

02-27-2002

Form PTO-1594

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings



101994345

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

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

1. Name of conveying party(ies):

MSH South Inc.

2-8-02

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

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

3. Nature of conveyance:

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

Execution Date: January 5, 1996

2. Name and address of receiving party(ies)

Name: The Bank of New York, as Agent

Internal

Address: _____

Street Address: One Wall Street

City: New York State: NY Zip: 10286

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State New York
- 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) 76/299982

76/299983

B. Trademark Registration No.(s) 1,899,268

1,907,715 1,967,484

Additional number(s) attached Yes No

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

Name: Bryan Cave LLP

Internal Address: Margo Hirsch

Street Address: 245 Park Avenue

City: New York State: NY Zip: 10167-0034

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41).....\$ 140.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

FBI - 8 0000

DO NOT USE THIS SPACE

9. Signature.

Edna L. Jenkins

Name of Person Signing

Edna L. Jenkins
Signature

January 21, 2002

Date

Total number of pages including cover sheet, attachments, and document: 25

02/27/2002 LMUELLER 00000076 76299982

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

01 FC:481
02 FC:482

40.00 OP
100.00 OP

TRADEMARK
REEL: 002450 FRAME: 0325

SUBSIDIARY GUARANTY AND SECURITY AGREEMENT

SUBSIDIARY GUARANTY, dated as of January 5, 1996 by and among MSH South Inc., a Delaware corporation (the "Guarantor"), and The Bank of New York, as Agent (as the same may be amended, supplemented or otherwise modified from time to time, this "Agreement").

RECITALS

I. Reference is made to the Credit Agreement, dated as of November 12, 1993, by and among Herto Inc. (the "Borrower"), the Lenders party thereto and the Agent, as amended by the First Amendment, dated as of March 31, 1994, and the Consent and Second Amendment, dated as of December 29, 1995 (as the same may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement").

II. The Guarantor is a wholly-owned Subsidiary of the Borrower and was formed for the limited purpose of managing certain intangible and other assets.

III. It is a condition to the effectiveness of the consent of the Lenders to the formation of the Guarantor and to the transfer of certain assets of the Borrower to the Guarantor that the Guarantor shall have executed and delivered this Agreement.

IV. The Guarantor expects to derive substantial benefit from the Credit Agreement and understands that the Agent and the Lenders would not consent to the transfer by the Borrower to the Guarantor of certain assets of the Borrower as provided in the Second Amendment to the Credit Agreement referred to above without the Guarantor executing and delivering this Agreement

Therefore, in consideration of the Recitals, the terms and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agent and the Guarantor hereby agree as follows:

1. Defined Terms

(a) Capitalized terms used herein which are not otherwise defined herein shall have the respective meanings ascribed thereto in the Credit Agreement.

(b) When used in this Agreement, the following capitalized terms shall have the respective meanings ascribed thereto as follows:

"Borrower Obligations": all of the obligations and liabilities of the Borrower under the Loan Documents and each Interest Rate Protection Arrangement with one or more of the Lenders or any Affiliate of any such Lender, in each case whether fixed, contingent, now existing or hereafter arising, created, assumed, incurred or acquired, and whether before or after the occurrence of any Insolvency Event, and including, without limitation (a) any obligation or liability in respect of any breach of any representation or warranty and in respect of any rights of redemption or rescission, and (b) all post-petition

interest, funding losses and make-whole premiums, whether or not allowed as a claim in any proceeding arising in connection with an Insolvency Event.

"Consideration": as of any date of determination and with respect to the Guarantor, an amount equal to the lesser of (a) the total "value" (within the meaning of Section 548 of the Bankruptcy Code as in effect on the date hereof) given, directly or indirectly, to the Guarantor during the period commencing on the date the Guarantor became a party to this Agreement and ending on such date of determination, in exchange for its execution and delivery of this Agreement, and (b) the amount of "fair consideration" (within the meaning of Article 10 of the New York Debtor Creditor Law as in effect on the date hereof) given, directly or indirectly, to the Guarantor during the period commencing on the date the Guarantor became a party to this Agreement and ending on such date of determination in exchange for its execution and delivery of this Agreement.

"Event of Default": as defined in Section 17.

"Guarantor Obligations": all of the obligations and liabilities of the Guarantor hereunder, whether fixed, contingent, now existing or hereafter arising, created, assumed, incurred or acquired.

"Insolvency Event": any Event of Default under Sections 10.1(i) or 10.1(j) of the Credit Agreement.

"Net Worth": as of any date, the lesser of the following:

(a)(i) all of the Guarantor's "property, at a fair valuation" (within the meaning of Section 101(32) of the Bankruptcy Code as in effect on the date hereof) on such date, minus (ii) the sum of the Guarantor's "debts" (within the meaning of Section 101(12) of the Bankruptcy Code as in effect on the date hereof) on such date (exclusive of such "debts" in respect of this Guaranty), or

(b)(i) the "fair salable value of the assets" (within the meaning of Article 10 of the New York Debtor Creditor Law as in effect on the date hereof) of the Guarantor on such date, minus (ii) "the amount that will be required to pay the Guarantor's probable liability on its existing debts as they become absolute and matured" (as such phrase would be construed under Article 10 of the New York Debtor Creditor Law as in effect on the date hereof) on such date (exclusive of such debts in respect of this Guaranty).

"Supplement": a Supplement to this Agreement, duly completed, in the form of Annex A hereto.

2. Guaranty

(a) Subject to Section 2(b) hereof, the Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full and prompt payment when due (whether at stated maturity, by acceleration or otherwise) of the Borrower Obligations. This Agreement constitutes a guaranty of payment, and neither the Agent nor any Lender or any Affiliate of such Lender shall have any obligation to enforce any Loan Document or any Interest Rate Protection Arrangement or exercise any right or remedy with respect to

any collateral security thereunder by any action, including, without limitation, making or perfecting any claim against any Person or any collateral security for any of the Borrower Obligations prior to being entitled to the benefits of this Agreement. The Agent may, at its option, proceed against the Guarantor in the first instance to enforce the Guarantor Obligations without first proceeding against the Borrower or any other Person, and without first resorting to any other rights or remedies, as the Agent may deem advisable. In furtherance hereof, if the Agent or any Lender is prevented by law from collecting or otherwise hindered from collecting or otherwise enforcing any Borrower Obligation in accordance with its terms, the Agent or such Lender, as the case may be, shall be entitled to receive hereunder from the Guarantor after demand therefor, the sums which would have been otherwise due had such collection or enforcement not been prevented or hindered.

(b) Notwithstanding anything to the contrary contained in this Agreement, the maximum liability of the Guarantor under this Agreement shall not, as of any date of determination, exceed the lesser of (i) the highest amount that is valid and enforceable against the Guarantor under principles of New York State contract law, and (ii) the sum of (1) all Consideration received by the Guarantor as of such date of determination, plus (2) 95% of the Net Worth of the Guarantor on such date of determination. In calculating the maximum liability of the Guarantor hereunder, full effect shall be given to any provision in any other Indebtedness of or guaranteed by the Guarantor which for purposes of applicable fraudulent transfer or similar laws provides that indebtedness incurred under the Credit Agreement shall be deemed to have been incurred prior to such other Indebtedness.

(c) The Guarantor agrees that the Guarantor Obligations may at any time and from time to time exceed the maximum liability of the Guarantor hereunder without impairing this Agreement or affecting the rights and remedies of the Agent or any Lender hereunder.

3. Absolute Obligation

Subject to Section 21, the Guarantor shall not be released from liability hereunder unless and until the Maturity Date shall have occurred and either (a) the Borrower Obligations shall have been paid in full, in cash, or (b) the Guarantor Obligations of the Guarantor shall have been paid in full, in cash. The Guarantor acknowledges and agrees that (1) neither the Agent nor any Lender has made any representation or warranty to the Guarantor with respect to the Borrower, its Subsidiaries, any Loan Document, any Interest Rate Protection Arrangement, or any agreement, instrument or document executed or delivered in connection therewith or any other matter whatsoever, and (2) the Guarantor shall be liable hereunder, and such liability shall not be affected or impaired, irrespective of (A) the validity or enforceability of any Loan Document, any Interest Rate Protection Arrangement, or any agreement, instrument or document executed or delivered in connection therewith, or the collectability of any of the Borrower Obligations, (B) the preference or priority ranking with respect to any of the Borrower Obligations, (C) the existence, validity, enforceability or perfection of any security interest or collateral security under any Loan Document, or any Interest Rate Protection Arrangement, or the release, exchange, substitution or loss or impairment of any such security interest or collateral security, (D) any failure, delay, neglect or omission by the Agent or any Lender to realize upon or protect any direct or indirect collateral security, indebtedness, liability or

obligation, any Loan Document, any Interest Rate Protection Arrangement, or any agreement, instrument or document executed or delivered in connection therewith, or any of the Borrower Obligations, (E) the existence or exercise of any right of set-off by the Agent or any Lender, (F) the existence, validity or enforceability of any other guaranty with respect to any of the Borrower Obligations, the liability of any other Person in respect of any of the Borrower Obligations, or the release of any such Person or any other guarantor of any of the Borrower Obligations, (G) any act or omission of the Agent or any Lender in connection with the administration of any Loan Document, any Interest Rate Protection Arrangement, or any of the Borrower Obligations, (H) the bankruptcy, insolvency, reorganization or receivership of, or any other proceeding for the relief of debtors commenced by or against, any Person, (I) the disaffirmance or rejection, or the purported disaffirmance or purported rejection, of any of the Borrower Obligations, any Loan Document, any Interest Rate Protection Arrangement, or any agreement, instrument or document executed or delivered in connection therewith, in any bankruptcy, insolvency, reorganization or receivership, or any other proceeding for the relief of debtor, relating to any Person, (J) any law, regulation or decree now or hereafter in effect which might in any manner affect any of the terms or provisions of any Loan Document, any Interest Rate Protection Arrangement, or any agreement, instrument or document executed or delivered in connection therewith or any of the Borrower Obligations, or which might cause or permit to be invoked any alteration in the time, amount, manner or payment or performance of any of the Borrower's obligations and liabilities (including, without limitation, the Borrower Obligations), (K) the merger or consolidation of the Borrower into or with any Person, (L) the sale by the Borrower of all or any part of its assets, (M) the fact that at any time and from time to time none of the Borrower Obligations may be outstanding or owing to the Agent or any Lender, (N) any amendment or modification of, or supplement to, any Loan Document or any Interest Rate Protection Arrangement or (O) any other reason or circumstance which might otherwise constitute a defense available to or a discharge of the Borrower in respect of its obligations or liabilities (including, without limitation, the Borrower Obligations) or of the Guarantor in respect of any of the Guarantor Obligations (other than by the performance in full thereof).

4. Grant of Security Interest.

The Guarantor, in order to secure the payment and performance of all of its Guarantor Obligations, hereby grants to the Agent for its benefit and for the ratable benefit of the Lenders (and Affiliates of the Lenders with whom the Borrower has entered into Interest Rate Protection Agreements), a continuing first priority security interest in and to all of the Guarantor's right, title and interest in and to the following, whether now owned or existing or hereafter arising or acquired and wherever located (collectively, the "Collateral"):

PLEGGED STOCK: All Stock, whether now owned or hereafter acquired in each Person which now is or may hereafter become a Subsidiary of the Guarantor, together with all additions thereto, and all substitutions, exchanges and replacements therefor, and all Proceeds thereof (collectively, the "Pledged Stock");

ACCOUNTS: All "accounts" as defined in the UCC, including, without limitation, all present and future contracts, contract rights, accounts, accounts receivable and other rights of the Guarantor to payment for goods sold or leased or for services rendered (except those evidenced by Instruments or Chattel Paper set forth below), in each

case whether now existing or hereafter arising and whether they have been earned by performance or otherwise; and all accessions and additions thereto, substitutions and replacements therefor, and the products and Proceeds thereof (collectively, the "Accounts");

INVENTORY: All "inventory" as defined in the UCC, including, without limitation, all goods (wherever located, whether in the possession of the Guarantor or of a bailee or other Person whether for sale, storage, transit, processing, use or otherwise and whether consisting of whole goods, spare parts, components, supplies, materials, or consigned, returned or repossessed goods) which are held for sale or lease or to be furnished (or have been furnished) under any contract of service or which are raw materials, work in process or materials used or consumed in the Guarantor's business, in each case whether now owned or hereafter acquired; and all accessions and additions thereto, substitutions and replacements therefor, and the products and Proceeds thereof (collectively, the "Inventory");

EQUIPMENT: All "equipment" as defined in the UCC, including, without limitation, all equipment, all machinery, all manufacturing, distribution, selling, data processing and office equipment, all radio and television studio, broadcasting, receiving and transmitting equipment, lines, antennas, towers, testing equipment, computer discs and tapes, plans, maps, diagrams, blueprints, schematics, handbooks, manuals, electronic, recording, switching, telephone and cellular equipment, used or useful in connection with the construction and operation of any business of the Guarantor, whether presently or hereafter conducted, all film, record and recording equipment, assets and properties, all furniture, furnishings, works of art, appliances, fixtures and trade fixtures, tools, vehicles, vessels, aircraft and all other goods of every type and description (other than Inventory), in each case whether now owned or hereafter acquired and wherever located; and all additions and accessions thereto, substitutions and replacements therefor, and the products and Proceeds thereof (collectively, the "Equipment");

CHATTEL PAPER, INSTRUMENTS AND DOCUMENTS: All "chattel paper", "instruments" and "documents" as defined in the UCC, including, without limitation, all chattel paper, including, without limitation, the notes and debt instruments described in Part B of Schedule 1, in each case whether now owned or hereafter acquired (the "Pledged Debt"), and all payments thereunder and instruments and other Property (other than real Property) from time to time delivered in respect thereof or in exchange therefor), and all bills of lading, warehouse receipts and other documents of title and documents, in each case whether now owned or hereafter acquired; and all additions and accessions thereto, substitutions and replacements therefor, and the products and Proceeds thereof (collectively, the "Chattel Paper, Instruments and Documents");

PATENTS, TRADEMARKS AND COPYRIGHTS: All patents, trademarks, servicemarks and copyrights; all patent, trademark, servicemark and copyright registrations, interests under patent, trademark or copyright license agreements; all trade names; all patent, trademark, servicemark and copyright applications for which registrations have been issued or applied for in the United States Patent and Trademark Office or in any other office or with any other official anywhere in the world or which are used in the United States or any state, territory or possession thereof, or in any other place, nation or jurisdiction anywhere in the world; all renewals thereof; all income, royalties, damages and payments now and hereafter due or payable with respect thereto, including, without

limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof; the right to sue for past, present and future infringements thereof; all rights corresponding thereto throughout the world; in each case whether now owned or hereafter acquired and all accessions thereto, substitutions and replacements and the goodwill of the Guarantor's business connected with and symbolized by the Trademarks, and all additions and accessions thereto, substitutions and replacements therefor, and products and Proceeds thereof (collectively, the "Patents and Trademarks");

GENERAL INTANGIBLES: All "general intangibles" as defined in the UCC, including, without limitation, all rights, interests, choses in action, causes of actions, claims, general intangibles and all other intangible property of the Guarantor of every kind and nature (other than Accounts and Trademarks set forth above) due from or in respect of any Person, including, without limitation, all corporate and other business records; all filings with Governmental Authorities, all loans, royalties, and other obligations receivable; all inventions, designs, trade secrets, computer programs, software, printouts and other computer materials; all licenses, franchises, customer lists, credit files, correspondence, and advertising materials; all customer, supplier, film, programming, exhibition, advertising, time and other contracts, firm sale orders, rights under license and franchise agreements, and other contracts and contract rights; all interests in partnerships and joint ventures; all tax refunds and tax refund claims; all right, title and interest under leases, subleases, licenses and concessions and other agreements relating to personal Property; all payments due or made to the Guarantor in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any Property by any Person or Governmental Authority; all deposit accounts (general or special) with any bank or other financial institution; all credits with and other claims against carriers and shippers; all rights to indemnification; all reversionary interests in pension and profit sharing plans and reversionary, beneficial and residual interests in trusts; all proceeds of insurance of which the Guarantor is beneficiary; and all letters of credit, guaranties, liens, security interests and other security held by or granted to the Guarantor; and all other intangible property, whether or not similar to the foregoing; in each case, whenever and wherever arising, whether now owned or hereafter acquired by the Guarantor; and all additions and accessions thereto, substitutions and replacements therefor, and the products and Proceeds thereof (collectively, the "General Intangibles"); and

OTHER PROPERTY: All other Property (other than real Property) or interests in Property (other than real Property), whether now owned or hereafter acquired by the Guarantor or which now or hereafter may come into the possession, custody or control of the Agent or any of the Lenders or any agent or affiliate of any of them in any way or for any purpose (whether for safekeeping, deposit, custody, pledge, transmission, collection or otherwise); and all rights and interests of the Guarantor, whether now existing or hereafter arising and however and wherever arising, in respect of any and all (i) notes, drafts, letters of credit, stocks, bonds, and debt and equity securities, whether or not certificated, and warrants, options, puts and calls and other rights to acquire or otherwise relating to the same; (ii) money; (iii) proceeds of loans, including, without limitation, the Loans; and (iv) insurance proceeds and books and records relating to any of the Property covered by this Agreement; and all additions and accessions thereto, substitutions and replacements therefor, and the products and Proceeds thereof (collectively, the "Other Property").

As used herein, the term "Proceeds" shall have the meaning assigned to it under the UCC and, to the extent not otherwise included, shall include, but not be limited to, (i) any stock dividend or distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off; (ii) any option or other right, whether received as an addition, in substitution or exchange, or otherwise; (iii) distributions payable in Property; (iv) dividends or distributions on dissolution, or in partial or total liquidation, or from capital, capital surplus, or paid-in surplus; (v) any and all proceeds of any insurance, causes and rights of action or settlements thereof, escrowed amounts or Property, judicial and arbitration judgments and awards, payable to the Guarantor from or in respect of any Person from time to time whether with respect to the Collateral; (vi) any and all payments (in any form whatsoever) made or due and payable to the Guarantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority; (vii) all claims of the Guarantor for losses or damages arising out of or relating to or for any breach of any agreements, covenants, representations or warranties or any default whether or not with respect to or under any of the foregoing Collateral (without limiting any direct or independent rights of the Agent or any Lender with respect to the Collateral); and (viii) any and all other amounts from time to time paid or payable under or in connection with the Collateral.

As used herein, the term "UCC" shall mean the New York Uniform Commercial Code (as the same is amended from time to time).

5. Guarantor Remains Liable.

Anything herein to the contrary notwithstanding, (a) the Guarantor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Agent of any of its rights hereunder shall not release the Guarantor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) the Agent shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Agent be obligated to perform any of the obligations or duties of the Guarantor thereunder, to make any payment, to make any inquiry as to the nature or sufficiency of any payment received by the Guarantor or the sufficiency of any performance by any party under any such contract or agreement or to take any action to collect or enforce any claim for payment assigned hereunder.

6. Delivery of Pledged Collateral.

All certificates, notes and other instruments, if any, representing or evidencing the Pledged Stock or the Pledged Debt and all other instruments at any time owned or acquired by the Guarantor (collectively, the "Pledged Collateral") shall be delivered to and held by or on behalf of the Agent pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignments in blank, all in form and substance reasonably satisfactory to the Agent. Upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right, at any time in its discretion and without notice to the Guarantor, to transfer to or to register in the name of the Agent or any of its nominees any or all of the Pledged Collateral. In addition, upon the occurrence and during the continuance

of an Event of Default, the Agent shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

7. Representations and Warranties

(a) The Guarantor hereby represents and warrants to the Agent as follows:

(i) Binding Agreement. This Agreement constitutes the valid and binding obligation of the Guarantor, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws related to or affecting the enforcement of creditors' rights generally.

(ii) Solvency: Ability to Pay Debts. The Guarantor (both immediately before and after giving effect to this Agreement and to all Indebtedness incurred by the Borrower in connection therewith) (1) is not insolvent, (2) is not engaged, and is not about to engage, in business or a transaction, for which it has unreasonably small capital, and (3) does not intend to incur, and does not believe that it would incur, debts that would be beyond its ability to pay such debts as they mature, in each case referred to above within the meaning of both the Bankruptcy Code and Article 10 of the New York Debtor Creditor Law, each as in effect on the date hereof.

(iii) Corporate Authority. The Guarantor has full power and authority to enter into, execute, deliver and perform the terms of this Agreement and to incur the obligations provided for herein, all of which have been duly authorized by all proper and necessary corporate action and are in full compliance with its certificate of incorporation and by-laws.

(iv) No Misrepresentation. No representation or warranty contained herein and no certificate or report furnished or to be furnished by the Guarantor in connection with the transactions contemplated hereby, contains or will contain a misstatement of material fact, or, to the best knowledge of the Guarantor, omits or will omit to state a material fact required to be stated in order to make the statements herein or therein contained not misleading in the light of the circumstances under which made.

(b) The Guarantor hereby represents and warrants to the Agent as follows:

(i) Names: Tradenames. As of the date of this Agreement, the Guarantor currently conducts business under its own name.

(ii) Offices: Collateral Locations. As of the date of this Agreement (i) the chief executive office and chief place of business of the Guarantor are located at the address set forth in Part A of Schedule 7(b)(ii), (ii) in addition to such chief executive office and chief place of business, the Guarantor maintains only the offices and places of business set forth in Part B of Schedule 7(b)(ii), (iii) all records concerning any Account and all originals of all chattel paper which evidence any Account are located at one or more of the addresses set forth in Part A or Part B of Schedule 7(b)(ii) and none of the

Accounts is evidenced by a promissory note or other instrument, and (iv) the locations listed in Part C of Schedule 7(b)(ii) constitute all additional locations at which Inventory and/or Equipment is located.

(iii) Possession of Equipment and Inventory. The Guarantor has exclusive possession and control of the Equipment and Inventory, except for Equipment and Inventory in transit with common or other carriers.

(iv) Absence of Liens. The Guarantor is the legal and beneficial owner of the Collateral, free and clear of all Liens, except Permitted Liens and banker's set off rights with respect to deposit accounts (general or special).

(v) Pledged Collateral. To the best of the Guarantor's knowledge, the Pledged Debt has been duly authorized, issued and delivered, and is the legal, valid, binding and enforceable obligation of the respective issuers thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar rights affecting the enforcement of creditors' rights generally. The Pledged Stock (to the extent certificated within the meaning of the UCC) and the Pledged Debt constitute all of the Pledged Collateral, except for Pledged Collateral consisting of checks and drafts received in the ordinary course of business.

(vi) Patents and Trademarks. As of the date hereof, the Guarantor has no Patents or Trademarks except those listed on Schedule 7(b)(vi). To the best of the knowledge of the Guarantor, (except as set forth on Schedule 7(b)(vi), the Guarantor has the sole, full and clear title to the Patents and Trademarks in the United States and all registrations thereof are valid and subsisting and in full force and effect.

(vii) Security Interest. This Agreement creates a valid security interest in the Collateral, securing the payment of the obligations of the Guarantor hereunder, and all filings and other actions necessary or desirable to perfect such security interests have been or, substantially simultaneously with the execution and delivery of this Agreement, will be, duly taken, except with respect to vehicles and real Property and other Property as to which security interests are not subject to perfection under the UCC. The delivery and pledge of the Pledged Collateral pursuant to this Agreement and all other filings and other actions taken by the Guarantor to perfect such security interests prior to the date hereof, create a valid and perfected first priority security interest in the Pledged Collateral securing the payment of the obligations of the Guarantor hereunder, except for Pledged Collateral consisting of checks and drafts received in the ordinary course of business.

8. Further Assurances.

(a) The Guarantor agrees that from time to time, at its expense, the Guarantor shall promptly execute and deliver all further instruments and documents, and take all further action, that the Agent may reasonably request, in order to perfect and protect any security interests granted hereby or to enable the Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Guarantor shall promptly execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, and promptly take such other action as the Agent may reasonably request, in order to perfect and preserve the security interests granted hereby.

(b) The Guarantor hereby authorizes the Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Guarantor where permitted by law. The Agent shall provide the Guarantor with a copy of any such statement or amendment, provided that no failure to do so shall affect the rights of the Agent hereunder, result in any liability of the Agent or the Lenders to the Guarantor or in any way affect the validity of such filing. A photographic or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) The Guarantor shall furnish to the Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail.

9. As to Equipment and Inventory.

The Guarantor shall:

(a) Keep the Equipment and Inventory at the places specified in Section 7(b)(ii) and deliver written notice to the Agent at least thirty days prior to establishing any other location at which it reasonably expects to maintain Inventory and/or Equipment, in which jurisdiction all action required by Section 8 shall have been taken with respect to all such Equipment and Inventory.

(b) Maintain or cause to be maintained in good repair, working order and condition, excepting ordinary wear and tear and damage due to casualty, all of the Equipment, and make or cause to be made all appropriate repairs, renewals and replacements thereof, to the extent not obsolete and consistent with past practice of the Guarantor or as required by any Governmental Authority, as quickly as practicable after the occurrence of any loss or damage thereto which are necessary or desirable to such end. The Guarantor shall promptly furnish to the Agent a statement respecting any material loss or damage to any of the Equipment or Inventory.

10. As to Accounts.

(a) The Guarantor shall keep its chief place of business and chief executive office and the office where it keeps its records concerning the Accounts, and the offices where it keeps all originals of all chattel paper which evidence Accounts, at the locations therefor specified in Section 7(b)(ii) or, upon at least thirty days prior written notice to the Agent, at such other locations in a jurisdiction where all actions required by Section 8 shall have been taken with respect to the Accounts. The Guarantor will hold and preserve such records and chattel paper and will permit representatives of the Agent or any Lender at any reasonable time and as often as may be reasonably be desired to inspect and make abstracts from such records and chattel paper.

(b) Except as otherwise provided in this subsection (b), the Guarantor shall continue to collect in accordance with its customary practice, at its own expense, all amounts due or to become due to the Guarantor in respect of the Accounts and, so long as no Event of Default shall have occurred and be continuing, the Guarantor shall have the

right to adjust, settle or compromise the amount or payment of any Account all in accordance with its customary practices. In connection with such collections, the Guarantor may, upon the occurrence and during the continuation of an Event of Default, take (and, at the direction of the Agent shall take) such action as the Guarantor or the Agent may deem necessary or advisable to enforce collection of the Accounts; provided, however, that upon the occurrence and at any time during the continuance of an Event of Default, and upon written notice by the Agent to the Guarantor of its intention so to do, the Agent shall have the right to notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Agent and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Guarantor thereunder directly to the Agent and, upon such notification and at the expense of the Guarantor, to enforce collection of any such Accounts, and to adjust, settle or compromise, the amount or payment thereof, in the same manner and to the same extent as the Guarantor might have done. After receipt by the Guarantor of the notice referred to in the proviso to the preceding sentence, (i) all amounts and Proceeds (including instruments) received by the Guarantor in respect of the Accounts shall be received in trust for the benefit of the Agent hereunder, shall be segregated from other funds of the Guarantor and shall be forthwith paid over to the Agent in the same form as so received (with any necessary indorsement) to be held as cash collateral and either (A) released to the Guarantor if such Event of Default shall have been cured or waived or (B) if such Event of Default shall be continuing, applied as provided by Section 18(c), and (ii) so long as such Event of Default shall be continuing, the Guarantor shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon.

11. As to the Pledged Collateral.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) The Guarantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement and the Credit Agreement; provided, however, that the Guarantor shall not exercise or refrain from exercising any such right without the consent of the Agent if such action or inaction would have a material adverse effect on the fair market value of any part of the Pledged Collateral or the validity, priority or perfection of the security interests granted hereby or the remedies of the Agent hereunder.

(ii) The Guarantor shall be entitled to receive and retain any and all dividends, principal, interest and other distributions paid in respect of the Pledged Collateral to the extent not prohibited by this Agreement; provided, however, that any and all dividends, principal, interest and other distributions paid or payable other than in cash in respect of, and instruments and other Property received, receivable or otherwise distributed in respect of, or in exchange for, Pledged Collateral, shall forthwith be delivered to the Agent to hold as Pledged Collateral and shall, if received by the Guarantor, be received in trust for the benefit of the Agent, be segregated from the other Property of the Guarantor, and be forthwith delivered to the Agent, as Pledged Collateral in the same form as so received (with any necessary indorsement).

(iii) The Agent shall execute and deliver (or cause to be executed and delivered) to the Guarantor all such proxies and other instruments as the Guarantor may reasonably request for the purpose of enabling the Guarantor to exercise the voting and other rights which it is entitled to exercise pursuant to clause (i) above and to receive the distributions, principal or interest payments which it is authorized to receive and retain pursuant to clause (ii) above.

(b) Upon the occurrence and during the continuance of an Event of Default and at the Agent's option and following written notice by the Agent to the Guarantor:

(i) All rights of the Guarantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 11(a)(i) and to receive the dividends, principal, and interest payments and other distributions which it would otherwise be authorized to receive and retain pursuant to Section 11(a)(ii) shall cease, and all such rights shall thereupon become vested in the Agent, who shall thereupon have the sole right to exercise such voting and other consensual rights and to receive and hold as Pledged Collateral such distributions and principal and interest payments.

(ii) All dividends, principal and interest payments and other distributions which are received by the Guarantor contrary to the provisions of Section 11(b)(i) shall be received in trust for the benefit of the Agent, shall be segregated from other funds of the Guarantor and shall be forthwith paid over to the Agent as Pledged Collateral in the same form as so received (with any necessary indorsement).

(c) In the event that all or any part of the securities or instruments constituting the Pledged Collateral are lost, destroyed or wrongfully taken while such securities or instruments are in the possession of the Agent, the Guarantor agrees that it will cause the delivery of new securities or instruments in place of the lost, destroyed or wrongfully taken securities or instruments upon request therefor by the Agent without the necessity of any indemnity bond or other security other than the Agent's agreement or indemnity therefor customary for security agreements similar to this Agreement.

12. Additional Shares.

The Guarantor agrees that it will cause each issuer of the Pledged Stock not to issue to the Guarantor any Stock or other securities in addition to or in substitution for the Pledged Stock issued by such issuer, unless immediately upon its acquisition (directly or indirectly) thereof, any and all additional shares of Stock or other securities of each such issuer are pledged to and delivered by the Guarantor to the Agent hereunder.

13. Other Covenants and Agreements of the Guarantor.

The Guarantor covenants and agrees that on and after the date hereof until the indefeasible cash payment in full of the Obligations, unless the Agent shall otherwise consent in writing:

15. The Agent May Perform.

If the Guarantor fails to perform any agreement contained herein, the Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of the Agent incurred in connection therewith shall be payable by the Guarantor under Section 20.

16. The Agent's Duties.

The powers conferred on the Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Agent shall have no duty as to any Collateral. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Agent accords its own property, it being understood that the Agent shall not be under any obligation to (i) ascertain or take action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Collateral, whether the Agent or any Lender has or is deemed to have knowledge of such matters, or (ii) take any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral, but may do so at its option, and all reasonable expenses incurred in connection therewith shall be for the sole account of the Guarantor and shall be added to the Obligations.

17. Events of Default

Each of the following shall constitute an "Event of Default":

(a) The occurrence and continuance of an "Event of Default" under and as defined in the Credit Agreement; or

(b) If any representation or warranty made herein or in any certificate furnished by the Guarantor in connection with this Agreement shall prove to have been incorrect or misleading (whether because of misstatement or omission) in any material respect when made; or

(c) If the Guarantor shall fail to observe or perform any term, covenant or agreement contained in Section 2, 12 or 13 of this Agreement; or

(d) If the Guarantor shall fail to perform or observe any other covenant or agreement on its part to be performed or observed pursuant to this Agreement and such failure shall have continued unremedied for a period of 30 days after the Guarantor shall become aware of such failure.

18. Remedies.

After the occurrence and during the continuance of an Event of Default, the Agent may, and upon direction of the Required Lenders shall, proceed to enforce the rights of the Agent and the Lenders hereunder by suit in equity, action at law and/or other

appropriate proceedings, whether for payment or for specific performance of any covenant or agreement contained in this Agreement, including, without limitation, the following:

(a) The Agent may take any action the Guarantor is required to take or any other necessary action to obtain, preserve and enforce this Agreement, and maintain and preserve the Collateral, without notice to the Guarantor, and add the costs of the same to the Obligations (but the Agent is under no duty to take any such action);

(b) The Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party upon default under the UCC as in effect from time to time (whether or not the UCC applies to the affected Collateral) and also may (i) require the Guarantor to, and the Guarantor hereby agrees that it will at its expense and upon request of the Agent forthwith, assemble all or any part of the Collateral as directed by the Agent and make it available to the Agent at a place designated by the Agent which is reasonably convenient to the Agent and the Guarantor, (ii) without notice, except as specified below, sell, lease, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as may be commercially reasonable. The Guarantor agrees that, to the extent notice of sale shall be required by law, at least five Business Days' notice to the Guarantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) Any cash held by the Agent as Collateral and all cash proceeds received by the Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Agent, be held by the Agent as Collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Agent pursuant to Section 20) in whole or in part by the Agent, for the benefit of the Lenders, against all or any part of the Obligations in accordance with Section 10.1 of the Credit Agreement. Any surplus of such cash or cash proceeds held by the Agent and remaining after payment in full of all the Obligations shall be promptly paid over to the Guarantor or to whomsoever may be lawfully entitled to receive such surplus.

(d) Upon the completion of any sale or other disposition of all or any part of the Collateral under this Section, full title and right of possession to such Collateral shall pass to such purchaser or purchasers forthwith upon the completion of such sale. Nevertheless, if so requested by the Agent or by any purchaser of such Collateral, the Guarantor shall confirm any such sale or disposition by executing and delivering to such purchaser all proper instruments of conveyance and transfer and releases as may be designated in any such request. To the extent permitted by applicable law, every such sale or other disposition shall operate to divest all right, title, interest, claim and demand whatsoever of the Guarantor of, in and to the Collateral so sold or disposed of and shall be a perpetual bar, both at law and in equity, against the Guarantor, all persons claiming the Collateral sold or disposed of, or any part thereof, through the Guarantor, and its successors and assigns.

(e) At any sale or other disposition hereunder, the Agent may bid for and purchase the Collateral offered for sale, and, upon compliance with the terms of sale or other disposition, may hold, retain and dispose of such Collateral without further accountability therefor. Any such purchaser at any sale or other disposition hereunder shall be entitled, for the purpose of making payment for the Collateral purchased, to apply any part of the Obligations due and payable to it as a credit against the purchase price of such Collateral.

(f) The Guarantor hereby expressly waives and covenants, to the extent permitted by applicable law, not to assert any appraisal, valuation, stay, extension, redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the performance or enforcement of this Agreement.

(g) The Guarantor recognizes that the Agent may be compelled to resort to one or more private sales of the Pledged Stock to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Pledged Stock for their own accounts, for investment, and not with a view to the distribution or resale thereof. The Guarantor agrees that private sales so made may be at prices and other terms less favorable to the seller than if the Pledged Stock were sold at public sales and that the Agent shall have no obligation to delay sale of any such Pledged Stock for the period of time necessary to permit the Guarantor, even if the Guarantor would agree, to register such Pledged Stock for public sale under the Securities Act of 1933, as amended. The Guarantor agrees that private sales made under the foregoing circumstances shall be deemed to have been conducted in a commercially reasonable manner.

19. Notices

Except as otherwise expressly provided herein, all notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (i) when delivered by hand, or (ii) one Business Day after having been sent by overnight courier service, (iii) five Business Days after having been deposited in the mail, first-class postage prepaid, or (iv) in the case of telecopier notice, when sent, addressed as follows, or to such other addresses as to which the Agent may be hereafter notified by a party hereto:

The Guarantor:

MSH South Inc.
2500 West 4th Street, Suite 16
Wilmington, Delaware 19805
Attention: Robert C. Campbell

Telephone: (302) 654-7584
Telecopy: (302) 652-8667

The Agent:

The Bank of New York, as Agent
 One Wall Street, 19th Floor
 New York, New York 10286
 Attention: Brian C. Weddington
 Assistant Treasurer

Telephone: (212) 635-8473
 Telecopy: (212) 635-8593

20. Expenses

The Guarantor agrees that it shall, upon demand, pay to the Agent any and all costs and expenses, which the Agent or any Lender may pay or incur defending, protecting or enforcing this Agreement (whether suit is instituted or not), including, without limitation, reasonable attorneys' fees and disbursements. All sums, costs and expenses which are due and payable pursuant to this Section shall bear interest, payable on demand, at the highest rate then payable on the Borrower Obligations.

21. Repayment in Bankruptcy, etc.

If, at any time or times subsequent to the payment of all or any part of the Borrower Obligations or the Guarantor Obligations, the Agent or any Lender shall be required to repay any amounts previously paid by or on behalf of the Borrower or the Guarantor in reduction thereof by virtue of an order of any court having jurisdiction in the premises, including, without limitation, as a result of an adjudication that such amounts constituted preferential payments or fraudulent conveyances, the Guarantor unconditionally agrees to pay to the Agent within 5 days after demand a sum in cash equal to the amount of such repayment, together with interest on such amount from the date of such repayment by the Agent or such Lender, as the case may be, to the date of payment to the Agent at the applicable after-maturity rate set forth in the Credit Agreement.

22. No Segregation of Moneys; No Interest.

No moneys or any other Property received by the Agent hereunder need be segregated in any manner except to the extent required by law, and any such moneys or other Property may be deposited under such general conditions as may be prescribed by law applicable to the Agent and the Agent shall not be liable for any interest thereon, except as may otherwise be agreed by the Agent.

23. Subrogation

The Guarantor hereby irrevocably and forever waives any right to succeed to any of the rights of the Agent and the Lenders against the Borrower under this Agreement, whether by way of subrogation or otherwise, until all Borrower Obligations have been indefeasibly paid in full, in cash.

24. Miscellaneous

(a) Except as otherwise expressly provided in this Agreement, to the maximum extent permitted by applicable law, the Guarantor hereby waives presentment, demand for payment, notice of default, nonperformance and dishonor, protest and notice of protest of or in respect of this Agreement, the other Loan Documents, each Interest Protection Arrangement, and the Borrower Obligations, notice of acceptance of this Agreement and reliance hereupon by the Agent and each Lender, and the incurrence of any of the Borrower Obligations, notice of any sale of collateral security or any default of any sort.

(b) The Guarantor is not relying upon the Agent or any Lender to provide to the Guarantor any information concerning the Borrower or any Subsidiary, and the Guarantor has made arrangements satisfactory to the Guarantor to obtain from the Borrower on a continuing basis such information concerning the Borrower and its Subsidiaries as the Guarantor may desire.

(c) The Guarantor agrees that any statement of account with respect to the Borrower Obligations from the Agent or any Lender to the Borrower which binds the Borrower shall also be binding upon the Guarantor, and that copies of said statements of account maintained in the regular course of the Agent's or such Lender's business, as the case may be, may be used in evidence against the Guarantor in order to establish its Guarantor Obligations.

(d) The Guarantor acknowledges that it has received a copy of the Loan Documents and each Interest Rate Protection Arrangement and has approved of the same. In addition, the Guarantor acknowledges having read each Loan Document and each such Interest Rate Protection Arrangement and having had the advice of counsel in connection with all matters concerning its execution and delivery of this Agreement.

(e) The Guarantor may not assign any right, or delegate any duty, it may have under this Agreement.

(f) This Agreement is the "Subsidiary Guaranty" referred to in the Credit Agreement. Each of the Agent and the Guarantor acknowledges that certain provisions of the Credit Agreement, including, without limitation, Sections 1.2 (Other Definitional Provisions), 12.1 (Amendments and Waivers), 12.3 (No Waiver; Cumulative Remedies), 12.4 (Survival of Representations and Warranties), 12.7 (Successors and Assigns), 12.8 (Counterparts), 12.13 (Headings Descriptive), 12.14 (Severability), 12.15 (Integration), 12.16 (Consent to Jurisdiction), 12.17 (Service of Process), 12.18 (No Limitation on Service or Suit) and 12.19 (WAIVER OF TRIAL BY JURY) thereof, are made applicable to this Agreement and all such provisions are incorporated by reference herein as if fully set forth herein.

25. Governing Law; Terms.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws rules, except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any particular collateral are governed by the laws of a jurisdiction

other than the State of New York. Unless otherwise defined herein or in the Credit Agreement, terms used in Articles 8 and 9 of the UCC are used herein as therein defined.

IN EVIDENCE of the agreement by the parties hereto to the terms and conditions herein contained, each such party has caused this Agreement to be duly executed on its behalf.

THE BANK OF NEW YORK, individually and as Agent

By: V. J. P.
Name: VINCENT J. PELLIC
Title: VP

MSH SOUTH INC.


By: _____
Name: _____
Title: _____

IN EVIDENCE of the agreement by the parties hereto to the terms and conditions herein contained, each such party has caused this Agreement to be duly executed on its behalf.

THE BANK OF NEW YORK, individually and as Agent

By: _____
Name: _____
Title: _____

MSH SOUTH INC.

By: 
Name: Shakti Newkam
Title: Chairman Pres

Schedule I
to
SUBSIDIARY GUARANTY

PART A - Pledged Stock:

<u>Name of Issuer</u>	<u>Jurisdiction of Incorporation</u>	<u>Class;</u> <u>Par Value</u>	<u>Shares Owned</u>
None.			

PART B - Pledged Debt:

<u>Debtor</u>	<u>Date</u>	<u>Face Amount</u>	<u>Balance Due</u>
None.			

Schedule 7(b)(ii)
to
SUBSIDIARY GUARANTY

PART A - Chief Executive Office and Chief Place of Business:

MSH South Inc.
2500 West 4th Street, Suite 16
Wilmington, Delaware 19805

PART B - Other Offices and Places of Business:

None.

PART C - Location of Other Equipment and Inventory:

None.

Schedule 7(b)(vi)

to

SUBSIDIARY GUARANTY

ADDITIONAL TRADEMARKS & COPYRIGHTS

Dutch Wonderland	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	1,899,268 (federal)	3/20/01	Trademark
Castle Gift Shop	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	1,907,715 (federal)	3/20/01	Trademark
Discover Lancaster County History Museum	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	2842187 (fictitious name, PA)	10/22/98 (registration date)	Trademark
Discover Lancaster County History Museum	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	76/299982 (federal)	8/16/01 (filing date)	Trademark
Old Mill Stream Camping Manor	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	2945647 (fictitious name, PA)	6/5/00 (registration date)	Trademark
Old Mill Stream Camping Manor	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	76/299983 (federal)	8/16/01 (filing date)	Trademark
Wax Museum of Lancaster County History	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	1,967,484 (federal)	4/9/96 (registration date)	Trademark
Gift House at Kitchen Kettle Village	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	Common Law		Trademark
Duke	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	Common Law		Copyright
Duke's Father (recently named "Sir Scotch")	Earl Realty, Inc.	Earl Realty, Inc.	MSH South, Inc.	Common Law		Copyright

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