in the recitals to this Agreement.

“Business” has the meaning set forth in the recitals to this Agreement.

“Buyer” has the meaning set forth in the first paragraph to this Agreement.

“Closing” has the meaning set forth in Section 2.1.

“Closing Date” has the meaning set forth in Section 2.1.

“Contracts” has the meaning set forth in Section 1.2(b).

“Effective Date” means September 2, 2003.

“Employment Agreement” has the meaning set forth in Section 2.3(b).

“Excluded Assets” has the meaning set forth in Section 1.3.

“Intellectual Property” means all intellectual property relating to the Business, including, without limitation, (i) all trademarks, service marks, trade dress, logos, trade names, brand names (including, without limitation, the Registered Trademarks listed on Schedule 1.2(c) hereto), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (ii) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (iii) all mask works and all applications, registrations, and renewals in connection therewith, (iv) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (v) all computer software (including data and related documentation), (vi) all other proprietary rights, (vii) all copies and tangible embodiments thereof (in whatever form or medium), (viii) the right to use the following phone number (800)245-4125, and (ix) the website “joypetfood.com”.

"Inventories" has the meaning set forth in Section 1.2(a).

"Inventory Value" means, the value of the Inventories of the Seller as of the Closing, as determined by the Seller and the Buyer, calculated as follows: (i) all ingredients, raw materials and packaging shall be valued at the lower of actual cost incurred or fair market value, (ii) all saleable finished inventories of merchandise shall be valued at eighty-five percent (85%) of selling value, and (iii) the actual cost of all promotional and sales materials and all finished goods purchased from third parties.

"Knowledge" means, with respect to any party, the actual knowledge of such party after reasonable inquiry and, if such party fails to make such inquiry, shall include the constructive knowledge of such facts as would have been learned had such reasonable inquiry been made.

"Lien" means any mortgage, pledge, lien, encumbrance, charge or other security interest of any kind.

"Purchase Price" has the meaning set forth in Section 2.2.

"Purchased Assets" has the meaning set forth in Section 1.2.

"Seller" has the meaning set forth in the first paragraph to this Agreement.

"Tax" means, any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

"Tax Return" has the meaning set forth in Section 3.7.

"Toll Manufacturing Agreement" has the meaning set forth in the recitals to this Agreement.

Schedule 1.2(b)

Contracts

Lease Agreement between Bud Behling Leasing, Inc. and Best Feeds & Farm Supplies, Inc., dated October 22, 2002.

Schedule 1.2(c)

Intellectual Property

1. **Registered Trademarks**

<u>Description</u>	<u>Reg #</u>	<u>Reg Date</u>	<u>Exp Date</u>
<u>United States</u>			
Dainty (Cat Litter)	1621519	11/6/90	11/6/10 (renewed)
Misc Puppy Design (dog food)	1602663	6/19/90	6/19/10 (renewed)
JOY (Stylized)(Dog Food)	615414	11/1/55	11/1/05 (renewed)
JOY (Cat food, Dog Biscuits, Bird Seed)	1605849	7/10/90	7/10/10 (renewed)
Demand (dog food)	1748761	1/26/93	1/26/13 (renewed)
Best Feeds (Dog Food)	1067355	6/7/77	6/7/07 (renewed)
Jump for JOY (dog & cat food)	1341297	6/11/85	6/11/05 (renewed)
<u>Japan</u>			
Puppy Logo	4062072	10/3/97	10/3/07
Demand	3319750	6/6/97	6/6/07
<u>Canada</u>			
Puppy Design (dog food)	446980	9/1/95	9/1/10
Best Feeds (dog food)	436458	11/25/94	11/25/09
DEMAND (dog food)	435422	11/11/94	11/11/09
JOY (Stylized)	435421	11/11/94	11/11/09
<u>Mexico</u>			
Puppy Design	511947	11/30/95	9/22/05
Best Feeds	572770	9/22/95	9/22/05
JOY	508045	9/22/95	9/22/05

Schedule 1.2(d)**Vehicles**

<u>Vehicle Type and VIN#</u>	<u>User</u>	<u>Status</u>	<u>Value*</u>
1998 Chev Silverado 1GCEC19W3W3236924	R. Cline	Owned	\$5,560
1998 Chev Silverado 1GCEC19W8WE238510	R. Kohser, Jr	Owned	\$5,560
1998 Chev Silverado 1GCEC19W8WE23799	D. Surrena	Owned	\$6,175
2000 Chev Silverado 1GCEC19W9YZ138867	R. Eckard	Owned	\$8,650
2000 Chev Silverado 1GCEC19W2YZ138785	J. Olenick	Owned	\$7,830
1996 Chev Tahoe 1GNEK13R9TJ337952	R. Gueldner	Owned	\$4,825
1995 GMC Suburban 1GKFK16K9SJ748749	R. Kohser	Owned	\$5,575

* Value is determined according to Kelly Blue Book trade in value.

Schedule 3.5

Consents

1. Lease Agreement between Bud Behling Leasing, Inc. and Best Feeds & Farm Supplies, Inc., dated October 22, 2002.
2. Sky Bank pursuant to loan agreements.

Schedule 3.6**Litigation**

Columbia Gas Company has asserted an alleged claim against Best Feeds in the sum of approximately \$162,000. This claim relates to alleged transmission charges for furnishing natural gas utility services to the manufacturing plant. The claim is disputed. No action has been taken by Columbia Gas except to send a statement for payment, to which an appropriate response has been made.

EXHIBIT A**ASSIGNMENT, ASSUMPTION AND BILL OF SALE**

This ASSIGNMENT, ASSUMPTION AND BILL OF SALE (this "Agreement") is made as of October 7, 2003 by and among Milk Specialties Company, a Delaware corporation (the "Buyer"), and BEST FEEDS & FARM SUPPLY, Inc., a Pennsylvania corporation (the "Seller").

RECITALS:

WHEREAS, the Buyer and the Seller have executed and delivered that certain Asset Purchase Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified, the "Purchase Agreement"), pursuant to which the Buyer has agreed to purchase the Purchased Assets (as defined in the Purchase Agreement) from the Seller; and

WHEREAS, the Buyer and the Seller have also previously executed and delivered that certain Toll Manufacturing Agreement (the "Toll Manufacturing Agreement") whereby the Seller continued to manufacture, package, solicit and make sales of, and ship animal feed products, consistent with its past practice, on behalf of the Buyer while the Buyer evaluated the Seller to determine whether to acquire certain assets of the Seller related to the Business; and

WHEREAS, the Buyer and the Seller desire to execute and deliver this Agreement for the purpose of effecting the sale, transfer, conveyance, assignment and delivery of the Purchased Assets as contemplated pursuant to Section 1.2 of the Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, the parties hereto agree as follows:

1. Definitions. Unless otherwise defined herein, each capitalized term used herein shall have the meaning assigned thereto in the Purchase Agreement.

2. Sale and Assignment.

(a) The Seller by this Agreement does hereby sell, transfer, convey, assign and deliver to the Buyer, its successors and permitted assigns, all of the Seller's right, title and interest in, to and under the Purchased Assets.

(b) Notwithstanding anything in this Agreement to the contrary, the Seller is retaining title to, and possession of, and is not selling, assigning, conveying, transferring or delivering to the Buyer hereunder or otherwise, any rights, title or interest of such Seller in, to or under, the Excluded Assets.

(c) The Seller by this Agreement does hereby sell, transfer, convey, assign and deliver to the Buyer, its successors and permitted assigns, all of the Seller's right, title and interest in, to and under (i) the MSC Inventory (as defined in the Toll Manufacturing Agreement) immediately upon the termination of the Toll Manufacturing Agreement, and (ii) the MSC

Receivables (as defined in the Toll Manufacturing Agreement) immediately upon such MSC Receivables being created as stated in the Toll Manufacturing Agreement.

3. **No Third-Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer upon any Person, other than the parties hereto, or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

4. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. **Choice of Law: Headings.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania (regardless of such Commonwealth's conflict of laws principles), and without reference to any rules of construction regarding the party responsible for the drafting hereof. Headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect any of the terms hereof.

6. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Assignment, assumption and Bill of Sale to be duly executed as of the date first written above.

MILK SPECIALTIES COMPANY

By: _____
William P. Herrington
President

BEST FEEDS & FARM SUPPLY, INC.

By: _____
Russell N. Kohser
President and Chief Executive Officer

EXHIBIT B
EMPLOYMENT AGREEMENT