



Appendix F

1998 Sewer Connection Agreement

RECORDED

11939PG386

1 2

3

Number of pages

53

99 JAN 13 AM 10:39

EDWARD P. ROMAINE
CLERK OF
SUFFOLK COUNTY

TORRENS

Serial # _____

Certificate # _____

Prior Ctf. # _____

Deed / Mortgage Instrument

Deed / Mortgage Tax Stamp

Recording / Filing Stamps

4 FEES

Page / Filing Fee _____

Handling _____

TP-584 _____

Notation _____

EA-5217 (County) _____ Sub Total _____

EA-5217 (State) _____

R.P.T.S.A. 23 _____

Comm. of Ed. 5.00 _____

Affidavit _____

Certified Copy _____

Reg. Copy _____ Sub Total _____

Other _____

GRAND TOTAL _____

EXEMPT



Mortgage Amt. _____

1. Basic Tax _____

2. Additional Tax _____

Sub Total _____

Spec./Assit. _____

or _____

Spec./Add. _____

TOT. MTG. TAX _____

Dual Town _____ Dual County _____

Held for Apportionment _____

Transfer Tax _____

Mansion Tax _____

The property covered by this mortgage is or will be improved by a one or two family dwelling only.

YES _____ or NO _____

If NO, see appropriate tax clause on page # _____ of this instrument.

OK pm

5 Real Property Tax Service Agency Verification

6 Title Company Information

Dist.	Section	Block	Lot
0400	268.00	02.00	003.00
			017.00

Stamp: ALLIANCE OF REALTORS
Date: 1-13-99
Initials: *[Signature]*

Company Name _____

Title Number _____

PLEASE RETURN TO:
William J. McBrien
SC DPW
335 Yaphank Avenue
Yaphank, NY 11980

7 RECORD & RETURN TO (ADDRESS)

8 FEE PAID BY:
Cash _____ Check _____ Charge _____

Payer same as R & R _____
(or if different)

NAME: _____

ADDRESS: _____

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THIS AGREEMENT IS INTENDED TO BE RECORDED
IN THE OFFICE OF THE SUFFOLK COUNTY CLERK

CONNECTION AGREEMENT TO
SUFFOLK COUNTY SEWER DISTRICT NO. 3 - SOUTHWEST

This Agreement is made this 3rd day of September, 1998,
by, between and among:

MSC INDUSTRIAL DIRECT COMPANY, INC., a corporation duly organized under, and existing by virtue of, the laws of the State of New York, with an address at 151 Sunnyside Boulevard, Plainview, New York 11803, hereinafter referred to as "OWNER," and

The SUFFOLK COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized under, and existing by virtue of, the laws of the State of New York, having its principal office at 220 Rabro Drive, Hauppauge, New York 11788-0099, hereinafter referred to as the "IDA," and

SUFFOLK COUNTY SEWER DISTRICT No. 3 - SOUTHWEST, having offices at the Yaphank County Center, 335 Yaphank Avenue, Yaphank, New York 11980, hereinafter referred to as the "DISTRICT," and

SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS, a department of the county government of Suffolk County, New York, having offices at the Yaphank County Center, 335 Yaphank Avenue, Yaphank, New York 11980, hereinafter referred to as "DPW," and

SUFFOLK COUNTY SEWER AGENCY, a unit of the county government of Suffolk County, New York, having offices at the Yaphank County Center, 335 Yaphank Avenue, Yaphank, New York 11980, hereinafter referred to as the "AGENCY," and

SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES, a department of the county government of Suffolk County, New York, having office at 225 Rabro Drive, Hauppauge, New York 11788, hereinafter referred to as "SCDHS," and

COUNTY OF SUFFOLK, having offices at the Suffolk County Center, Riverhead, New York 11901, hereinafter referred to as "SUFFOLK." (The DISTRICT, DPW, the AGENCY, SCDHS and SUFFOLK are hereinafter collectively referred to as the "COUNTY").

DISTRICT

SECTION

BLOCK

LOT

0	4	0	0
2	9	8	0
0	3	0	0
0	0	1	3
0	0	8	8
0	0	8	8

W I T N E S S E T H :

WHEREAS, the IDA is the owner of the property located at the northeast corner of Maxess Road and Corporate Center Drive, in Melville, Town of Huntington, County of Suffolk and State of New York, more particularly bounded and described as set forth in "Schedule A" annexed hereto, which property is hereinafter referred to as the "PREMISES," and

WHEREAS, OWNER has leased the PREMISES from the IDA, pursuant to a written lease agreement dated November 1, 1997 (the "IDA Lease"), and

WHEREAS, the PREMISES is not located within the boundary of the DISTRICT, or within the boundary of any other Suffolk County sewer district, and

WHEREAS, OWNER has caused to be filed with the COUNTY and the Town of Huntington, a certain map or plan entitled "Sid Tools Site Plan," which map or plan is dated August 19, 1997, was prepared by Nelson & Pope, and shows the location of an office building presently consisting of 170,000 square feet, with a cafeteria, which building is proposed to be expanded to 212,009 square feet, upon 16.62 acres of land located at Melville, Town of Huntington, County of Suffolk and State of New York (the PREMISES), and

WHEREAS, OWNER has petitioned and requested the Administrative Head of the DISTRICT for permission to connect the PREMISES into the sanitary sewers of the DISTRICT, and

WHEREAS, it has been determined by the Administrative Head of the DISTRICT that, at the time of the execution of this Agreement, the DISTRICT has capacity in excess of its own needs, and

WHEREAS, the DISTRICT is willing, under specific terms and conditions as herein set forth, to permit such connection to its sanitary sewer system, provided that for the duration of this Agreement the DISTRICT continues to have capacity in excess of its own needs,

NOW, THEREFORE, in consideration of the individual and mutual covenants, promises and representations herein contained, the parties hereto do hereby agree as follows:

1. Whereas Clauses

The "Whereas" clauses are an integral part of this Agreement and shall have meaning and effect as though they were set forth at length in numbered paragraphs herein.

2. Term

The term of this Agreement shall be for a period of time commencing on the date of execution of this Agreement by the parties hereto and expiring at 12:00 P.M. on December 31, 2021. In the event that, at the expiration or termination of the initial term of this Agreement, a new agreement or a renewal of this Agreement has not been executed, OWNER shall, at the option of the COUNTY, be deemed to have agreed to a renewal of this Agreement for a term of one (1) year, upon the same terms and conditions contained herein. The foregoing sentence notwithstanding, however, neither the COUNTY, nor any of the COUNTY's departments, agencies, bureaus, employees, personnel, agents or representatives, shall have any obligation to renew this Agreement, or to execute any other agreement, with OWNER, either during or at the end of the original term, or during or at the end of any renewal or extended term, hereof.

3. Title

A. The IDA covenants, warrants and represents that it owns the PREMISES herein described. A description of the PREMISES, including its Suffolk County Tax Map number(s), is annexed hereto and marked "Schedule A."

B. OWNER shall, at OWNER's sole cost, expense and effort, provide a policy of title insurance to the COUNTY, from a reputable title company authorized to do business in Suffolk County and the State of New York, and acceptable to the COUNTY, in the amount determined by the COUNTY. Title shall be marketable and guaranteed in the name of OWNER, naming SUFFOLK as the insured. The title policy shall cover the PREMISES, together with any easement(s) required pursuant to Article 8 (*Easements*) (the "Insured Property"). The Insured Property shall be free and clear of any liens or encumbrances superior to those of the COUNTY. The title policy and the guaranteed description of the Insured Property, including its Suffolk County Tax Map number(s), shall be annexed hereto and marked "Schedule B."

C. This Agreement is not authorized to be executed on behalf of the COUNTY, and is not binding upon the COUNTY in any way, until title policy and the guaranteed description of the Insured Property have been received by the COUNTY.

4. Reservation of Capacity

The COUNTY represents and warrants that the DISTRICT has sufficient capacity and reserves such capacity to accept waste flow from the PREMISES at an average daily flow rate described in "Schedule E" annexed hereto.

5. Compliance with Law

A. OWNER covenants, warrants and represents that it shall comply with all of the provisions of the Suffolk County Code and any amendment thereof and/or successor law thereto, including, but not limited to, Sections 424 (Sewers) (Suffolk County Local Law Number 24-1986) and 760 (Sanitary Code). A copy of Suffolk County Local Law Number 24-1986 is annexed hereto and marked "Schedule C."

B. OWNER covenants, warrants and represents that it shall, at all times, comply with any and all orders, directives, requests and rules and regulations of the COUNTY and of each and every federal, state or local municipality, department and/or agency having jurisdiction of or over the work to be performed by OWNER hereunder and the connection of the PREMISES to the DISTRICT.

C. OWNER covenants, warrants and represents that any and all parts of OWNER's sewage system, including sewer lines, manholes, pretreatment systems, lateral sewers, pump stations and/or force mains, as well as any and all equipment, appurtenances and/or facilities used in connection therewith, located in, under or upon the PREMISES, or utilized, in the connection of the PREMISES to the sanitary sewerage facilities of the DISTRICT (the "Facilities"), shall be constructed and maintained by OWNER, at OWNER'S sole cost, expense and effort, in accordance with the rules, regulations and approvals of the COUNTY, until such time, if ever, as a dedication to the County occurs pursuant to Article 18 (*Dedication*).

D. OWNER warrants and represents that OWNER has not offered or given any gratuity to any official, employee or agent of Suffolk County, New York State or any political party with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement, or the making of any determinations with respect to the performance of an agreement, and that OWNER has read and is familiar with the provisions of Suffolk County Local Law Number 32-1980.

6. Design and Construction

A. OWNER covenants, warrants and represents that it shall, at OWNER's sole cost, expense and effort, design and construct any and all Facilities necessary, in the sole discretion

of the COUNTY, for the connection of the PREMISES to the DISTRICT's sewage treatment plant at a point designated by the COUNTY, in order to serve the sewage collection, treatment and disposal needs of the PREMISES.

7. Transfer

OWNER covenants, warrants and represents that:

A. No portion of the PREMISES upon which any part of the Facilities has been constructed or has been authorized to be constructed by the COUNTY may be transferred without the prior written approval of the COUNTY; such approval shall not be unreasonably withheld; however, the COUNTY shall not be obligated to approve such transfer where, in the sole discretion of the COUNTY, the COUNTY's interest is adversely affected. This paragraph shall not apply to the transfer of: (i) any individual residential unit(s) within the PREMISES, provided that such unit(s) continue to be used for residential purposes; or (ii) any common areas to a home owner association(s).

B. Any portion of the PREMISES authorized to be conveyed pursuant to paragraph (A) above may only be conveyed upon sufficient easements in favor of the COUNTY. The sufficiency of such easements shall be determined by the COUNTY, using reasonable standards.

8. Easements

This Agreement is contingent upon OWNER: (a) obtaining, at OWNER's sole cost, expense and effort, any and all necessary easements over, under and/or through public or private property for the purposes of installing, operating, replacing, inspecting, repairing and/or maintaining the Facilities, running from the PREMISES to the point of connection with the sanitary sewers of the DISTRICT; and (b) conveying all such easements to the COUNTY, at OWNER's sole cost, expense and effort, and without charge to the COUNTY, its successors and/or assigns. Such easements shall be in locations, and of such length and width, and shall contain such terms and conditions, as the COUNTY, in its sole discretion, may determine and approve.

9. Pretreatment Systems

If, in the sole discretion of the COUNTY, pretreatment systems are required, OWNER covenants, warrants and represents that it shall, at OWNER's sole cost, expense and effort, design and construct such pretreatment systems. Such pretreatment systems shall be operated and maintained by, at the option of the COUNTY, either (a) the COUNTY, or (b) personnel provided by OWNER. OWNER covenants, warrants and represents that, at its sole cost, expense and effort, it shall provide such personnel, which shall be acceptable to the COUNTY. Should

the COUNTY so request, OWNER shall provide, at any time or times during the term of this Agreement or during the term of any renewal or extension hereof, at OWNER's sole cost, expense and effort, a sampling station and equipment to measure and characterize the volume and strength of sewage and/or other wastewater from the PREMISES. Such sampling station and equipment shall be subject to approval by the COUNTY as a condition of OWNER's continued connection of the PREMISES to the DISTRICT. The COUNTY reserves the right to inspect the PREMISES in connection with such approval if, in its sole discretion, it deems same to be necessary. OWNER covenants, warrants and represents that its design and construction of any pretreatment systems shall be done in a good workmanlike manner and to the satisfaction and specifications of the COUNTY.

10. Reports, Plans and Specifications

A. Prior to the commencement of construction of the Facilities, OWNER shall, at OWNER's sole cost, expense and effort, submit to the COUNTY, an engineering report, and then, upon approval of the report, plans and specifications of all proposed work showing the Facilities. The report, plans and specifications shall be prepared by a professional engineer duly licensed by the State of New York, include the location of all sewer easements and sites, show the method of ultimate connection of the PREMISES to the DISTRICT, and be subject to review by, and approval of, the COUNTY prior to the commencement of construction of the Facilities; no such construction shall commence until the report, plans and specifications shall have been approved, in writing, by the COUNTY. The COUNTY shall, within a reasonable time, examine the report, plans and specifications submitted by OWNER, and shall make such inspections and reports, in its sole discretion, as it may require. The engineers and inspectors of the COUNTY shall not replace, nor act as or on behalf of, the engineers, inspectors or staff of OWNER, and nothing contained herein or elsewhere in this Agreement shall be construed to the contrary.

B. At the conclusion of the work hereunder, OWNER shall, at OWNER's sole cost, expense and effort, submit to the COUNTY "as-built" drawings, prepared by a professional engineer duly licensed by the State of New York, showing the exact location and depth of all of the Facilities in accordance with the COUNTY's specifications on: (i) computer diskette(s), formatted to the COUNTY's specifications; (ii) two (2) reproducible transparencies, Mylar or equal; and (iii) one (1) microfilm.

11. Construction

A. Prior to the commencement of construction of the Facilities, OWNER shall, at OWNER's sole cost, expense and effort, (i) obtain from the COUNTY a Special Permit as provided for in Local Law No. 24-1986 (a copy of which is annexed to this Agreement and

marked "Schedule C") and/or in any amendment thereof and/or successor law thereto, (ii) obtain a construction permit from SCDHS, and (iii) secure any and all other permits which may be lawfully required by, and abide by the rules and regulations of, each and every municipality and/or department and/or agency having jurisdiction in or over the matter.

B. At least fourteen (14) days prior to the commencement of construction of the Facilities, OWNER shall notify the COUNTY, in writing, of the proposed date or dates on which construction is scheduled to commence, and shall include with the notice a tentative schedule setting forth all work proposed to be done during the thirty (30) days following the commencement of construction and the exact location thereof. OWNER shall not commence construction of any Facilities until (i) the location and order of progression of the proposed work as set forth in the aforesaid schedule has been approved by the COUNTY, and (ii) arrangements have been made with the COUNTY for inspection by the COUNTY of the work. OWNER shall notify the COUNTY, in writing and within twenty-four (24) hours, of any addition(s), deletion(s), change(s) or other modification(s) to, from or in the schedule. The schedule shall be updated as necessary by OWNER to set forth all work proposed to be done after the thirty (30) days following the commencement of construction. Such updating shall be done with sufficient frequency so that the COUNTY shall have a minimum of thirty (30) days advance notice, via the aforesaid schedule, of all work proposed to be done. All such updates of the schedule shall be subject to the same terms and conditions as the originally-submitted schedule, as set forth above.

12. Inspection and Testing

A. Prior to covering, burying or otherwise concealing or obscuring any part of the Facilities, OWNER covenants, warrants and represents that it shall request an inspection by the COUNTY of the construction of same. OWNER shall await such inspection, and shall not cover, bury or otherwise conceal or obscure any of the Facilities until the same have been both inspected and approved by the COUNTY. In the event that OWNER fails to request an inspection as set forth herein, and/or fails to await such inspection, and causes or permits, whether intentionally or otherwise, any part of the Facilities to be covered, buried or otherwise concealed or obscured before the same have been both inspected and approved by the COUNTY, then OWNER covenants, warrants and represents that it shall, if so requested by the COUNTY, at OWNER's sole cost, expense and effort, excavate, uncover and/or otherwise remove the same from concealment or obscurity, in order that the same may be inspected, and approved or disapproved, by the COUNTY.

B. During the course of construction of the Facilities, the engineers, inspectors and staff of the COUNTY, and the Highway Department of the Town and/or Village in which the PREMISES are situate, shall have the right, at any time, to make inspections of the work. OWNER

hereby expressly grants such engineers, inspectors and staff the right to enter into and upon the PREMISES for the purpose of making such inspections.

C. During the course of construction of the Facilities, OWNER covenants, warrants and represents that it shall, at OWNER's sole cost, expense and effort, make any tests of the Facilities as may from time to time be requested by the COUNTY. In the event that the COUNTY issues a stop-work order, OWNER shall immediately cease all work on the item, or items, set forth in the order and shall not resume such work until the order has been vacated, in writing, by the COUNTY.

13. Letter of Credit; Maintenance Bond

A. In the event that any municipality having jurisdiction over the lands in, through, over, under or upon which OWNER will construct the Facilities so requests, OWNER covenants, warrants and represents that it shall, at OWNER's sole cost, expense and effort, prior to the commencement of construction of any of the Facilities, furnish an irrevocable letter of credit issued by a New York bank, for the repair, restoration and/or maintenance of any facilities (sewerage or otherwise) owned by any such municipality. This letter of credit shall be in form and wording satisfactory to, and in an amount requested by, any such municipality.

B. Notwithstanding paragraph (A), prior to the commencement of construction of the Facilities, OWNER covenants, warrants and represents that it shall, at OWNER's sole cost, expense and effort, furnish an irrevocable letter of credit issued by a New York bank, to ensure that, in the event OWNER fails to (i) undertake and/or complete the construction of any part of the Facilities, and/or (ii) fails to undertake and/or complete any of OWNER's obligations under this Agreement, sufficient financial resources are available to construct and complete the construction of the Facilities, and/or to undertake and/or complete such obligations.

C. (i) OWNER covenants, warrants and represents that the letter of credit referred to in paragraph (B), above, shall be in form and wording satisfactory to, and in amount requested by, the COUNTY. Without limiting the generality of the foregoing sentence, the letter of credit shall be effective for a period of one (1) year, and shall provide as follows:

This Letter of Credit shall be automatically extended for successive one (1) year periods from the present or any future expiration date unless we have notified you, in writing, no less than forty-five (45) days before such expiration date, that we have elected not to extend the date of expiration. Such notice of election shall be sent by Certified Mail, Return Receipt Requested, to your above address. Upon any such notification, you shall have the right to draw against this Letter of Credit at any time prior to the expiration date without re-

gard to a default under the agreement for which this Letter of Credit was issued.

(ii) Such automatic renewals of the letter of credit shall continue until such time as OWNER has completed the construction of the Facilities, as approved by the COUNTY, and has fulfilled all of OWNER's obligations under this Agreement. The expiration of the letter of credit prior to such time shall constitute a default under the letter of credit and under this Agreement.

D. OWNER covenants, warrants and represents that, commencing on the first anniversary of the effective date of the letter of credit and on each subsequent anniversary for which the letter of credit is required pursuant to this Agreement, the letter of credit amount shall increase six percent (6%). Upon a written request by OWNER, within 90 to 60 days prior to the anniversary date of the letter of credit, the COUNTY may grant a waiver, in writing, if they determine, in their sole discretion, that the six percent (6%) increase is not required to insure the construction and/or completion of the Facilities in good working order, as shall be reasonably defined by the COUNTY. In its discretion, the COUNTY may reduce or eliminate the six percent (6%) increase for any anniversary period.

E. (i) Prior to the release of any such letter of credit, OWNER shall furnish, at OWNER's sole cost, expense and effort, (i) a maintenance bond, or (ii) a letter of credit issued by a New York bank, for the due, proper and efficient maintenance and operation of the Facilities. The maintenance bond or letter of credit shall be in form and wording satisfactory to, and in an amount or amounts determined by, the COUNTY. The maintenance bond or letter of credit shall be effective for a period of one (1) year, and shall provide as follows:

This maintenance bond [letter of credit] shall be automatically extended for successive one (1) year periods from the present or any future expiration date unless we have notified you, in writing, no less than forty-five (45) days before such expiration date, that we have elected not to extend the date of expiration. Such notice of election shall be sent by Certified Mail, Return Receipt Requested, to your above address. Upon any such notification, you shall have the right to draw against this maintenance bond [letter of credit] at any time prior to the expiration date without regard to a default under the agreement for which this maintenance bond [letter of credit] was issued.

(ii) Such automatic renewals of the maintenance bond or letter of credit shall continue until such time, if ever, as OWNER has dedicated the Facilities pursuant to Article 18 (*Dedication*). The expiration of the maintenance bond or letter of credit prior to such time shall constitute a default under the maintenance bond or letter of credit and under this Agreement.

(iii) OWNER shall, at OWNER's sole cost, expense and effort, provide for covenants, which shall be recorded in the Office of the Clerk of the County of Suffolk and which shall run with each portion of the PREMISES sold or transferred by OWNER, which shall provide that each and every subsequent owner of any portion of the PREMISES sold or transferred by OWNER shall be lawfully obligated to contribute towards the cost of (i) maintaining the sewerage system provided for herein and (ii) the maintenance bond or letter of credit, and any renewals thereof, provided for herein, in sufficient amounts so that the sums collected at any time from all owners of the PREMISES shall be sufficient to pay the cost of the maintenance and the maintenance bond or letter of credit provided for herein. No S-9 form or other approval shall be issued by the COUNTY in connection with the PREMISES unless and until the COUNTY approves the form and substance of the covenants and OWNER furnishes proof to the COUNTY that same have been recorded in the Office of the Suffolk County Clerk.

14. Costs Incurred by the COUNTY

A. OWNER covenants, warrants and represents that all costs and expenses incurred by the COUNTY during the course of design and construction of the Facilities, including, but not limited to, engineering costs, for any examination, inspection, audit, test, report and/or service either called for herein, or, in the sole discretion of the COUNTY, required, shall be borne by OWNER. Following approval of the engineering report of the Facilities, OWNER covenants, warrants and represents that it shall post the sum of TEN THOUSAND AND NO/100THS (\$10,000.00) DOLLARS, or a sum equal to five (5%) percent of OWNER's total costs for the design and construction of the Facilities, whichever is greater, by certified check, bank check or teller's check drawn to the order of "Suffolk County Treasurer," which sum shall be applied toward the aforesaid costs of the COUNTY. Thereafter, OWNER covenants, warrants and represents that it shall pay further and additional sums as shall be requested by the COUNTY, within 30 days of such request, which shall also be applied toward the costs of the COUNTY. Subject to paragraphs (C) and (D) below, the total amount of all sums so posted by OWNER shall not exceed five (5%) percent of OWNER's total costs for the design and construction of the Facilities. OWNER shall submit proof, satisfactory to the COUNTY, of its total design and construction costs.

B. In addition to the costs set forth in paragraph (A) above, OWNER covenants, warrants and represents that it shall pay for up to a fourteen-day operational inspection of the Facilities by a representative of the COUNTY. OWNER's offer of dedication of any part of the Facilities, as set forth in Article 18 (*Dedication*), shall not be accepted unless and until such fourteen-day, or less, operational inspection has been performed, and, pursuant to this inspection, the COUNTY has determined that the Facilities are in good working order as reasonably defined by the COUNTY.

C. For the sums posted by OWNER pursuant to this Article, OWNER shall be entitled to have the COUNTY review no more than two (2) submissions of the engineering reports, plans and specifications for approval. In the event that additional submissions are made showing any addition(s), deletion(s), change(s) or other modification(s), whether or not requested or required by the COUNTY, OWNER covenants, warrants and represents that it shall pay, upon demand, in the same manner as set forth in paragraph (A) above, an additional sum in the amount of one-half of one (0.5%) percent of OWNER's total costs for the construction of the Facilities for each such additional submission.

D. The percentage limitations set forth in paragraphs (A) and (C) above on the sums to be paid by OWNER do not include any allowance for any expenses incurred by the COUNTY as a result of OWNER's scheduling work to be performed on overtime, weekends or holidays, or other than during the normal working hours of the COUNTY's staff. No such work shall be scheduled by OWNER without the COUNTY's consent. In the event that any such work is scheduled, OWNER covenants, warrants and represents that it shall pay, upon demand, in the same manner as set forth in paragraph (A) above, an additional sum in an amount estimated by the COUNTY, in the COUNTY's sole discretion, to cover the COUNTY's anticipated additional costs as a result thereof. Should the COUNTY's estimate prove to be insufficient to cover its actual additional costs, OWNER covenants, warrants and represents that it shall, upon demand, pay to the COUNTY, in the same manner as set forth in paragraph (A) above, the difference between the estimated and the actual additional costs. The 5% limit referred to in paragraph (A) above does not apply to those costs.

E. Any unused portion of the sum or sums posted by OWNER pursuant to paragraphs (A), (C) and (D) above shall be returned to OWNER.

F. The sum or sums posted by OWNER pursuant to paragraphs (A), (C) and (D) above shall not exceed reasonable levels for the particular activity(ies) described. The COUNTY shall exercise reasonable controls over its costs in this regard. Upon request by OWNER, the COUNTY shall provide OWNER with evidence to account for its costs.

15. Liability Insurance

OWNER covenants, warrants and represents that it shall provide, at OWNER's sole cost, expense and effort, an insurance policy or policies in accordance with the requirements set forth in "Schedule D" annexed to this Agreement. At the COUNTY's request, OWNER shall submit the policy or policies, or due evidence thereof, in the form of certificates or binders, to the COUNTY. The failure of OWNER to furnish and maintain insurance, certificates or binders as required herein may be deemed by the COUNTY, in its sole discretion, to be a default hereunder and the COUNTY, in addition to other remedies to which it may be entitled in

such cases, may, but shall not be obligated to, purchase such equivalent insurance at the cost and expense of OWNER.

16. Indemnification

OWNER covenants, warrants and represents that it shall save, indemnify and hold harmless the COUNTY, and any and all of their departments, agencies, bureaus, employees, personnel, agents and representatives, from and against any and all claims, loss or expense, including reasonable attorneys fees, by reason of any liability imposed by law or equity upon any of them, except in cases of their negligence or intentional acts or omissions, for any damages or claim for damages arising out of, or in consequence of or in connection with, this Agreement, and involving the PREMISES, and/or OWNER'S connection to, and/or use of, the sanitary sewerage facilities of the DISTRICT, including, but not limited to, bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property. It is further understood and agreed that OWNER shall, at the option of the COUNTY, defend any of the entities indemnified hereunder with appropriate counsel acceptable to the COUNTY and, further, shall bear all costs and expenses, including the reasonable expense of counsel, in the defense of any action or proceeding arising hereunder. Such indemnification shall be on a nonrecourse basis, the COUNTY having no rights beyond the PREMISES and any interests therein.

17. Repair; Replacement by OWNER

A. OWNER covenants, warrants and represents that it shall, at OWNER's sole cost, expense and effort, repair, replace and/or restore the Facilities, and also any COUNTY sewerage facilities, in the event that either or both are damaged or disturbed as the result of any act or omission, intentional or otherwise, by OWNER and/or by OWNER's guests, invitees, etc., and/or by anyone acting for or on behalf of OWNER or at or under OWNER's direction or control.

B. Any and all costs and expenses incurred by the COUNTY in conjunction with the repair, replacement and/or restoration of facilities as set forth in paragraph (A) above shall be borne by OWNER. Such costs and expenses shall include, but shall not be limited to, those for examinations, inspections, audits, reports and/or services as the same may, in the reasonable discretion of the COUNTY, be required. All such costs and expenses shall be due and payable by OWNER immediately upon demand of the COUNTY. Should OWNER so request, the COUNTY shall provide OWNER with evidence of such costs and expenses.

18. Dedication

A. OWNER covenants, warrants and represents that: (i) the Facilities, including any and all easements and/or rights of way required for access to any item(s) to be accepted by the COUNTY (or the COUNTY's nominee), including the collection system for the PREMISES, and all agreements for the use of the Facilities by third parties or for the maintenance or repair of the Facilities, if any, and (ii) any Facilities other than those described in Article 10 (*Reports, Plans and Specifications*), are hereby irrevocably offered for dedication to the COUNTY (or to the COUNTY's nominee) by OWNER, free of charge, without expectation of any reimbursement or compensation, and without limitations of time for acceptance.

B. Upon approval of the construction of the Facilities or any portion thereof, the COUNTY (or to the COUNTY's nominee) may accept title to same. This acceptance may be made at any time. In the event that only a portion of the items referred to above are accepted, OWNER's offer of dedication as set forth in this Article shall continue in perpetuity for any item(s) not accepted.

C. Any item(s) and/or easement(s) shall be offered free of all liens and encumbrances. OWNER shall, at the COUNTY's (or the COUNTY's nominee's) request, and at OWNER's sole cost, expense and effort, provide, for the benefit of the COUNTY (or the COUNTY's nominee), (i) a title search, (ii) a policy of title insurance under the terms specified in Article 3 (*Title*), and (iii) a guaranteed survey covering the item(s) and/or easement(s) and/or rights of way and/or other interests to be accepted. Should the title report indicate the existence of any encumbrance(s) on title, OWNER shall, at its sole cost, expense and effort, and prior to the acceptance of dedication by the COUNTY, take whatever steps are required to remove the encumbrance(s), so as to provide clear and unencumbered title to the COUNTY.

19. Maintenance/Repair by the COUNTY

A. The COUNTY may, at any time during the term of this Agreement or during the term of any renewal or extension hereof, provide routine and/or minor maintenance, and/or major repairs, and/or any other service, to the Facilities necessary, in the sole discretion of the COUNTY, for the upkeep of the portion of same located inside the PREMISES, whether or not situate in, under or upon the PREMISES. The cost of all such repairs shall be borne by OWNER.

B. Where major repairs, as defined by and in the sole discretion of the COUNTY, are required to safeguard and/or maintain the equipment and/or the sewerage facilities of the DISTRICT outside of the PREMISES, OWNER must pay its pro rata share of the cost of the re-

pair based upon its average usage at the time of the repair compared to the total usage of the DISTRICT's sewerage facilities.

C. Except in cases of emergency, the COUNTY shall not undertake any of the work set forth in paragraph (A) above unless OWNER fails to perform same after reasonable notice to do so has been given to OWNER by the COUNTY. The COUNTY shall have sole discretion in deciding what constitutes an "emergency" as that term is used in this paragraph.

20. Connection

Anything herein or elsewhere to the contrary notwithstanding, it is expressly understood and agreed that OWNER shall pay to the DISTRICT, by certified check, bank check or teller's check drawn to the order of "Suffolk County Treasurer," upon OWNER's execution of this Agreement, in addition to any and all other sums to be paid by OWNER pursuant to this Agreement or pursuant to any schedule annexed hereto, a connection fee in the amount specified in "Schedule E" annexed hereto.

21. Future Connection

A. Except for the connection of the PREMISES as provided for in the reports, plans and specifications referred to herein, no properties, parties, persons, corporations or other entities shall be permitted to connect to the Facilities, whether or not situate in, under or upon the PREMISES, whether or not owned by OWNER, without the prior written consent of the COUNTY.

B. (i) The COUNTY shall be entitled, at any time, in their sole discretion, without OWNER's consent, to arrange for any one or more properties, parties, persons, corporations or other entities to connect to any of the COUNTY's or OWNER's sewerage facilities, whether or not situated in, under or upon the PREMISES and whether or not owned by OWNER.

(ii) The cost of any such connection(s) shall be borne by the property, party, person, corporation or entity connecting. No portion of this cost shall be borne by OWNER or the COUNTY. Nothing herein contained shall be construed as a grant of an easement or right of way on, over, under or through any portion of the PREMISES.

C. Any construction for such future connection(s) shall be subject to all requirements of this Agreement with respect to approvals and inspections.

D. OWNER shall have the right to charge all users of the Facilities the reasonable expenses for the operation and maintenance of same. OWNER may also recover from future

connectees for the construction expenses for capacity in the Facilities beyond what was required by the Agency for OWNER's use. The County will not authorize OWNER to recover from the future connectees for connection fees already paid. OWNER covenants, warrants, represents that such charges shall be for the benefit of all users of the Facilities and that the amount of any such charges shall be subject to prior written approval by the COUNTY. OWNER's right to collect such charges shall terminate at such time, if ever, as the COUNTY accepts dedication of the Facilities.

E. In the event that OWNER, at any time, desires an increase in the rate charged to any connecting entity for the operation and maintenance costs of the Facilities, OWNER shall make application to the COUNTY for same. OWNER shall, at OWNER's sole cost, expense and effort, provide written notice of its application to all of the entities connected to the Facilities. The notice shall be sent via regular, first-class mail, and may be included with the invoices sent by OWNER to the connected entities for operation and maintenance expenses. The notice shall advise the connected entities that OWNER is seeking an increase in the rate charged to them for the operation and maintenance costs of the Facilities and that OWNER has applied to the COUNTY for such an increase, and shall state the date of the AGENCY meeting at which OWNER's application will be considered. Such notice shall be mailed to each connected entity no less than three weeks prior to the date of the AGENCY meeting at which OWNER's application will be heard.

22. Expansion/Improvement

(A) OWNER recognizes that the COUNTY has the primary interest in the design, flow and capacity of the DISTRICT's sewerage collection, treatment and disposal system. OWNER agrees that if, at a future date, the flow to the DISTRICT's sewerage system exceeds plant capability or capacity, necessitating an expansion and/or improvement thereof, the cost of expansion and/or improvement shall be borne proportionately by users of the DISTRICT's sewerage facilities as follows:

(i) the cost of any expansion of the DISTRICT's sewerage facilities shall be borne proportionately by all contractees to the DISTRICT (*i.e.*, those located outside the periphery of the DISTRICT);

(ii) the cost of any improvement of the DISTRICT's sewerage facilities shall be borne proportionately by all users of the DISTRICT's sewerage facilities (*i.e.*, those located both within and without the periphery of the DISTRICT).

(B) In addition, OWNER and any other lessees, and residents of the DISTRICT, shall pay, according to paragraphs (A) and (B) above, their proportionate share of the costs of any expansion and/or improvement of the system necessitated, in the discretion of the COUNTY or otherwise [e.g., by State mandate, federal laws, etc.], by other than flow requirements. However, OWNER shall have the right at that time to refuse to join in the costs of the expansion and/or improvement of the sewerage system and elect to disconnect its sewage flow to the DISTRICT and treat same by other means, subject to OWNER's compliance with all applicable rules, regulations, ordinances, statutes and/or other provisions of law, including, but not limited to, those of the COUNTY. The COUNTY reserves the right to terminate this Agreement upon three (3) months notice in the event such expansion and/or improvement becomes necessary, unless OWNER executes a new agreement which includes provision for OWNER's proportionate share of the costs of expansion and/or improvement and the Suffolk County Legislature approves such new agreement.

23. Use Fee

A. OWNER covenants, warrants and represents, for itself, its successors and/or assigns, that it shall pay, to the DISTRICT, the following use fee:

(i) The annual rate for sewer service to be charged to OWNER for the PREMISES shall be the same as if OWNER were a chargeable entity inside the periphery of the DISTRICT, plus an additional five percent (5%) of said amount for administrative purposes; and

(ii) The annual rate does not include the costs of any pretreatment which may be required. In the event that pretreatment is required, OWNER and DPW shall enter into a separate agreement which shall provide, *inter alia*, that OWNER shall pay all costs associated with pretreatment, including, but not limited to, those for the operation and maintenance of pretreatment systems.

B. In the event that the PREMISES becomes part of the DISTRICT, or part of any other sewer district, the provisions of this Agreement pertaining to the amount of charges to be paid by OWNER shall be deemed terminated, and all charges, assessments and levies thereafter paid by OWNER in connection with OWNER's use of the DISTRICT's sanitary sewer system, or the sanitary sewer system of any other sewer district, shall be in accordance with applicable provisions of law. Such termination shall not relieve OWNER of OWNER's obligation to pay rent and/or any other charges owed hereunder for any period of time prior to the effective date of such termination.

C. In the event that subdivision or condominium maps are filed (or have been filed) on the PREMISES, the lien for nonpayment of any use fee shall be against the individual lot(s) with respect to which payment has not been made.

24. Liens

Any and all sums due pursuant to this Agreement, with the exception of use fees pursuant to Article 23(C), including, but not limited to, penalties, interest, costs, disbursements and attorneys' fees, are hereby made a lien upon the PREMISES and shall be collectible out of the PREMISES.

25. Default

A. Upon any change in the use of the PREMISES and/or upon any change in the quality and/or quantity of sewage discharged from the PREMISES into the DISTRICT's sanitary sewage system, OWNER shall, within ten (10) days of such change(s), notify the COUNTY, in writing, of such change(s) for the purpose of executing a modification of this Agreement, a cost accounting formula change (if sewer usage increases), or any combination thereof. Failure of OWNER to so notify the COUNTY shall constitute a default hereunder. The notice requirements set forth herein shall be equally binding upon any and all subsequent owners of the PREMISES.

B. All payments due under this Agreement and delinquent by more than thirty (30) days shall be subject to a penalty equal to that being charged commonly by the COUNTY to residents within any existing Suffolk County sewer district.

C. In the event OWNER shall, at any time, be in default of the provisions of this Agreement and remain in default for period of thirty (30) days after the mailing of written notice of such default, mailed by certified or registered mail to OWNER at the address appearing on the latest completed assessment roll of the Town in which the PREMISES is located, the COUNTY may, in addition to any other rights and/or remedies it may have, impose a penalty as described in paragraph (B) above. The failure of the COUNTY to exercise any remedies upon a breach by OWNER of any of the provisions contained herein shall not be deemed a waiver by the COUNTY of its right to exercise its remedies available at law or provided for herein for such breach or for any other breach or breaches of this Agreement. Termination of this Agreement by the COUNTY shall not relieve OWNER of OWNER's obligations to pay rent and/or any other charges owed hereunder for any period of time prior to the effective date of such termination. Where the PREMISES are comprised of units, this paragraph shall not apply to individual unit owners.

D. The filing of an insolvency or bankruptcy petition by OWNER, whether voluntary or involuntary, or the making by OWNER of an assignment for the benefit of creditors, shall be deemed to be an automatic and immediate default hereunder by OWNER. No notice of any such default under this Article need be given to OWNER. In the event of such a default, to the extent permitted by law, immediate payment, pursuant to the letter of credit provided for herein, shall be made to the COUNTY. This paragraph is not applicable to the filing of an insolvency or bankruptcy petition by individual unit owners, whether voluntary or involuntary, or the making by individual unit owners of an assignment for the benefit of creditors.

E. Except for a default under paragraph (D) above, reasonable written notice of any default by OWNER hereunder shall be given to OWNER. The failure of OWNER to cure any default hereunder within ten (10) days after notice thereof (or, where such default is not curable within ten (10) days, to commence the cure within ten (10) days and to complete the cure within a reasonable period of time), shall (a) constitute an automatic default under any bond(s) or letter(s) of credit posted hereunder by OWNER, and (b) entitle the COUNTY to pursue all available remedies, hereunder or elsewhere, against OWNER and OWNER's surety or sureties, unless it is determined, in the sole discretion of the COUNTY, that OWNER has made a bona fide attempt to cure the default.

F. Anything hereinbefore to the contrary notwithstanding, the COUNTY shall give OWNER a minimum of ten (10) days written notice prior to calling any Letter of Credit, or holding in default any bond, posted hereunder.

26. Recordation

A. This Agreement shall be recorded in the Office of the Suffolk County Clerk and shall be binding upon the heirs, executors, administrators, successors and/or assigns of the parties hereto, including, but not limited to, subsequent owners of the PREMISES, and the covenants, warranties, promises, representations and obligations of OWNER herein contained shall run with the land.

B. Notwithstanding paragraph (A) above, in the event of a change in the ownership of the PREMISES, or any portion thereof, whether by sale, operation of law, or otherwise, and whether voluntary or involuntary, the COUNTY shall have the right to require that the new owner execute a new agreement in its own name, which new agreement shall contain such provisions as the COUNTY may require. Pending the execution of such a new agreement, in the event the COUNTY requires same, any subsequent owner of the PREMISES, or any portion thereof, shall be bound by the terms hereof. In addition, such new owner shall take the PREMISES, or portion thereof, subject to this Agreement, and shall be deemed to have assumed, and shall be bound by, all obligations of OWNER hereunder. Unless otherwise provided for in

a writing signed on behalf of the COUNTY, no such transfer shall relieve or release OWNER of OWNER's obligations hereunder. OWNER shall notify the COUNTY, in writing, of any such transfer in advance of same, such notice to include the name and address of the transferee and, if known, the name and address of the transferee's engineer and attorney.

C. If the PREMISES are comprised of residential units, the provisions of paragraph (B) above relating to the execution of a new agreement shall not apply where there is a change in ownership of any of the individual residences, provided that such residences continue to be used for residential purposes. The provisions of paragraph (B) above shall not apply to the transfer of common areas.

27. Termination

This Agreement shall terminate at the earlier of the following dates:

- (i) Upon mutual written agreement of the parties hereto;
- (ii) Upon the formation or extension of a municipal sewer district encompassing the PREMISES; or
- (iii) In conformity with Article 2 (*Term*).

28. Modification

This Agreement may not be modified or repealed without the prior written consent of the parties hereto.

29. Formation/Extension of Sewer District

OWNER hereby irrevocably consents to the formation and/or extension of any Suffolk County or town or village sewer district to serve the sanitary sewage disposal needs of the PREMISES and to the inclusion and/or connection of the PREMISES, or any portion thereof, to such a sewer district in conformity with Suffolk County Code §§ 424-44(a)(v) and 760-502(4)(e).

30. Cancellation

A. If, within three (3) years from the date hereof, OWNER has not (a) procured, from each and every municipality, department and/or agency having jurisdiction in or over the work to be performed by OWNER hereunder, any and all required permits and/or other authoriza-

tions for same, and (b) commenced construction upon the work provided for herein, then the staff of the AGENCY shall, in its sole discretion, determine, in writing, whether to (1) continue this Agreement in full force and effect and permit OWNER to proceed hereunder, (2) cancel this Agreement, or (3) refer the matter to the AGENCY.

B. In the event that the staff of the AGENCY determines to continue this Agreement in full force and effect and permit OWNER to proceed with construction of the work provided for herein, this Agreement shall be continued for a period of twelve (12) months. In the event that construction has not commenced, as outlined in paragraph (A) above, within twelve (12) months, this Agreement shall be canceled and the provisions of paragraph (C) below shall control.

C. If the COUNTY makes a determination to cancel this Agreement then at the COUNTY's sole discretion any or all of the following will occur:

(i) this Agreement shall be canceled and shall be null and void, and no party hereto shall have any rights against, or liabilities to, any other party as a result hereof;

(ii) any bond or letter of credit furnished or posted by OWNER in connection with the work provided for herein may be utilized to pay any costs or expenses incurred by the COUNTY in connection with this Agreement that remain unpaid after utilization of any sum of money in accordance with paragraph (C) (iii) after which any such bond or letter of credit shall be released; and

(iii) any sum or sums of money posted by OWNER in connection with the work provided for herein may be utilized to pay any and all costs or expenses incurred by the COUNTY in connection with this Agreement; after the payment of any and all such costs or expenses, any remaining sum may be returned to OWNER.

D. In the event that the staff of the AGENCY determines to refer the matter to the AGENCY, the matter shall be placed on the agenda of the AGENCY's next meeting, at which meeting the AGENCY may determine whether to (1) continue this Agreement in full force and effect and permit OWNER to proceed hereunder, (2) provide new and/or different terms and/or conditions for this Agreement and allow OWNER to proceed hereunder under such new and/or different terms, or (3) cancel this Agreement.

E. At the sole discretion of the COUNTY, notwithstanding the provisions of paragraphs (A) through (D) above, if, within four (4) years from the date hereof, OWNER has not (a) pro-

cured, from each and every municipality, department and/or agency having jurisdiction in or over the work to be performed by OWNER hereunder, any and all required permits and/or other authorizations for same, and (b) completed construction upon the work provided for herein, then OWNER may be deemed to be in default of its obligations under this Agreement and in such event the COUNTY shall be entitled to pursue all available remedies against OWNER and OWNER's surety or sureties, including the right to call any letter of credit, or hold in default any bond, posted hereunder. No notice of any default under this paragraph need be given to OWNER.

F. OWNER covenants, warrants and represents that, after the commencement of construction upon the work provided for herein, the cessation of work for a period of sixty (60) days shall be deemed to be an automatic and immediate default hereunder by OWNER. In the event of such a default, the COUNTY shall provide notice of such default to OWNER and OWNER shall have thirty (30) days from the receipt of such notice to resume work pursuant to this Agreement. The failure of OWNER to resume work pursuant to this Agreement within such thirty (30) day period shall be a default and entitle the COUNTY to pursue all available remedies against OWNER and OWNER's surety or sureties, including the right to call any letter of credit, or hold in default any bond, posted hereunder.

G. In the event that the Facilities or the DISTRICT's sewerage system is subject to a public health emergency, a natural disaster or any other emergency situation wherein services must be limited, this Agreement may be canceled by the COUNTY upon reasonable notice to OWNER.

H. Notwithstanding anything above, in the event that after cancellation of this Agreement none of the dwelling units on the PREMISES has been sold and OWNER certifies to the COUNTY, in writing, that there are no outstanding contracts for the sale of any of such units, any letter of credit furnished by OWNER pursuant to this Agreement shall be released.

31. Resolutions

A. This Agreement is subject to the approval and ratification of the Suffolk County Legislature and shall not become effective until such approval and ratification has been given.

B. OWNER covenants, warrants and represents that its execution of this Agreement has been authorized by its Board(s) of Directors pursuant to a duly-adopted resolution, (a copy of such resolution is annexed hereto and marked "Schedule F") [*if OWNER is a corporation*].

32. Books and Records

OWNER shall maintain full and complete books and records of accounts relating to the Facilities and OWNER's ownership and operation thereof, in accordance with generally accepted accounting practices. Such books and records shall be retained for a period of seven (7) years and shall be available for audit and inspection by the COUNTY. The OWNER shall make provision for inspection of the books and records on terms suitable to the COUNTY within five business days of such demand. Access to such books and records by the COUNTY is granted notwithstanding any exemption from disclosure that may be claimed for records which are subject to nondisclosure agreements, trade secrets and/or commercial information or financial information that is privileged or confidential.

33. This Agreement Governs

This Agreement supersedes any contract(s), agreement(s) or understanding(s), written or oral, heretofore made by, between or among any one or more of the parties hereto, and/or any one or more of their predecessors in interest, title or otherwise, concerning the connection of the PREMISES to, and/or the use by the PREMISES of, the sanitary sewerage facilities of the DISTRICT, and any such contract, agreement or understanding is hereby deemed to be null and void and of no further force or effect, and no party to any such contract, agreement or understanding shall have any rights against, or liabilities to, any other such party as a result thereof. This paragraph shall in no manner affect the validity of any covenants and/or restrictions affecting the PREMISES required by the SCDHS.

34. Survival

If any section, subsection, paragraph, clause, phrase or provision of this Agreement shall, by a court of competent jurisdiction, be adjudged or determined to be illegal, unlawful, invalid or unconstitutional, the same shall not affect the validity of this Agreement as a whole, or any part or provision hereof, other than the part so adjudged or determined to be illegal, unlawful, invalid or unconstitutional.

35. Notice

Any notice desired or required to be given pursuant to the terms of this Agreement shall be sent via Certified Mail, Return Receipt Requested, to the appropriate party at the address for the party appearing on pages one and two hereof. A copy of any such notice shall be sent by regular first class mail to the Suffolk County Department of Law, H. Lee Dennison Building, 100 Veterans Memorial Highway, Post Office Box 6100, Hauppauge, New York 11788-0099, Attention: Municipal Law Bureau Chief.

36. Rights Cumulative

Each right and remedy of the COUNTY under this Agreement shall be in addition to every other right and remedy of the COUNTY and such rights and remedies may be enforced separately or in any combination.

37. No Waiver

The COUNTY expressly reserves the right, in its sole and absolute discretion, to waive noncompliance by OWNER with any of the terms, covenants or conditions to be performed by OWNER under this Agreement. Any failure by the COUNTY to insist upon the strict performance by OWNER of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the COUNTY, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by OWNER of any and all of the terms and provisions hereof to be performed by OWNER.

38. Applicable Law

The provisions of this Agreement shall be construed in accordance with the laws of the United States and the State of New York.

39. Further Assurances

OWNER shall, at the cost of OWNER, and without expense to the COUNTY, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, agreements, assignments, notices of assignments, transfers and assurances as the COUNTY shall, from time to time, require, for the better assuring, conveying, assigning, transferring and confirming unto the COUNTY the rights hereby conveyed or intended now or hereafter so to be, or which OWNER may be or may hereafter become bound to convey or assign to the COUNTY, or for carrying out the intention or facilitating the performance of the terms of this Agreement, or for filing, registering or recording this Agreement, and, on demand, shall execute and deliver, and hereby authorizes the COUNTY to execute in the name of OWNER to the extent the COUNTY may lawfully do so, one or more agreements to evidence more effectively the intent of this Agreement.

40. Counterparts

The parties hereto have duly executed this Agreement in counterparts, any one of which may be considered an original.

41. Force Majeure

A. OWNER shall not be penalized for any delay(s) in the performance of its obligations under this Agreement resulting from an act of God, war, strike, riot, civil disorder, fire, storm, landslide, earthquake, flood, explosion, frozen ground conditions, or other similar catastrophe condition beyond OWNER's control. OWNER shall notify the COUNTY, in writing, within ten (10) days of the occurrence of any such condition which causes a delay in the performance of, or an inability to comply with, OWNER's obligations hereunder.

B. Such written notice shall specify the nature of the catastrophic condition and the particular provision(s) of this Agreement affected thereby, as well as the measures taken and to be taken by OWNER in response thereto and the specific effect of the catastrophic condition on OWNER's obligations hereunder.

C. In the event that any such catastrophic condition beyond OWNER's control causes a delay in the time required by OWNER to perform any of its obligations hereunder, the time allowed to OWNER to perform the obligation(s) shall be extended by the COUNTY, in writing, for a period no longer than the length of the delay caused by such condition.

42. Schedules

OWNER covenants, warrants and represents that the following schedules annexed hereto are incorporated into and made a part of this Agreement, and their provisions, conditions and requirements, which are to be performed and complied with by OWNER, are to be given the same force and effect as if fully set forth at length herein:

SCHEDULES ANNEXED AND PROVISIONS INCORPORATED

- A. Description of PREMISES
- B. Title Policy and the Guaranteed Description of the Insured Property
- C. Suffolk County Local Law No. 24-1986
- D. Insurance Requirements
- E. Addendums
- F. OWNER's Resolution(s)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date hereinabove set forth:

MSC INDUSTRIAL DIRECT COMPANY, INC.

By:


THOMAS R. ECCLESTON 11/3/98 Date
Vice-President and Secretary

The SUFFOLK COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By:


[Name] Anthony Catapano 11/2/98 Date
[Title] Deputy Admin. Director

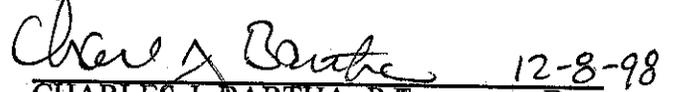
COUNTY OF SUFFOLK

By:


ERIC A. KOPP 12/16/98 Date
Chief Deputy County Executive

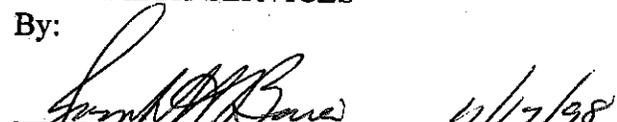
SUFFOLK COUNTY SEWER DISTRICT NO. 3 - SOUTHWEST, SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS, and SUFFOLK COUNTY SEWER AGENCY

By:


CHARLES J. BARTHA, P.E. 12-8-98 Date
Administrative Head of Suffolk County Sewer District No. 3 - Southwest, Commissioner of the Suffolk County Department of Public Works and Chairman of the Suffolk County Sewer Agency

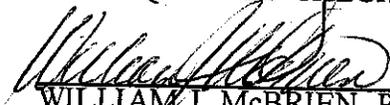
SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES

By:

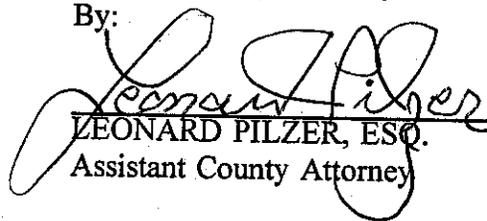

JOSEPH H. BAIER, P.E. 11/17/98 Date
Director, Division of Environmental Quality

APPROVED AS TO FORM
NOT REVIEWED AS TO EXECUTION:

FORM, CONTENTS AND
PREREQUISITES CHECKED:


WILLIAM J. MCBRIEN, P.E. 11/06/98 Date
Assistant Secretary
Suffolk County Sewer Agency

ROBERT J. CIMINO, ESQ.
Suffolk County Attorney

By: 
LEONARD PILZER, ESQ. 10/30/98 Date
Assistant County Attorney

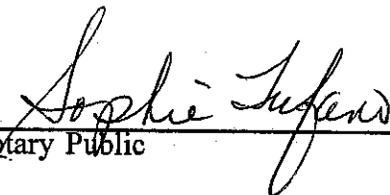
CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss:

COUNTY OF SUFFOLK)

On the 3rd day of November, 1998, before me personally came THOMAS R. ECCLESTON, to me known, who, being by me duly sworn, did depose and say that he resides at Plainville, N.J., that he is the Vice-President and Secretary of MSC INDUSTRIAL DIRECT COMPANY, INC., the corporation described in, and which executed, the foregoing Agreement, that he knows the seal of said corporation, that the seal affixed to the said Agreement is such corporation's seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



Notary Public

SOPHIE TUFANO
Notary Public, State of New York
No. 01TU4769480
Qualified In Suffolk County
Commission Expires July 31, 2000

Schedule A

Description of PREMISES

First American Title Insurance Company of New York

TITLE NO. 151-S-6676

SCHEDULE "A"

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Melville, Town of Huntington, County of Suffolk and State of New York, known and designated as part of Lot Number 3 on a certain map entitled "Map of Melville Industrial Park, Section No. 1, situate at Melville, Town of Huntington, Suffolk County, New York, Baldwin & Cornelius Co. C.E. & S." and filed in the Office of the Clerk of the County of Suffolk on August 30, 1963, under File Number 3855 and being bounded and described as follows:

BEGINNING at the intersection formed by the northerly side of Old Sod Farm Road and the easterly side of Maxess Road (as widened);

RUNNING THENCE along the Easterly side of Maxess Road (as widened) the following eight (8) courses:

- 1) North 05 degrees 16 minutes 30 seconds West, 104.31 feet;
- 2) South 82 degrees 48 minutes 00 seconds West, 13.75 feet;
- 3) Northerly along the arc of a curve bearing to the left having a radius of 780.00 feet and a length of 177.27 feet;
- 4) North 05 degrees 48 minutes 20 seconds West, 360.29 feet;
- 5) Northerly along the arc of a curve bearing to the right, having a radius of 490.00 feet and a length of 435.46 feet;
- 6) Northerly along the arc of a curve bearing to the left having a radius of 570.00 feet and a length of 101.58 feet;
- 7) Easterly along the arc of a curve bearing to the right having a radius of 20.00 feet and a length of 28.64 feet;
- 8) North 26 degrees 56 minutes 07 seconds East, 3.00 feet to lot 2 as shown on "Map of Melville Industrial Park - Section 1" (filed August 30, 1963, No. 3855) and the southerly side of a 60' wide right of way;

Continued...

First American Title Insurance Company of New York

Title No: 151-S-6676

SCHEDULE "A" CONTINUED

THENCE along said map and right of way easterly along the arc of a curve bearing to the left having a radius of 1,060.00 feet, and a length of 590.88 fet;
e

THENCE the following four (4) courses:

- 1) South 07 degrees 02 minutes 10 seconds West, 399.99 feet;
- 2) North 84 degrees 15 minutes 45 seconds East, 0.85 feet;
- 3) South 07 degrees 02 minutes 10 seconds West, 430.74 feet;
- 4) South 04 degrees 02 minutes 37 seconds East, 102.29 feet to the northerly side of Old Sod Farm Road;

THENCE along said road line the following three (3) courses:

- 1) South 80 degrees 23 minutes 58 seconds West, 179.34 feet;
- 2) Westerly along the arc of a curve bearing to the right having a radius of 2,460.00 feet and a length of 165.86 feet;
- 3) South 84 degrees 15 minutes 45 seconds West, 315.54 feet to the point or place of BEGINNING.

Schedule B

Title Policy and the Guaranteed Description of the Insured Property

ALTA Owner's Policy
(10-17-92)
FTWC-900



POLICY OF TITLE INSURANCE



Policy No. Y 1009291

ISSUED BY

Title No. 151-S-6676

First American Title Insurance Company of New York

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK, a New York corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

*First American Title Insurance Company
of New York*

Michele Cresto BY: *Paul B.*
AUTHORIZED SIGNATURE PRESIDENT

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on: (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure (a) to timely record the instrument of transfer; or (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes

expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay;

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or (ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule (A) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company a rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only the part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, a service of the Company in connection with its issuance or the breach of a policy provision or other obligation. A arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 1050 Franklin Avenue, Garden City, New York 11530.



First American Title Insurance Company of New York

**STANDARD NEW YORK ENDORSEMENT
(OWNER'S POLICY)**

1. *The following is added to the insuring provisions on the face page of this policy:
Y 1009291*

"5. *Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy.*"

2. *The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:*

"(d) *If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or incumbrances, except real estate taxes, assessments, water charges and sewer rents.*"

Nothing herein contained shall be construed as extending or changing the effective date of the policy, unless otherwise expressly stated.

This endorsement, when countersigned below by a validating signatory, is made a part of the policy and is subject to the Exclusions from Coverage, Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, First American Title Insurance Company of New York has caused this Endorsement to be signed on its date of issue set forth herein.

Dated: September 24, 1998

Countersigned

**First American Title Insurance Company
of New York**

Michelle Cresto
Authorized Signatory

BY: _____

Robert Berman



First American Title Insurance Company of New York

ALTA Owner's Policy
(4-6-90)
Schedule A
FTWC-701

SCHEDULE A

Title No. 151-S-6676

Policy No. Y 1009291

Amount of Insurance \$ 191,000.00

Date of Policy September 24, 1998

1. Name of Insured:

SUFFOLK COUNTY SEWER DISTRICT NUMBER 3-SOUTHWEST

2. The estate or interest in the land which is covered by the policy is:

Easement

3. Title to the estate or interest in the land is vested in the insured by means of a Sewer Connection Agreement dated:

September 3, 1998, between MSC Industrial Direct Company, Inc., the Suffolk County Industrial Development Agency, Suffolk County Sewer District No. 3-Southwest, the Suffolk County Department of Public Works, the Suffolk County Sewer Agency, the Suffolk County Department of Health Services and the County of Suffolk, which agreement is about to be recorded in the Office of the Suffolk County Clerk.

4. The land referred to in this policy is described as follows:

See Schedule "A" (Description Page) Attached

First American Title Insurance Company of New York

ALTA Owner's Policy
(4-6-90)
Schedule B
FTWC-702

SCHEDULE B

Title No. 151-S-6676

Policy No. Y 1009291

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Survey by Nelson & Pope, last dated July 21, 1998, shows a one story masonry building, parking area, curbing and fencing.
2. Declaration of Covenants and Restrictions in Liber 9394 page 193. This policy insures that same do not contain any condition or provision for forfeiture under which the insured can be cut off or subordinated.
3. Telephone Easement in Liber 6303 page 377.
4. Electric Easement in Liber 5971 page 65.
5. Agreement in Liber 6314 page 274.
6. Electric Easement in Liber 6312 page 188.
7. Electric Easement in Liber 6312 page 249.
8. This Policy excepts the future delivery of the deed of dedication of the easement area, however, policy affirmatively insures the superiority of the sewer easement insured herein as against any subordinate lienors, but said lienors must be disposed of prior to the deed of dedication.
9. 60 foot set back line from adjoining street as shown on filed Map Number 3855 (for information only).
10. 100 foot and 50 foot building set back lines from adjoining street as shown of filed Map Number 6920 (for information only).

SCHEDULE "A"

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Melville, Town of Huntington, County of Suffolk and State of New York, known and designated as part of Lot Number 3 on a certain map entitled "Map of Melville Industrial Park, Section No. 1, situate at Melville, Town of Huntington, Suffolk County, New York, Baldwin & Cornelius Co. C.E. & S." and filed in the Office of the Clerk of the County of Suffolk on August 30, 1963, under File Number 3855 and being bounded and described as follows:

BEGINNING at the intersection formed by the northerly side of Old Sod Farm Road and the easterly side of Maxess Road (as widened);

RUNNING THENCE along the Easterly side of Maxess Road (as widened) the following eight (8) courses:

- 1) North 05 degrees 16 minutes 30 seconds West, 104.31 feet;
- 2) South 82 degrees 48 minutes 00 seconds West, 13.75 feet;
- 3) Northerly along the arc of a curve bearing to the left having a radius of 780.00 feet and a length of 177.27 feet;
- 4) North 05 degrees 48 minutes 20 seconds West, 360.29 feet;
- 5) Northerly along the arc of a curve bearing to the right, having a radius of 490.00 feet and a length of 435.46 feet;
- 6) Northerly along the arc of a curve bearing to the left having a radius of 570.00 feet and a length of 101.58 feet;
- 7) Easterly along the arc of a curve bearing to the right having a radius of 20.00 feet and a length of 28.64 feet;
- 8) North 26 degrees 56 minutes 07 seconds East, 3.00 feet to lot 2 as shown on "Map of Melville Industrial Park - Section 1" (filed August 30, 1963, No. 3855) and the southerly side of a 60' wide right of way;

Continued...

First American Title Insurance Company of New York

Title No: 151-S-6676

SCHEDULE "A" CONTINUED

THENCE along said map and right of way easterly along the arc of a curve bearing to the left having a radius of 1,060.00 feet, and a length of 590.88 feet;

THENCE the following four (4) courses:

- 1) South 07 degrees 02 minutes 10 seconds West, 399.99 feet;
- 2) North 84 degrees 15 minutes 45 seconds East, 0.85 feet;
- 3) South 07 degrees 02 minutes 10 seconds West, 430.74 feet;
- 4) South 04 degrees 02 minutes 37 seconds East, 102.29 feet to the northerly side of Old Sod Farm Road;

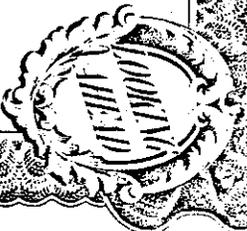
THENCE along said road line the following three (3) courses:

- 1) South 80 degrees 23 minutes 58 seconds West, 179.34 feet;
- 2) Westerly along the arc of a curve bearing to the right having a radius of 2,460.00 feet and a length of 165.86 feet;
- 3) South 84 degrees 15 minutes 45 seconds West, 315.54 feet to the point or place of BEGINNING.

First American Title Insurance Company of New York



**POLICY
OF
TITLE
INSURANCE**



See copy of
Suffolk County Local Law No. 24-1986
filed in the Office of the Suffolk County Clerk
on November 12, 1986

Schedule C
Suffolk County Local Law No. 24-1986

OWNER shall procure and maintain, at OWNER's sole cost, expense and effort, and without expense to the AGENCY or the COUNTY, until final approval by the COUNTY of the construction covered by this Agreement, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do business in the State of New York, covering all operations under this Agreement whether performed by OWNER or by a contractor or subcontractor or by any other person or entity. Prior to the commencement of construction of any Facilities, OWNER shall furnish to the COUNTY a certificate or certificates of insurance, in form satisfactory to the COUNTY, showing that OWNER has complied with the requirements set forth herein, which certificate or certificates shall provide that the policies of insurance provided for herein shall not be changed or canceled unless and until thirty (30) days written notice has been given to the COUNTY.

OWNERS AND CONTRACTORS PROTECTIVE POLICY

OWNER shall procure and maintain, at OWNER's sole cost, expense and effort, a standard form of an Owners and Contractors Protective Policy, in the name of the COUNTY of Suffolk, with the limits of ONE MILLION AND NO/100THS (\$1,000,000.00) DOLLARS minimum per occurrence. The policy shall include a provision specifically including coverage for explosion, collapse and underground property damage.

Schedule D

Insurance Requirements

Those articles listed below shall be modified in the following respects:

1. Article 3 (*Title*). The second sentence of paragraph (B) ["Title shall be marketable and guaranteed in the name of OWNER, naming SUFFOLK as the insured"] is amended to read "Title shall be marketable and guaranteed in the name of the IDA, naming SUFFOLK as the insured."

2. Article 4 (*Reservation of Capacity*). The COUNTY represents and warrants that the DISTRICT has sufficient capacity and reserves such capacity to accept waste flow from the PREMISES at an average daily flow rate not to exceed SIXTEEN THOUSAND, SEVEN HUNDRED TWENTY gallons per day (16,720 GPD), as follows:

Building: 212,009 square feet @ 0.06 GPD per square foot =	12,720 GPD
Cafeteria: 1,600 employees @ 2.5 GPD per capita =	4,000 GPD

Total =	16,720 GPD

3. (A) Article 20 (*Connection*). The connection fee shall be in the amount of TWO HUNDRED THOUSAND, SIX HUNDRED FORTY AND NO/100THS (\$200,640.00) DOLLARS. The connection fee has been computed on the basis of a sewage flow from the PREMISES in the amount of SIXTEEN THOUSAND, SEVEN HUNDRED TWENTY gallons per day (16,720 GPD) multiplied by TWELVE AND NO/100THS (\$12.00) DOLLARS per gallon.

(B) The connection fee shall be due and shall be paid upon the execution of this Agreement by OWNER.

4. Article 26 (*Recordation*). New paragraph 26(D) is added, as follows: "D. The provisions of paragraph (B) above relating to the execution of a new agreement shall not apply in the event of a change in ownership of the PREMISES from the IDA to OWNER."

5. Pursuant to Article 7 (*Transfer*), approval is hereby granted for the transfer by OWNER to the Town of Huntington of that portion of the PREMISES described in "Schedule E-1" attached hereto.

Schedule E

Addendums

Description of that portion of the PREMISES authorized to be transferred by OWNER to the Town of Huntington:

BEGINNING at the intersection formed by the northerly side of Corporate Center Drive (Old Sod Farm Road) and the easterly side of Maxess Road (as widened):

RUNNING THENCE along the northerly side of Corporate Center Drive North 84 degrees 15 minutes 45 seconds East, 315.54 feet to the point of BEGINNING:

RUNNING THENCE the following four (4) courses:

1. North 09 degrees 36 minutes 02 seconds West, 8.00 feet;
2. North 80 degrees 23 minutes 58 seconds East, 180.12 feet;
3. South 04 degrees 02 minutes 37 seconds East, 8.04 feet;
4. South 80 degrees 23 minutes 58 seconds West, 179.34 feet to the point or place of BEGINNING.

Containing within said bounds: 0.03 acres.

Suffolk County Tax Map Number:

District: 0400
Section: 268.00
Block: 02.00
Lot: 017.009

Schedule E-1

Schedule F

OWNER's Resolution(s)
(If OWNER is a corporation)

SECRETARY'S CERTIFICATE

I, Thomas R. Eccleston, hereby certify that:

(a) I am the duly elected and qualified Secretary of **MSC INDUSTRIAL DIRECT CO., INC.**, a New York corporation (the "Corporation") and the keeper of its corporate records; and

(b) Attached hereto as Exhibit A is a true and complete copy of the resolutions duly adopted by the board of directors of the Corporation at a duly held meeting of the board of directors of the Corporation held on July 17, 1997.

IN WITNESS WHEREOF, I have hereunto signed my name as of the 28 day of October, 1998.



Thomas R. Eccleston, Secretary

EXHIBIT A

RESOLVED, that the Corporation is authorized to enter into any agreements necessary to connect the facility to be located at 75 Maxess Road, Melville, New York Facility to the Suffolk County Sewer District No. 3-Southwest.

RESOLVED, that a Vice President or the Secretary of the Corporation be, and hereby is, authorized to execute, acknowledge, if required, and deliver on behalf of Corporation all documents necessary to effectuate the connection to the Sewer District.