



100933230

To the Honorable Commissioner of Patents and
Please record the attached original documents

1. Name of conveying party(ies)
Mulberry Child Care Centers, Inc.
 Individual(s)
 General Partnership
 Corporation-State- Delaware
 Association
 Limited Partnership
 Other

MRO
12-28-98

2. Name and address of receiving party(ies):

Name: **State Street Bank and Trust Company**
 Address: **225 Franklin Street**
 City: **Boston** State: **MA** Zip: **02110**

- Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 Other **Massachusetts trust company**

RECORDED
DEC 23 1998
COMM-FS

Additional name(s) of
conveying party attached?

Yes No

3. Nature of Conveyance:

- Assignment
 Merger
 **Trademark and Security Agreement
 and Conditional Assignment from
 Mulberry Child Care Centers, Inc. in favor of
 State Street Bank and Trust Company**

If assignee is not domiciled in the United States, a domestic
representative designation is attached:

Yes No

- Change of Name
 Other: _____

Additional name(s) address(es) attached?

Yes No

Execution Date: **December 17, 1998**

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

- A. Application No.(s)
 Application No.: 75/504,231;
 Application No.: 75/504,232;
 Application No.: 75/210,491.

- B. Registration No.(s)

Additional numbers attached? Yes No

90E

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

Name: **Frank S. Hamblett, Esq.**
 Address: **Peabody & Arnold LLP**
50 Rowes Wharf
 City: **Boston** State: **MA** Zip: **02110**

Total Fee (37 CFR 3.41) **\$90**

Enclosed

8. Statement of my signature.

12/31/1998 DMGUYEN 00000218 75504231
 01 FC:481
 02 FC:482
 40.00 OP
 50.00 OP

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy
is a true copy of the original document.

Frank S. Hamblett, Esq.

Name of Person Signing

Signature

December 23, 1998

Date

Total number of pages comprising cover sheet: 1

PABOS2:FSH:195019_1

TRADEMARK SECURITY AGREEMENT
AND CONDITIONAL ASSIGNMENT

This TRADEMARK SECURITY AGREEMENT AND CONDITIONAL ASSIGNMENT (the "**Agreement**") is made as of December 17, 1998, by MULBERRY CHILD CARE CENTERS, INC., a Delaware corporation (the "**Borrower**") in favor of STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company (the "**Lender**").

Preliminary Statements

WHEREAS, the Borrower has requested that the Lender enter into the Loan Agreement (as defined below) and to lend certain sums and otherwise extend certain credit to or for the benefit of the Borrower, as provided for therein; and

WHEREAS, it is a condition precedent to the effectiveness of the Loan Agreement and to the obligations of the Lender to lend such sums and otherwise extend such credit under the Loan Agreement that the Borrower enter into this Agreement;

NOW, THEREFORE, in order to induce the Lender to enter the Loan Agreement and to lend such sums and otherwise extend such credit to or for the benefit of the Borrower, and in consideration thereof and in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby agrees with the Lender as follows:

1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"PTO": the United States Patent and Trademark Office or any other federal governmental agency which may hereafter perform its functions.

"Security Agreement": the Security Agreement-All Assets, dated of even date herewith between the Borrower and the Lender, as the same may be amended, modified, supplemented, extended or restated, from time to time.

"Trademark Collateral": as defined in Section 2.1 below.

"Trademark Registrations": all present or future federal, state and foreign registrations of the Trademarks (as defined below)(and all renewals and extensions of such registrations), and all present and future applications for any such registrations of the Trademarks (and any such registrations thereof upon approval of such applications) in the PTO or in any similar office or agency of the United States or any state thereof or any similar office in any country or any political subdivision thereof.

"Trademark Rights": any and all present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including the following: all such rights arising out

of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of the Borrower or the Lender for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the rights referred to above in this definition or any goodwill associated therewith, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury.

“Trademarks”: those trademarks of the Borrower listed and described in **Schedule A** attached hereto and made a part hereof.

All other capitalized terms not defined herein but defined in the Commercial Loan Agreement, dated of even date herewith (as the same may be amended, modified, supplemented, extended or restated, from time to time, the **“Loan Agreement”**) by and between the Borrower and the Lender, shall have the meanings given to such terms in the Loan Agreement, and if not defined in the Loan Agreement, then the meanings given to such terms in the Uniform Commercial Code as from time to time in effect in The Commonwealth of Massachusetts (the **“UCC”**).

2. **Confirmation of Grant of Security Interest; Conditional Assignment.**

2.1 **Grant of Security Interest.** The Borrower hereby confirms that, pursuant to the Security Agreement, the Borrower has pledged and granted to the Lender a continuing security interest in and to, among other things, all of the Trademark Collateral. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby ratifies such pledge and security interest, and hereby pledges, mortgages, assigns and grants to the Lender a continuing security interest in all of its right, title and interest of the Borrower in and to all of the following property, whether now owned or hereafter acquired or existing (collectively, the **“Trademark Collateral”**):

- (a) all of the Trademarks, Trademark Registrations and Trademark Rights;
- (b) all reissues, extensions or renewals of any of the Trademarks or Trademark Registrations, and
- (c) all of the goodwill of the business connected with the use of, and symbolized by, the Trademarks and Trademark Registrations.

2.2 **Conditional Assignment.** In addition to, and not by way of limitation of, the grant, pledge, mortgage and hypothecation of the Trademark Collateral provided in Section 2.1 hereof, the Borrower hereby grants, assigns, transfers conveys and sets over to the Lender, its entire right, title and interest in and to the Trademark Collateral; provided, however, that such grant, assignment, transfer and conveyance shall be and become of force and effect only (a) upon the occurrence of an Event of Default and (b)

either (i) upon the written demand of the Lender at any time that an Event of Default is continuing or (ii) immediately and automatically (without notice or action of any kind by the Lender) upon the occurrence of an Event of Default specified in Sections 7.1(f) or (g) of the Loan Agreement or upon the sale or other disposition of or foreclosure upon the Trademark Collateral pursuant to the Security Agreement (including the transfer or other disposition of the Trademark Collateral by the Borrower to the Lender in lieu of foreclosure). The foregoing grant, assignment, transfer and conveyance shall be referred to from time to time herein as the “**Trademark Conditional Assignment.**” For all purposes of this Agreement, the “effectiveness of the Trademark Conditional Assignment” shall be deemed to occur only as provided above.

3. Supplement to Security Agreement. This Agreement has been executed and delivered by the Borrower for the purpose of recording the Trademark Conditional Assignment, and recording and confirming the grant of the security interest of the Lender in the Trademark Collateral, with the PTO. For purposes thereof, and without limiting the generality of the foregoing, the Borrower will execute and file with the PTO a grant for security, in a form and substance reasonably satisfactory to the Lender. The security interest granted pursuant hereto are granted as a supplement to, and not in limitation of, the security interest granted to the Lender under the Security Agreement. The Security Agreement (and all rights and remedies of the Lender thereunder) shall remain in full force and effect in accordance with their respective terms. The Borrower acknowledges and agrees that, at the time of the effectiveness of the Trademark Conditional Assignment, the Lender shall have the cumulative rights in and to the Trademark Collateral as are provided in this Agreement, the Security Agreement and the other Financing Documents, and shall have the rights in and to the Collateral (other than the Trademark Collateral) as are provided in this Agreement, the Security Agreement and the other Financing Documents.

4. Representations, Warranties and Covenants. The Borrower represents and warrants to, and covenants with, the Lender as follows:

(a) Except as otherwise disclosed in the Master Disclosure Schedule to the Loan Agreement, the Borrower has, to the best of its knowledge, the right to use the Trademarks, and has full power and authority to execute this Agreement and perform its obligations hereunder, and to subject the Trademark Collateral to the conditional assignment and security interest granted hereunder.

(b) The Borrower has, and shall continue to have, the right to the exclusive use of the Trademark Collateral in the manner in which it is currently used by the Borrower, free and clear of all Liens, except (i) the security interest and conditional assignment herein provided and (ii) Permitted Liens.

(c) To the best of the Borrower's knowledge, and except as otherwise disclosed in the Master Disclosure Schedule to the Loan Agreement, each of the Trademarks and Trademark Registrations is valid and enforceable in each of the jurisdictions in which the Borrower does business.

(d) The Borrower has used, and will continue to use the Trademarks for the duration of this Agreement, consistent standards of quality in the products and services sold or provided under the Trademarks.

(e) The Borrower has applied for registration of the Trademarks with the PTO and will use all reasonable efforts to pursue such applications and obtain such registrations which are material, or otherwise necessary, to the operation and financial condition of the Borrower's business.

(f) Except as otherwise described in the Master Disclosure Schedule to the Loan Agreement, and to the best of the Borrower's knowledge, there has been no decision adverse to the Borrower's use or enforceability of the Trademark Collateral and there is no proceeding involving such rights threatened or pending in the PTO or any court other than routine action on the applications for registration of certain of the Trademarks (not including opposition thereto).

(g) Promptly upon obtaining knowledge thereof, the Borrower will notify the Lender in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or the Borrower's right, title or interest in and to the Trademarks, and of any event that does or reasonably could materially adversely affect the value of any of the Trademarks, the ability of the Borrower or the Lender to dispose of any of the Trademarks or the rights and remedies of the Lender in relation thereto (including but not limited to the levy of any legal process against any of the Trademarks).

(h) If material or otherwise necessary to the operation and financial condition of the Borrower's business, the Borrower shall defend the Trademarks against all claims and demands of all Persons at any time claiming the same or any interests therein adverse to the Lender. Until the Obligations shall have been satisfied in full, the Borrower will not pledge, mortgage, create, or suffer to exist any security interest in any of the Trademark Collateral, without the prior written consent of the Lender, and will not enter into any license, sublicense or other agreement relating to the use of the Trademarks, without delivering a prior written notice thereof to the Lender.

(i) The Borrower shall have the right, and if material or otherwise necessary to the operation and financial condition of the Borrower's business, the duty, to bring suit or other action in the Borrower's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights to the extent that such a suit or other action is commercially and economically reasonable to pursue. The Lender may be required to join in such suit or action if necessary to assure the Borrower's ability to bring and maintain any such suit or action in any proper forum so long as the Lender is completely satisfied that such joinder will not subject the Lender to any risk of liability. The Borrower shall promptly, upon demand, reimburse and indemnify the Lender for all actual damages, costs and expenses, including reasonable legal fees, incurred by the Lender pursuant to this Section 4(i).

(j) Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and expenses incurred by the Lender in connection with (i) the Trademarks, (ii) the filing or recording of any documents (including all taxes in connection therewith) in public offices, (iii) the payment or discharge of any taxes, counsel fees, or encumbrances or (iv) otherwise protecting, maintaining or preserving the Trademarks shall be borne and paid by the Borrower on demand by the Lender

(k) The Borrower and each licensee or registered user shall employ the Trademarks in the same or similar manner as they have in the past, shall maintain as in the past the quality of products and services offered under the Trademarks, and if necessary in order to maintain any such Trademarks, shall employ such Trademarks with the appropriate notice of application or registration.

(l) The Borrower has filed, and shall continue to prepare and file, in a timely manner all necessary affidavits of use and applications for renewal, with respect to those Trademarks that are material or otherwise necessary to the operation and financial condition of the Borrower's business. The Borrower shall, and shall not permit any licensee or registered user to, abandon any of the Trademarks or do any act or omit to do any act, if such act or omission is of a character that tends to cause or contribute to the abandonment of any of the Trademarks, and such Trademark is material or otherwise necessary to the operation and financial condition of the Borrower's business.

(m) Except as otherwise described in the Master Disclosure Schedule to the Loan Agreement, no financing statement, security agreement, assignment, license or transfer (other than in favor of the Lender) covering any of the Trademark Collateral is on file in any public office.

(n) To the best of the knowledge of the Borrower, all information with respect to the Trademark Collateral set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by the Borrower to the Lender, and all other written information heretofore or hereafter furnished by the Borrower to the Lender, is and will be true and correct as of the date furnished

5. Effect of Trademark Conditional Assignment.

5.1 Rights and Remedies of Lender. Upon the effectiveness of the Trademark Conditional Assignment, the Lender shall own the entire right, title and interest of the Borrower in and to the Trademark Collateral and the exclusive right to use the Trademarks, free and clear of any Liens (other than Permitted Liens). Upon such effectiveness, in addition to all other rights and remedies of the Lender, whether under the Security Agreement, the other Financing Documents, applicable law or otherwise (all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively or concurrently, without notice to or consent by the Borrower except as expressly provided otherwise herein), the Lender's rights and remedies with respect to the Trademark Collateral shall include but not be limited to the following, without payment of

royalty or compensation of any kind to the Borrower (except as expressly provided otherwise herein):

(a) The Lender may exercise, in respect of the Trademark Collateral, all the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Trademark Collateral).

(b) The Lender may, to the same extent that the Borrower has the right to do so immediately prior to the effectiveness of the Trademark Conditional Assignment, license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Trademark Collateral, throughout the world for such term or terms, on such conditions, and in such manner, as the Lender shall in its sole discretion determine.

(c) The Lender may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right but not the obligation to enforce) against any licensor, licensee or sublicensee all Trademark Rights of the Borrower, and take or refrain from taking any such action.

(d) In order to implement the conditional assignment, sale, transfer or other disposition of any of the Trademark Collateral pursuant to this Section 6.1, the Lender may, pursuant to the authority granted in the powers of attorney provided in this Agreement and in the Security Agreement, execute and deliver, on behalf of the Borrower, one or more instruments of assignment of the Trademark Collateral, in form suitable for filing, recording or registration in any jurisdiction or country.

5.2 Right, Title and Interest of Borrower - Termination. Upon the effectiveness of the Trademark Conditional Assignment, the Borrower shall not have any right, title or interest in or to any of the Trademark Collateral, and the Borrower shall immediately cease and desist in the use of the Trademarks or any colorable imitation thereof, and shall, upon written demand of the Lender, deliver to the Lender (or the Lender's designee), all unused or unsold goods bearing the Trademarks. In addition, upon the effectiveness of the Trademark Conditional Assignment, and upon written demand by the Lender, the Borrower shall execute and deliver to the Lender an assignment or assignments of the Trademark Collateral and such other documents as are necessary or appropriate to carry out the intent and purposes of this Agreement; provided, however, that the failure of the Borrower to comply with such demand will not impair or affect the validity of the Trademark Conditional Assignment. The Borrower agrees that any such assignment (including a Trademark Conditional Assignment and/or any recording thereof) shall be applied to reduce the Obligations outstanding only to the extent that the Lender actually receives cash proceeds in respect of the assignment, sale or disposition of, or other realization upon, the Trademark Collateral.

In the event of any such license, assignment, sale, transfer or other disposition of any or all of the Trademark Collateral from and after the occurrence of an Event of

Default, whether to or by the Lender, the Borrower shall supply the Lender (or the Lender's designee) such Borrower's know-how and expertise relating to the products and services sold and provided under the Trademarks, and other records relating to the Trademark Collateral and to the production, marketing, delivery and sale of said products and services.

6. Power of Attorney. The Borrower hereby authorizes and empowers the Lender, upon the occurrence and during the continuance of any Event of Default, to make, constitute and appoint any officer or agent of the Lender as it shall select, in its exclusive discretion, as the Borrower's true and lawful attorney-in-fact, with the power to endorse the Borrower's name, as applicable, on all applications, documents, papers and instruments necessary for the Lender to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any third person, or necessary for the Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Patents to any third person. This power of attorney is coupled with an interest, shall be irrevocable for the life of this Agreement and is in addition to, and not mutually exclusive with, any other powers of attorney provided under the Security Documents

7. Miscellaneous.

7.1 Survival of Covenants; Binding Effect. All agreements, representations, covenants and warranties made by the Borrower in this Agreement, the other Financing Documents, or in any certificate or other document delivered to the Lender in connection herewith shall survive the termination of this Agreement and survive the execution and delivery of this Agreement, and shall remain in full force and effect until all Obligations to the Lender have been paid in full and satisfied, and the security interest, Lien and rights granted to the Lender in any Collateral and its rights and remedies hereunder and under the other Financing Documents shall continue in full force and effect, notwithstanding the fact that Loans may, from time to time, be in a zero or credit position, until all Obligations have been satisfied. All the terms and provisions of this Agreement and the other Financing Documents shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective successors and assigns.

7.2 Prior Discussions; Amendments in Writing; Counterparts. This Agreement and all other Financing Documents incorporate all discussions and negotiations between the Borrower and the Lender, either express or implied, concerning the matters included herein and therein, any custom, usage or other writing to the contrary notwithstanding. No such discussions or negotiations shall limit, modify, or otherwise affect the provisions of the Financing Documents. This Agreement may be amended or modified only in writing signed by the parties hereto, and in the case of the Lender signed by a duly authorized officer thereof. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but such counterparts together shall constitute one and the same instrument. Any proof of this Agreement shall require production of only one such counterpart.

7.3 Destruction of Documents; Receipt of Copy. This Agreement and all other Financing Documents may be reproduced by the Lender by any photographic, photostatic, microfilm, or similar process, and the Lender may destroy the original from which any document was so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). The Borrower acknowledges receipt of a true, correct and complete copy or counterpart of this Agreement.

7.4 Notices All notices required or permitted hereunder shall be in writing and delivered in accordance with the provisions of the Loan Agreement.

7.5 Severability. If any provision of this Agreement or any of the other Financing Documents, or any portion of such provision, or the application thereof to any Person or circumstance, shall to any extent be prohibited or held invalid or unenforceable, the remainder of this Agreement and the other Financing Documents or the remainder of such provision and the application thereof to other Persons or circumstances (other than those as to which it is prohibited or held invalid or unenforceable) shall not be affected thereby, and each term and provision hereof and of the other Financing Documents shall be valid and enforced to the fullest extent permitted by law. To the extent permitted by law, the parties hereto waive any provision of law which renders any such provision or the application thereof to any Person or circumstance prohibited, invalid or unenforceable in any respect.

7.6 Headings. Headings appearing in this Agreement are intended for convenience only and do not constitute, and shall not be interpreted to be, a part of this Agreement.

7.7 Waiver of Jury Trial. **THE BORROWER AND THE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.**

7.8 Governing Law; Jurisdiction. This Agreement is executed and delivered in The Commonwealth of Massachusetts, and for all purposes shall be construed in accordance with and governed by the laws of The Commonwealth of Massachusetts, without giving effect to the conflict of law provisions thereof. The Borrower submits itself to the non-exclusive jurisdiction of the Courts of The Commonwealth of Massachusetts for all purposes with respect to the Financing Documents and the Borrower's relationship with the Lender.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered under its seal as of the date first above written.

WITNESS:

MULBERRY CHILD CARE CENTERS, INC.

Melissa P. Smith
Name: Melissa P. Smith

By: Clark Adams
Name: Clark Adams
Title: President
Its duly authorized officer

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF Norfolk) ss.

On this 17 day of December, 1998, then personally appeared Clark Adams
as President of Mulberry Child Care Centers, Inc. and acknowledged
the foregoing to be his/her free act and deed, and the free act and deed of Mulberry Child Care
Centers, Inc., before me.

Clare Grate
Notary Public
My commission expires: 4/2/2004
[AFFIX NOTARIAL SEAL]

TRADEMARK SECURITY AGREEMENT AND CONDITIONAL ASSIGNMENT

From

MULBERRY CHILD CARE CENTERS, INC.
(the "Borrower")

in favor of

STATE STREET BANK AND TRUST COMPANY
(the "Lender").

TRADEMARKS AND TRADEMARK APPLICATIONS

Schedule A

1. MULBERRY CHILD CARE CENTERS, INC. and design, application serial no. 75/504,231 - filed on June 18, 1998.
2. MULBERRY CHILD CARE & PRESCHOOL and design, application serial no. 75/504,232- filed on June 18, 1998.
3. MULBERRY FIT TO BE KIDS, application serial no. 75/210,491 - filed on December 9, 1996