

04-19-1999

HEET

U.S. DEPARTMENT OF COMMERCE

(Rev. 6-93)

OMB No. 0651-0011

Tab Settings



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Patent and Trademark Office

101013697

To the Honorable commissions, the attached original documents or copy thereof.

1. Name of conveying party(ies): MERRYHILL SCHOOLS, INC.

- Individual (s)
- General Partnership
- Corporation - State
- Other
- Association
- Change of Name

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

2. Name and address of receiving party(ies)

Name: Summit Bank, as Agent

Internal Address: Thomas Lunny, Asst. Vice President

Street Address: Three Valley Square, 512 Township Line Rd.

City: Blue Bell State: PA Zip: 19422

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

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designation must be a separate document from assignment) Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Amended and Restated Collateral Assignemnt
- Merger
- Change of Name

Execution Date: March 9, 1999

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,497,155 1,481,106 1,498,080

Additional Numbers Attached?  Yes  No

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

Name: Lynn A. Huebner, Legal Assistant

Internal Address: Wolf Block Schorr \* Solis-Cohen LLP

Street Address: 350 Sentry Pkwy., Bldg. 640

City: Blue Bell State: PA Zip: 19422

556. Total number of registrations and registrations involved: 3

7. Total fee (37 CFR §3.41).....\$ 90.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

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.

Lynn A. Huebner  
Name of Person Signing

*Lynn A. Huebner*  
Signature

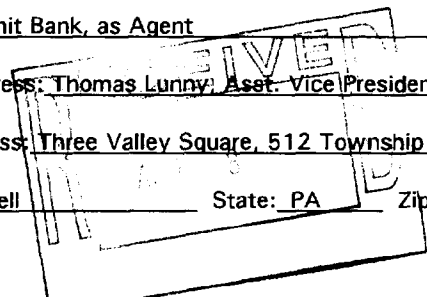
April 1, 1999  
Date

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

11

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments

4-8-99 mad



40.00  
50.00

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APR 16 1999

FC:481  
FC:482

**EXHIBIT "A"**

**TO**

**ASSIGNMENT OF PATENT, TRADEMARK,  
COPYRIGHT AND LICENSES AGREEMENT**

**Patents**

<b><u>Title</u></b>	<b><u>Patent No.</u></b>	<b><u>Expiration Date</u></b>
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NONE

**EXHIBIT "B"**

**TO**

**ASSIGNMENT OF PATENT, TRADEMARK,  
COPYRIGHT AND LICENSES AGREEMENT**

**Trademarks**

<u>MARK</u>	<u>REG. NO.</u>	<u>REG. DT.</u>
M.S.C. Est-1949	1,497,155	June 19, 1988
Merryhill Country School	1,481,106	March 15, 1988
Merryhill (design)	1,498,080	July 26, 1988

**EXHIBIT "C"**

**TO**

**ASSIGNMENT OF PATENT, TRADEMARK,  
COPYRIGHT AND LICENSES AGREEMENT**

**Copyrights**

NONE

**EXHIBIT "D"**

**TO**

**ASSIGNMENT OF PATENT, TRADEMARK,  
COPYRIGHT AND LICENSES AGREEMENT**

**Licenses**

**NONE**

**AMENDED AND RESTATED COLLATERAL ASSIGNMENT OF PATENTS,  
TRADEMARKS, LICENSES AND COPYRIGHTS**

**THIS AMENDED AND RESTATED COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS** is made effective as of the 9th day of March, 1999 by and among **MERRYHILL SCHOOLS, INC.** ("Assignor") and **SUMMIT BANK**, as Agent ("Assignee").

**BACKGROUND**

**A.** Pursuant to that certain Amended and Restated Loan and Security Agreement dated March 9, 1999 by and between Assignee, the Lenders from time to time a party thereto, Assignor and the other Borrowers named therein (such Amended and Restated Loan and Security Agreement, as heretofore or hereafter amended, modified or restated, being referred to herein as the "**Loan Agreement**"), the Lenders agreed to extend to Assignor and the other Borrowers the following credit facilities:

- i) \$7,000,000.00 revolving working capital line of credit;
- ii) \$3,000,000.00 revolving working capital lie of credit;
- iii) \$15,000,000.00 revolving acquisition credit facility; and
- iv) \$10,000,000.00 term loan.

**B.** The Loan Agreement provides, *inter alia*, that Assignor will grant to Assignee for the pro rata benefit of Lenders a security interest in all of Assignor's assets, including, without limitation, its patents, patent rights, patent applications, servicemarks, trademarks, service trademark applications, service tradenames, goodwill, copyrights and licenses.

**NOW THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

**1. Incorporation of Loan Agreement.** The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

**2. Collateral Assignment.** To secure the complete and timely payment and satisfaction of all Lender Indebtedness, Assignor hereby confirms its prior assignment, mortgage, pledge, grant and transfer to Summit Bank of and assigns, mortgages, pledges, grants a security interest in, and transfers to Assignee for the pro rata benefit of Lenders, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, all

of such Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on **Exhibit "A"**, attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Patents**");

(ii) servicemarks, trademarks, servicemark and trademark registrations, tradenames and trademark applications, including, without limitation, the servicemarks, trademarks and applications listed on **Exhibit "B"**, attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing servicemarks, trademarks, servicemark and trademark registrations, servicemark and tradenames and applications together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**");

(iii) copyrights, copyright registrations, copyright applications and all computer programs, operating systems, application systems, hardware or software of any nature whatsoever owned by Assignor, whether operational, under development or inactive, including all object codes, source codes, modules, technical manuals, user manuals, operating instructions and procedures, in-put and out-put formats, program listings, narrative descriptions, program flow charts, file layouts, report layouts, screen layouts and other documentation therefor (including internal notes, memoranda, status evaluations, marketing information and write-ups), and all improvements, modifications, enhancements, new releases and revisions thereof, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature; together with all tangible media upon which any of the foregoing are recorded or encoded, including, without limitation, all chips, disks, tapes, film and paper; including, without limitation, the copyrights, copyrights registrations and copyrights applications listed on **Exhibit "C"** attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, and (c) the right to sue for past, present and future infringements thereof (all of the foregoing items are sometimes referred to herein collectively as the "**Copyrights**"); and

(iv) license agreements with any other party, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on **Exhibit "D"** attached hereto and made a part hereof, and the right to prepare for sale, sell and advertise for sale all

inventory now or hereafter owned by Assignor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "**Licenses**"); and

(v) the goodwill of Assignor's business connected with and symbolized by the Trademarks.

**3. Restrictions on Future Agreements.** Assignor agrees that until all Lender Indebtedness shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement (including, without limitation, any license or royalty agreement) which is inconsistent with Assignor's obligations under this Assignment or which is prohibited under the terms of the Loan Agreement, and Assignor further agrees that it will not take any action, or permit any action to be taken by others, subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights of Assignee under this Assignment.

**4. New Patents, Trademarks, Copyrights and Licenses.** Assignor represents and warrants that the Patents, Trademarks, Copyrights and Licenses listed on **Exhibits "A", "B", "C" and "D"**, respectively, constitute all of the patents, trademarks, applications, copyrights and licenses now owned by Assignor which are material to the operation of Assignor or the value of the Collateral. If, before all Lender Indebtedness shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, tradenames, copyrights or licenses, or (ii) become entitled to the benefit of any patent or trademark application, trademark, trademark registration, copyright or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of **Section 2** above shall automatically apply thereto and Assignor shall give to Assignee prompt written notice thereof. Assignor hereby authorizes Assignee to modify this Assignment by amending **Exhibit "A", "B", "C" and/or "D"**, as applicable, to include any future patents, patent applications, trademarks, trademark registrations, trademark applications, tradenames, copyrights and licenses which are Patents, Trademarks, Copyrights or Licenses, as applicable, under **Section 2** above or under this **Section 4**.

**5. Royalties; Term.** Assignor hereby agrees that the use by Assignee of all Patents, Trademarks, Copyrights and Licenses as described above (which use by Assignee shall be permitted only after the occurrence of an Event of Default) shall be worldwide and without any liability for royalties or other related charges from Assignee to Assignor. The term of the assignment granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks, Copyrights and Licenses assigned hereunder, or (ii) the date on which all Lender Indebtedness has been paid in full and the Loan Agreement is terminated.

**6. Reassignment.** This Assignment is made for collateral purposes only. Upon payment in full of all Lender Indebtedness and termination of the Loan Agreement, Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, Trademarks, Copyrights and Licenses, subject to any



disposition thereof which may have been made by Assignee pursuant hereto or pursuant to the Loan Agreement.

7. **Assignee's Right to Sue**. Upon the occurrence and during the continuance of an Event of Default, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses, Patents, Copyrights and/or Trademarks, and any licenses thereunder and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this **Section 7**.

8. **Waivers**. No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

9. **Severability**. The provisions of this Assignment are severable, and if any clause or provision shall be invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Assignment in any jurisdiction.

10. **Modification**. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in **Section 4** hereof or by a writing signed by the parties hereto.

11. **Cumulative Remedies; Power of Attorney; Effect on Loan Agreement**. All of Assignee's rights and remedies with respect to the Patents, Trademarks, Copyrights and Licenses, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor hereby authorizes Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power to, after the occurrence of an Event of Default, (i) endorse Assignor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the use by Assignee or its successors or assigns of the Patents, Trademarks, Copyrights and/or Licenses, (ii) take any other actions with respect to the Patents, Trademarks, Copyrights and/or Licenses as the Assignee reasonably deems in the best interest of the Assignee, (iii) grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, Copyrights and/or Licenses to anyone, including Assignee. Assignee may act under such power of attorney to take the actions referenced in **Section 4** hereof. Assignee hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all Lender Indebtedness shall have been paid in full and the Loan Agreement shall have been terminated. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Loan Agreement but rather is

intended to facilitate the exercise of such rights and remedies given it by the terms of this Assignment, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents, Trademarks, Copyrights or Licenses may be located.

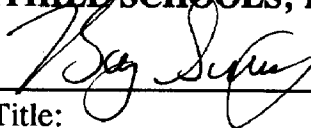
12. **Binding Effect; Benefits.** This Assignment shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of Assignee, its nominees, successors and assigns.

13. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

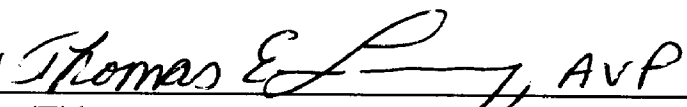
14. **Prior Agreement.** This Agreement is an amendment and restatement of that certain Collateral Assignment of Patents, Trademarks, Licenses and Copyrights dated August 30, 1995 (the "**Prior Agreement**") from Assignor to First Valley Bank, predecessor by merger to Summit Bank. Summit Bank previously assigned all of its right, title and interest in the Prior Agreement and all indebtedness secured thereby to Assignee. This Assignment is not intended to be a novation or satisfaction of the Prior Agreement, any indebtedness secured thereby or any rights or remedies in connection therewith.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Assignment the day and year first above written.

**MERRYHILL SCHOOLS, INC.**

By:   
Name/Title: \_\_\_\_\_


**SUMMIT BANK**

By:  AVP  
Name/Title: \_\_\_\_\_

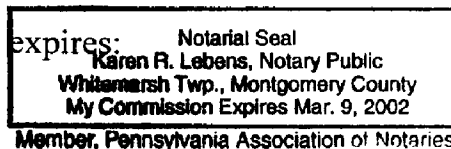
COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF MONTGOMERY :

On this the 9th day of March, 1999, before me the undersigned officer, personally appeared **RICHARD M. ZUCKER, ESQUIRE**, known to me (or satisfactorily proven) to be a member of the bar of the highest court of said state and a subscribing witness to the within instrument, and certified that he was personally present when **BARRY S. SWIRSKY** who acknowledged himself to be General Counsel and Assistant Secretary of Merryhill Schools, Inc., a California corporation, and that he as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

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

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

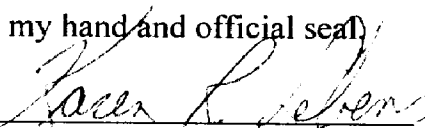
My commission expires:



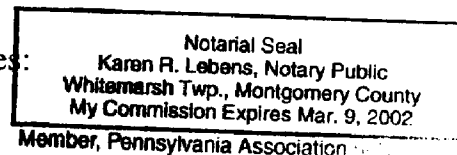
COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF MONTGOMERY :

On this the 9th day of March, 1999, before me the undersigned officer, personally appeared **RICHARD M. ZUCKER, ESQUIRE**, known to me (or satisfactorily proven) to be a member of the bar of the highest court of said state and a subscribing witness to the within instrument, and certified that he was personally present when **THOMAS LUNNY**, who acknowledged himself to be the Assistant Vice President of Summit Bank, and that he as such officer, being so authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing on behalf of the bank himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My commission expires:



## WOLF, BLOCK, SCHORR AND SOLIS-COHEN LLP

350 SENTRY PARKWAY  
 BUILDING 640  
 P.O. BOX 3038  
 BLUE BELL, PA 19422-0757  
 (610) 238-0600  
 FACSIMILE: (610) 238-0305

DIRECT DIAL: (610) 941-2473  
 E-MAIL: LHUEBNER@WOLFBLOCK.COM

April 1, 1999

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Commissioner of Patents and Trademarks  
 Assignment Division  
 North Tower Building  
 2800 Crystal Drive, Suite 10C35  
 Arlington VA 22202

**Re: Request for Recording Collateral Assignment of Patents,  
 Trademarks, Licenses and Copyrights - Merryhill Schools, Inc.  
Our File SUM009-126556**

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Dear Sir or Madam:

This firm represents Summit Bank ("**Lender**"), assignee of all rights of Merryhill Schools, Inc. ("**Merryhill**") under that certain Collateral Assignment of Patents, Trademarks, and Copyrights dated March 3, 1999 (the "**Assignment**"), wherein Merryhill granted to Lender a security interest in, inter alia, certain trademarks in connection with the extension of certain credit facilities by Lender to Merryhill. Accordingly, on behalf of Lender, we respectfully submit for recording with the Patent and Trademark Office under 15 U.S. §1060 the enclosed original executed and acknowledged Assignment with respect to the following registered trademarks:

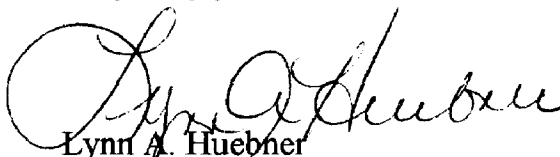
<u>Trademark</u>	<u>Registration/Application Number</u>
M.S.C. Est-1949	1,497,155
MERRYHILL COUNTRY SCHOOL	1,481,106
MERRYHILL (design)	1,498,080

April 1, 1999

Page 2

Enclosed is our check in the amount of \$90.00, representing \$40.00 for the first property and \$25.00 per property thereafter, payable to the Commissioner of Patents and Trademarks. Please direct any correspondence concerning the foregoing to the undersigned

Very truly yours,



Lynn A. Huebner

Legal Assistant

For WOLF, BLOCK, SCHORR AND SOLIS-COHEN LLP

LAH/lah  
Enclosures