

1 2

Number of pages 9  
TORRENS  
Serial # \_\_\_\_\_  
Certificate # \_\_\_\_\_  
Prior Ctf. # \_\_\_\_\_

RECORDED  
2004 Apr 16 12:45:15 PM  
Edward P. Romano  
CLERK OF  
SUFFOLK COUNTY  
L 000012317  
P 992  
DT# 03-29903

Deed / Mortgage Instrument      Deed / Mortgage Tax Stamp      Recording / Filing Stamps

3 FEES

Page / Filing Fee \_\_\_\_\_  
Handling 5.00  
TP-584 \_\_\_\_\_  
Notation \_\_\_\_\_  
EA-52 17 (County) \_\_\_\_\_ Sub Total \_\_\_\_\_  
EA-5217 (State) \_\_\_\_\_  
R.P.T.S.A. 30  
Comm. of Ed. 5.00  
Affidavit \_\_\_\_\_  
Certified Copy \_\_\_\_\_  
NYS Surcharge 15.00 Sub Total \_\_\_\_\_  
Other \_\_\_\_\_ Grand Total \_\_\_\_\_



Mortgage Amt. \_\_\_\_\_  
1. Basic Tax \_\_\_\_\_  
2. Additional Tax \_\_\_\_\_  
Sub Total \_\_\_\_\_  
Spec./Assit. \_\_\_\_\_  
or  
Spec. /Add. \_\_\_\_\_  
TOT. MTG. TAX \_\_\_\_\_  
Dual Town \_\_\_\_\_ Dual County \_\_\_\_\_  
Held for Appointment \_\_\_\_\_  
Transfer Tax \_\_\_\_\_  
Mansion Tax \_\_\_\_\_  
The property covered by this mortgage i 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.

4 Dist. 800 Section 167.000 Block 4.00 Lot 48.001 5 Community Preservation Fund

Real Property Tax Service Agency Verification  
**04016008 0800 16700 0400 048001**  
PTS  
R CSE A  
16-APR-04

Consideration Amount \$ \_\_\_\_\_  
CPF Tax Due \$ \_\_\_\_\_  
Improved \_\_\_\_\_  
Vacant Land \_\_\_\_\_  
TD \_\_\_\_\_  
TD \_\_\_\_\_  
TD \_\_\_\_\_

6 Satisfactions/Discharges/Releases List Property Owners Mailing Address  
**RECORD & RETURN TO:**  
JOHN C. MILAZZO  
SUFFOLK COUNTY WATER AUTHORITY  
4060 SUNRISE HIGHWAY  
ORADARE NY 11769-0901

7 Title Company Information  
Co. Name \_\_\_\_\_  
Title # \_\_\_\_\_

# 8 Suffolk County Recording & Endorsement Page

This page forms part of the attached DEED made by:  
(SPECIFY TYPE OF INSTRUMENT)  
OLD WORLD ITALIAN FOOD CORP.  
The premises herein is situated in  
SUFFOLK COUNTY, NEW YORK.  
TO  
SUFFOLK COUNTY WATER AUTHORITY  
In the Township of SMITHTOWN  
In the VILLAGE \_\_\_\_\_  
or HAMLET of NECOMSET

BOXES 6 THRU 8 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.  
(over)



SUFFOLK COUNTY CLERK  
 RECORDS OFFICE  
 RECORDING PAGE

Type of Instrument: DEEDS/DDD  
 Number of Pages: 9  
 Receipt Number : 04-0043791  
 TRANSFER TAX NUMBER: 03-38803

Recorded: 04/16/2004  
 At: 12:03:35 PM  
 LIBER: D00012313  
 PAGE: 992

OLD WORLD ITALIAN FOOD CORP  
 SUFFOLK COUNTY WATER AUTHORITY

District: 0800      Section: 167.00      Block: 04.00      Lot: 048.001

EXAMINED AND CHARGED AS FOLLOWS

Deed Amount: \$0.00

Received the Following Fees For Above Instrument

		Exempt			Exemj
Page/Filing	\$0.00	YES	Handling	\$0.00	YES
COE	\$0.00	YES	NYS SRCHG	\$0.00	YES
EA-CTY	\$0.00	YES	EA-STATE	\$0.00	YES
TP-584	\$0.00	YES	Cert.Copies	\$0.00	YES
RPT	\$0.00	YES	SCTM	\$0.00	YES
Transfer tax	\$0.00	YES			

Fees Paid \$0.00

TRANSFER TAX NUMBER: 03-38803

THIS PAGE IS A PART OF THE INSTRUMENT  
 THIS IS NOT A BILL

Edward P.Romaine  
 County Clerk, Suffolk County

THIS INDENTURE, made the 6<sup>th</sup> day of November, 2003

BETWEEN: OLD WORLD ITALIAN FOOD CORP., whose address is 2201 Jericho Turnpike, Commack, NY, party of first part, and

SUFFOLK COUNTY WATER AUTHORITY, whose address is 4060 Sunrise Highway, Oakdale, NY party of the second part,

WITNESSETH, that the parties of the first part, in consideration of Ten Dollars and other valuable consideration paid by the parties of the second part, do hereby grant and release unto the parties of the second part, the heirs or successors and assigns of the parties of the second part forever,

ALL that certain plot, piece or parcel of land, situate, lying and being at Nesconset, in the Town of Smithtown, County of Suffolk, State of New York, being more particularly bounded and described in Exhibit A attached hereto:

THIS conveyance has been made with the unanimous consent in writing of all the stockholders of the party of the first part.

BEING the same property conveyed to the party by deed dated July 25, 2001 and recorded in the Office of the Clerk of the County of Suffolk on August 6, 2001 at Liber 12134 cp 128.

Subject to the amended covenants and restrictions recorded on April 15, 2004 in the Office of the Clerk of Suffolk County in Liber 12313 page 819.

TOGETHER with all right, title and interest, if any, of the parties of the first part in and to any streets and roads abutting the above described premises to the center line thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the parties of the second part, their heirs or successors and assigns of the parties of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any purpose.

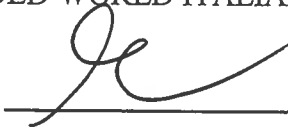
The Suffolk County Water Authority, its successors and assigns retain:

1. The right to install, maintain and repair any buildings, wells, tanks, mains, pipes or structures and/or appurtenances and ancillary facilities, without limitation on, in or above or below the premises for the purposes of taking and using water for water supply purposes, including the right to operate machinery, without limitation, to effect the same, provided such installation and/or uses do not generate sewage flow.
2. The right of vehicular and pedestrian ingress and egress over the premises to accomplish the above.

IN WITNESS WHEREOF, the parties of the first part have duly executed this deed the dat and year first above written,

IN PRESENCE OF:

OLD WORLD ITALIAN FOOD CORP.

  
\_\_\_\_\_  
By: EMILIO BRANCHINELLI, President

## RIDER TO DEED

BETWEEN OLD WORLD ITALIAN FOOD CORP., Party of the First Part, and SUFFOLK COUNTY WATER AUTHORITY, Party of the Second Part.

WHEREAS, THE PARTY OF THE FIRST PART appeared before the Board of Review requesting a variance for the project sewage design flow which exceeds the population density equivalent as required by Article 6, Section 760-607 of the Suffolk County Sanitary Code, and WHEREAS the Board of Review of the County of Suffolk Department of Health Services granted a variance by letter dated June 20, 2003, attached hereto and made a part hereof, provided that a covenant be filed, the PARTY OF THE FIRST PART, its successors, heirs or assigns, agrees as follows:

1. The parcel known as SCTM # 800-167-4-48.1, described in Schedule B, (sending parcel), shall be transferred to the Suffolk County Water Authority (SCWA) to be utilized for a future well field. The SCWA may improve this property for the purposes of providing community drinking water but shall not generate any sewage flow. The density rights of said parcel described in Schedule B (sending parcel) have been transferred to the parcel known as SCTM # 800-89-3-15, described in Schedule A (receiving parcel) for purpose of meeting density requirements pursuant to Article 6 of the Suffolk County Sanitary Code.

2. The covenants and restrictions shall run with the land and shall be binding upon the PARTY OF THE FIRST PART, DECLARANT, its successors and assigns, and upon all persons or entities claiming under them, and may be terminated, revoked or amended only with the written consent of the COUNTY OF SUFFOLK DEPARTMENT OF HEALTH SERVICES.

OLD WORLD ITALIAN FOOD CORP.



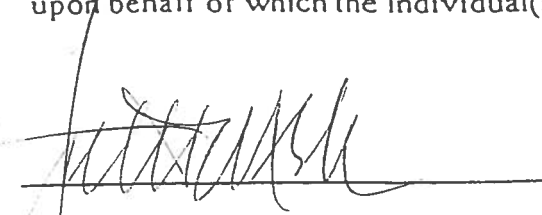
By: EMILIO BRANCHINELLI, Pres.

UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT

State of New York

County of Suffolk

On the 6<sup>th</sup> day of November in the year 2003, before me, the undersigned personally appeared EMILIO BRANCHINI personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

JUSTIN M. BLOCK

Notary Public State of New York

No. 02015048247

Qualified in Suffolk County

Commission Expires 8/2/05

## SCHEDULE A

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Smithtown, County of Suffolk and State of New York, known and designated as Plot A on a certain map entitled, "Map of Birchwood Park at Commack, Section One, situated at Commack, Town of Smithtown, Suffolk County, New York, owned by Morris Sosnow, 14-06 166<sup>th</sup> Street, Beechhurst, New York, surveyed by Teas and Steinbrenner, Surveyors, 125 Church Street, Malverne, NY, January 12, 1955 and filed in the Office of the Clerk of the County of Suffolk on August 1, 1955 as map no. 2418.

## SCHEDULE B

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Smithtown, County of Suffolk and State of New York, known and designated as Map of "20<sup>th</sup> Map of House and Home Co.", filed February 1, 1900 in the Office of the Clerk of the County of Suffolk as Map No. 580, being more particularly bounded and described as follows: *being part of lots 1271 and 1272*

**BEGINNING** at a point on the southerly side of Smithtown Boulevard distant 205.52 feet easterly from the corner formed by the intersection of the easterly side of Nichols Road with the southerly side of Smithtown Boulevard;

**RUNNING THENCE** South 75 degrees 13 minutes 23 seconds East, and along the southerly side of Smithtown Boulevard, a distance of 14.73 feet;

**RUNNING THENCE** South 41 degrees 12 minutes 33 seconds east, a distance of 344.42 feet;

**THENCE** south 8 degrees 47 minutes 39 seconds east, a distance of 206.61 feet to the easterly prolongation of the southerly boundary of Map of Lake Estates;

**THENCE** north 84 degrees, 02 minutes 50 seconds west, along said easterly prolongation of the southerly boundary of Map of Lake Estates, a distance of 105.88 feet;

**THENCE** north 7 degrees 45 minutes 10 seconds west, a distance of 261.89 feet;

**THENCE** north 33 degrees 54 minutes 00 seconds west, a distance of 236.83 feet to the southerly side of Smithtown Boulevard and the point or place of **BEGINNING**.

SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES  
DIVISION OF ENVIRONMENTAL QUALITY

ARTICLE 2, SECTION 220, SUFFOLK COUNTY SANITARY CODE

~~~~~

**TO:** Linda Mermelstein, M.D., M.P.H., Acting Commissioner  
**FROM:** James W. Meyers, P.E., Acting Chairman, Board of Review  
**SUBJECT:** *Report of Findings and Recommendations of the Review Board Regarding:  
C08-02-0022 ~ Emilio's Restaurant, Jericho Turnpike, Commack -  
t/o Smithtown - SCTM: #800-89-3-15*

~~~~~

**APPLICANT:** Mr. Emilio Branchinelli  
2201 Jericho Turnpike  
Commack, NY 11725

**NOTICE OF HEARING:** April 24, 2003

**HEARING DATE:** May 8, 2003

**STATEMENT OF PROBLEM**

The sewage design flow for the project exceeds the population density equivalent as required by Article 6, Section 760-607 of the Suffolk County Sanitary Code. The applicant is proposing to transfer the sanitary density rights from other properties so that the equivalent density complies with Article 6 requirements.

**FINDINGS AND FACTS**

1. Site is 2.6 acres with 24,836 square feet (sq. ft.) of commercial space.
2. Site is in Groundwater Management Zone I.
3. Area is zoned commercial.
4. Public water is available from Suffolk County Water Authority.
5. Depth to groundwater is greater than 19 ft.
6. Soils are good with sand below 3 ft.
7. Proposal calls for increasing seating at a restaurant on the site to 135 seats.
8. Proposal would result in 2,020 gallons-per-day (gpd) sanitary flow at the site. Previous variances have been issued for the site that allowed for 1,588 gpd sanitary flow. The proposal is 432 gpd over allowable flow, or 127% of allowable flow.

Linda Mermelstein, M.D., M.P.H., Acting Commissioner

Hearing Date: May 8, 2003

Subject: *Report of Findings and Recommendations of the Review Board Regarding:  
C08-02-0022 ~ Emilio's Restaurant, Jericho Turnpike, Commack -  
t/o Smithtown - SCTM: #800-89-3-15*

~~~~~

**FINDINGS AND FACTS (cont'd.)**

9. Proposal calls for transferring development rights (TDR) from tax map parcel #800-167-4-48.1. The allowable flow at this sending parcel is 444 gpd which would offset the 432 gpd overage at the receiving parcel. The TDR sending parcel is also in Groundwater Management Zone I.
10. The Suffolk County Water Authority is willing to accept donation of this parcel with a provision that they reserve the right to develop the property with no sanitary flow.

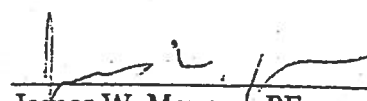
**DETERMINATION**

It was a 3 to 0 determination of the Board of Review to grant the request for the variance, provided the applicant makes appropriate arrangements to transfer tax parcel #800-167-4-48.1 to the Suffolk County Water Authority at no cost to the Suffolk County Water Authority. This decision is contingent upon the applicant placing covenants and/or other restrictions upon the sending parcel acceptable to the Suffolk County Attorney to prohibit any future sanitary discharge. The applicant will be responsible for making all arrangements for the transfer and covenants and for paying all associated administrative, legal and technical costs. Approval of this application will not affect overall groundwater resources since an equivalent parcel will be sterilized against future sanitary flow.

As per Section 760-609 of the Suffolk County Sanitary Code (Sanitary Code), the approval of the variance is in harmony with the general purpose and intent of the Sanitary Code, to protect groundwater and drinking water supplies, surface water and other natural resources, and public health, safety and welfare. In compliance with Section 760-609(1)(a), the proposed variance is in general conformity with the Sanitary Code. The variance should not impair groundwater, surface water, and drinking water supplies, and, as such, is consistent with criteria specified in Section 760-609(1)(b).

6/20/03

Date

  
James W. Meyers, PE  
Acting Chairman ~ Board of Review



**SUFFOLK COUNTY CLERK  
RECORDS OFFICE  
RECORDING PAGE**

Type of Instrument: DECLARATION/DOP  
Number of Pages: 12  
Receipt Number : 04-0043238

Recorded: 04/15/2004  
At: 12:08:58 PM

LIBER: D00012313  
PAGE: 819

District: 0800      Section: 089.00      Block: 03.00      Lot: 015.000

**EXAMINED AND CHARGED AS FOLLOWS**

Received the Following Fees For Above Instrument

|             |         | Exempt |           |         | Exempt |
|-------------|---------|--------|-----------|---------|--------|
| Page/Filing | \$36.00 | NO     | Handling  | \$5.00  | NO     |
| COE         | \$5.00  | NO     | NYS SRCHG | \$15.00 | NO     |
| TP-584      | \$0.00  | NO     | Notation  | \$0.00  | NO     |
| Cert.Copies | \$15.00 | NO     | RPT       | \$50.00 | NO     |
| SCTM        | \$0.00  | NO     |           |         |        |

Fees Paid \$126.00

**THIS PAGE IS A PART OF THE INSTRUMENT  
THIS IS NOT A BILL**

Edward P.Romaine  
County Clerk, Suffolk County

1 2

Number of pages 12.

TORRENS

Serial # \_\_\_\_\_

Certificate # \_\_\_\_\_

Prior Clf. # \_\_\_\_\_

RECORDED  
2004 Apr 15 12:08:58 PM  
Edward P. Romaine  
CLERK OF  
SUFFOLK COUNTY  
L D00012313  
P 819

Deed / Mortgage Instrument      Deed / Mortgage Tax Stamp      Recording / Filing Stamps

3 FEES

Page / Filing Fee 36  
Handling 5.00  
TP-584 \_\_\_\_\_  
Notation \_\_\_\_\_  
EA-52 17 (County) \_\_\_\_\_ Sub Total 41  
EA-5217 (State) \_\_\_\_\_  
R.P.T.S.A. 50  
Comm. of Ed. 5.00  
Affidavit \_\_\_\_\_  
Certified Copy 15  
NYS Surcharge 15.00 Sub Total \_\_\_\_\_  
Other \_\_\_\_\_ Grand Total 126



Mortgage Amt. \_\_\_\_\_  
1. Basic Tax \_\_\_\_\_  
2. Additional Tax \_\_\_\_\_  
Sub Total \_\_\_\_\_  
Spec./Assit. \_\_\_\_\_  
or \_\_\_\_\_  
Spec. /Add. \_\_\_\_\_  
TOT. MTG. TAX \_\_\_\_\_  
Dual Town \_\_\_\_\_ Dual County \_\_\_\_\_  
Held for Appointment \_\_\_\_\_  
Transfer Tax \_\_\_\_\_  
Mansion Tax \_\_\_\_\_  
The property covered by this mortgage is or will be improved by a one or two family dwelling only.  
YIS \_\_\_\_\_ or NO \_\_\_\_\_  
If NO, see appropriate tax clause on page # \_\_\_\_\_ of this instrument.

4 Dist. 0800 Section 089.00 Block 03.00 Lot 015.000 5 **Community Preservation Fund**

Real Property Tax Service Agency Verification  
4/15/04  
RECORD & RETURN TO:



Consideration Amount \$ \_\_\_\_\_  
CPF Tax Due \$ \_\_\_\_\_  
Improved \_\_\_\_\_  
Vacant Land \_\_\_\_\_  
TD \_\_\_\_\_  
TD \_\_\_\_\_  
TD \_\_\_\_\_

6 **RECORD & RETURN TO:**  
JUSTIN M. BLOCK PC  
ONE SUFFOLK SQUARE  
SUITE 500  
ISLANDIA NY 11749

7 **Title Company Information**  
Co. Name \_\_\_\_\_  
Title # \_\_\_\_\_

8 **Suffolk County Recording & Endorsement Page**

This page forms part of the attached AMENDED DECLARATIONS made by:

(SPECIFY TYPE OF INSTRUMENT)

OLD WORLD ITALIAN FOOD CORP.

The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

TO  
SUF CTY DEPT. OF HEALTH SERVICES.

In the Township of SMITHTOWN  
In the VILLAGE \_\_\_\_\_  
or HAMLET of \_\_\_\_\_

BOXES 6 THRU 8 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

(over)

## **IMPORTANT NOTICE**

If the document you've just recorded is your **SATISFACTION OF MORTGAGE**, please be aware of the following:

If a portion of your monthly mortgage payment included your property taxes, **\*you will now need to contact your local Town Tax Receiver so that you may be billed directly for all future property tax statements.**

Local property taxes are payable twice a year: on or before January 10<sup>th</sup> and on or before May 31<sup>st</sup>. Failure to make payments in a timely fashion could result in a penalty.

**Please contact your local Town Tax Receiver with any questions regarding property tax payment.**

Babylon Town Receiver of Taxes  
200 East Sunrise Highway  
North Lindenhurst, N.Y. 11757  
(631) 957-3004

Brookhaven Town Receiver of Taxes  
250 East Main Street  
Port Jefferson, N.Y. 11777  
(631) 473-0236

East Hampton Town Receiver of Taxes  
300 Pantigo Place  
East Hampton, N.Y. 11937  
(631) 324-2770

Huntington Town Receiver of Taxes  
100 Main Street  
Huntington, N.Y. 11743  
(631) 351-3217

Islip Town Receiver of Taxes  
40 Nassau Avenue  
Islip, N.Y. 11751  
(631) 224-5580

Riverhead Town Receiver of Taxes  
200 Howell Avenue  
Riverhead, N.Y. 11901  
(631) 727-3200

Shelter Island Town Receiver of Taxes  
Shelter Island Town Hall  
Shelter Island, N.Y. 11964  
(631) 749-3338

Smithtown Town Receiver of Taxes  
99 West Main Street  
Smithtown, N.Y. 11787  
(631) 360-7610

Southampton Town Receiver of Taxes  
116 Hampton Road  
Southampton, N.Y. 11968  
(631) 283-6514

Southold Town Receiver of Taxes  
53095 Main Street  
Southold, N.Y. 11971  
(631) 765-1803

Sincerely,



Edward P. Romaine  
Suffolk County Clerk

dw  
2/99

AGREEMENT FOR AMENDMENT/MODIFICATION  
OF RESTRICTIVE COVENANTS

THIS INDENTURE made by OLD WORLD ITALIAN FOOD CORP.

- (1) residing at this 18th day of MARCH, 1999 2004,
- (2) a domestic or foreign corporation with offices located at 2201 JERICHO TURNPIKE, COMMACK, NEW YORK
- (3) a sole proprietorship or partnership having its principal place of business at \_\_\_\_\_

for the purpose of amending/modifying certain Declaration of Covenants and Restrictions entered into by the DECLARANT, or his predecessor-in-interest, on the 8th day of SEPTEMBER, 1999 2003 and recorded on the 6th day of NOVEMBER, 19 2003 in the Office of the Clerk of the County of Suffolk at Liber 12282, at page 166. Said Declaration of Covenants and Restrictions burdened the PREMISES described in Schedule "A" attached hereto; and,

WHEREAS, said Declarations of Covenants and Restrictions set forth in paragraph SEVENTH as follows:

"These covenants and restrictions shall run with the land and shall be binding upon the DECLARANT, its successors and assigns, and upon all persons or entities claiming under them, and may be terminated, revoked or amended only with the written consent of the DEPARTMENT."

and,

WHEREAS, it has been determined by the DEPARTMENT (Suffolk County Department of Health Services) that the above mentioned covenants and restrictions affecting the PREMISES described herein can be amended/modified as hereinafter set forth; and

WHEREAS, the DEPARTMENT, by executing this agreement, hereby consents to the amendment/modification of the covenants and restrictions hereinbefore mentioned, and

WHEREAS, the undersigned parties to this Agreement are now the owners, mortgagees, and other parties interested in the above described PREMISES and agree to amend/modify the above mentioned restrictive covenants; and

WHEREAS, the DECLARANT represents and warrants that he has not offered or given any gratuity to any official, employee, or agent of Suffolk County, New York State, or of any political party, with the purpose or intent of securing favorable treatment with respect to the performance of an agreement, and that such person has read and is familiar with the provisions of Local Law #32-1980.

NOW, THEREFORE, it is mutually agreed as follows:

1. The PREMISES are hereby released from the restrictive covenants contained in the agreements above referred to, and the parties hereto release each of the other parties, their distributees, heirs, successors and assigns from such covenants.

2. The above described PREMISES shall thereafter be subject to the restrictive covenants attached hereto as Schedule C.

3. The parties hereto covenant on behalf of themselves, their distributees, heirs, successors and assigns to observe the restrictive covenants set forth in paragraph 2 and attached hereto as Schedule C, with the same force and effect as though such covenants had been imposed on the above described premises in the first instance.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the \_\_\_\_\_ day of MARCH, ~~1998~~ 2004



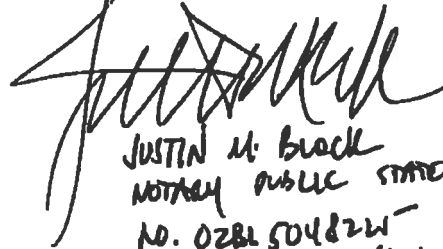
\_\_\_\_\_  
(Use for DECLARANT's signature)

State of New York )

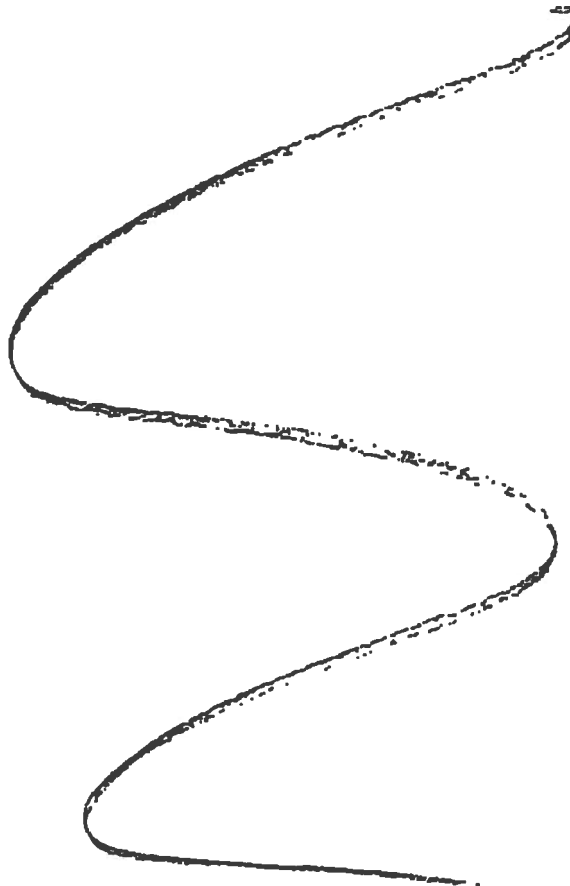
) : ss.:

County of Suffolk)

On the 18<sup>th</sup> day of March in the year 2004 before me, the undersigned, \_\_\_\_\_ personally appeared EMILIO FRANCHINELLI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



JUSTIN M. BLACK  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 028150482W  
Qualified in Suffolk County  
Commission Expires 8/21/05



Consented to:

SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES



By: Walter J. Hilbert

HD Ref. No. C08-02-0022

State of New York)

:ss.: (HEALTH OFFICIAL ACKNOWLEDGEMENT )  
COUNTY OF SUFFOLK )

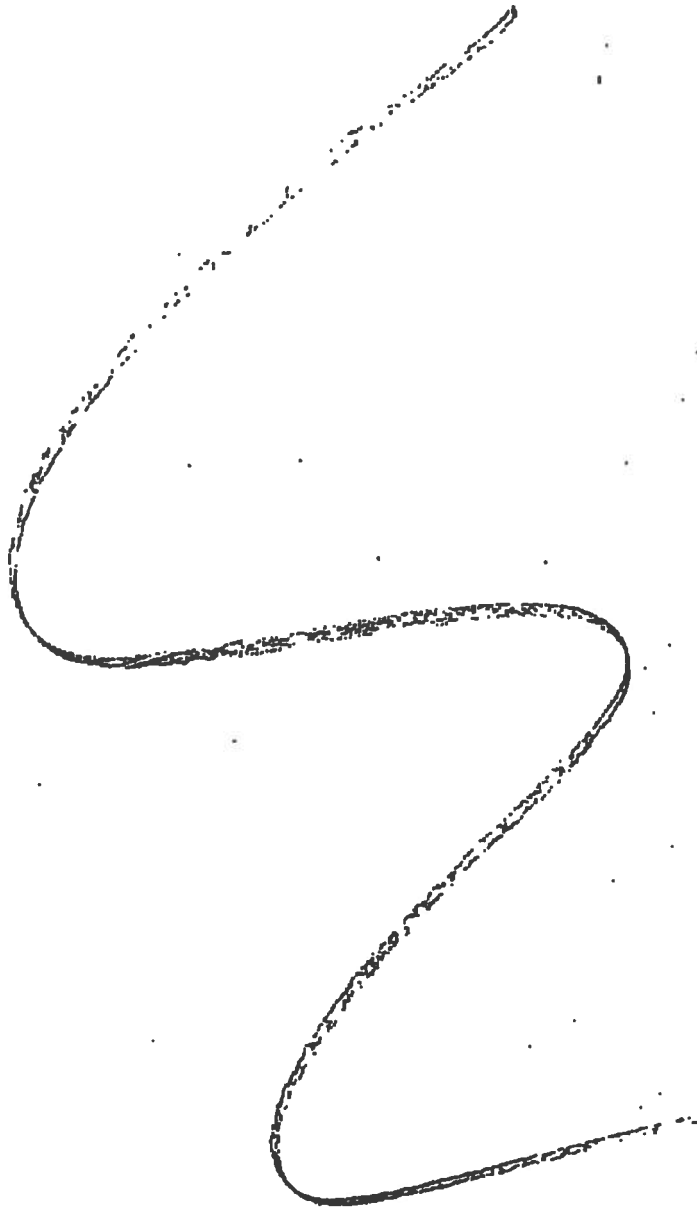
On the *15* day of *April* in the year *2004* before me, the undersigned, personally appeared *Walter J. Hilbert*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

LYNNE K. BURNS  
NOTARY PUBLIC, State of New York  
No. 4796041

Qualified in Suffolk County  
Commission Expires ~~March 08, 19~~ *Jan 31, 2006*  
Notary Public: State of New York  
*Lynne K. Burns*

SCHEDULE C

ATTACH AMENDED COVENANTS AND RESTRICTIONS HERE



## **DECLARATION**

**THIS DECLARATION made by OLD WORLD ITALIAN FOOD CORP. this 18<sup>th</sup> day of March, 2004, a domestic corporation with principal offices at 2201 Jericho Turnpike, Commack, New York, hereinafter referred to as the DECLARANT, as the owner of premises described in Schedule "A" annexed hereto (hereinafter referred to as the PREMISES), desires to restrict the use and enjoyment of said PREMISES and has for such purposes determined to impose on said PREMISES covenants and restrictions and does hereby declare that said PREMISES shall be held and shall be conveyed subject to the following covenants and restrictions:**

**1. DECLARANT has made application to the Suffolk County Department of Health Services (hereinafter referred to as the DEPARTMENT) for a permit to construct, approval of plans or approval of a subdivision or development on the PREMISES.**

**2. WHEREAS DECLARANT appeared before the Board of Review requesting a variance for the project sewage design flow which exceeds the population density equivalent as required by Article 6, Section 760-607 of the Suffolk County Sanitary Code, and WHEREAS the Board of Review of the County of Suffolk Department of Health Services granted a variance by letter dated June 20, 2003, attached hereto and made a part hereof, provided a covenant is filed, the DECLARANT, its successors, heirs or assigns, agrees:**

**a). The parcel known as SCTM # 800-167-4-48.1, described in Schedule A, (sending parcel), shall be transferred to the Suffolk County Water Authority (SCWA) to be utilized for a future well field. The SCWA may improve this property for the purposes of providing community drinking water but shall not generate any sewage flow. The density rights of said parcel described in Schedule A (sending parcel) have been transferred to the parcel known as SCTM # 800-89-3-15, described in Schedule B (receiving parcel) for purpose of meeting density requirements pursuant to Article 6 of the Suffolk County Sanitary Code.**

**3. DECLARANT, its successors and/or assigns shall set forth these covenants, agreements and declarations in any and all leases to occupants, tenants and/or lessees of the above described property and shall, by their terms subject same to the covenants and restrictions contained herein. Failure of the DECLARANT, its successors and/or assigns to so condition the leases shall not invalidate their automatic subjugation to the covenants and restrictions.**

**4. All of the covenants and restrictions contained herein shall be construed to be in addition to and not in derogation or limitation upon any provisions of local, state and federal laws, ordinances, and/or regulations in effect at the time of execution of this agreement, or at the time such laws, ordinances and /or regulations may thereafter be revised, amended or promulgated.**

**5. This document is made subject to the provisions of all laws required by law or by their provisions to be incorporated herein and they are deemed to be incorporated herein and made a part hereof, as though fully set forth.**

6. The aforementioned Restrictive Covenants shall be enforceable by the County of Suffolk, State of New York by injunctive relief or by and other remedy in equity or at law. The failure of said agencies or the County of Suffolk to enforce the same shall not be deemed to affect the validity of this covenant nor to impose any liability whatsoever upon the County of Suffolk or any office or employee thereof.

7. These covenants and restrictions shall run with the land and shall be binding upon the DECLARANT, its successors and assigns, and upon all persons or entities claiming under them, and may be terminated, revoked or amended only with the written consent of the DEPARTMENT.

8. If any section, subsection, paragraph, clause, phrase or provision of these covenants and restrictions shall, by a Court of competent jurisdiction, be adjudged illegal, unlawful, invalid or held to be unconstitutional, the same shall not affect the validity of these covenants as a whole, or any other part or provision hereof other than the part so adjudged to be illegal, unlawful, invalid or unconstitutional.

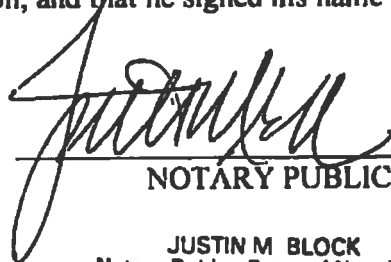
9. Local Law # 32-1980 - The DECLARANT represents and warrants that he has not offered or given any gratuity to any official, employee or agent of Suffolk County, New York State, or of any political party, with the purpose or intent of securing favorable treatment with respect to the performance of an agreement, and that such person has read and is familiar with the provisions of Local Law # 32-1980.

OLD WORLD ITALIAN FOOD CORP.



By: EMILIO BRANCHINELLI, Pres.

On the 18<sup>th</sup> day of March, 2004, before me came EMILIO BRANCHINELLI, to me known, who being by me duly sworn, did depose and say that he resides at 2201 Jericho Turnpike, Commack, New York; that he is the President of OLD WORLD ITALIAN FOOD CORP., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate 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

JUSTIN M. BLOCK  
Notary Public, State of New York  
No. 02BL5048225  
Qualified in Suffolk County  
Commission Expires August 21, 2005

**SCHEDULE A**

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Smithtown, County of Suffolk and State of New York, known and designated as Map of "20<sup>th</sup> Map of House and Home Co.", filed February 1, 1900 in the Office of the Clerk of the County of Suffolk as Map No. 580, being more particularly bounded and described as follows:

**BEGINNING** at a point on the southerly side of Smithtown Boulevard distant 205.52 feet easterly from the corner formed by the intersection of the easterly side of Nichols Road with the southerly side of Smithtown Boulevard;

**RUNNING THENCE** South 75 degrees 13 minutes 23 seconds East, and along the southerly side of Smithtown Boulevard, a distance of 14.73 feet;

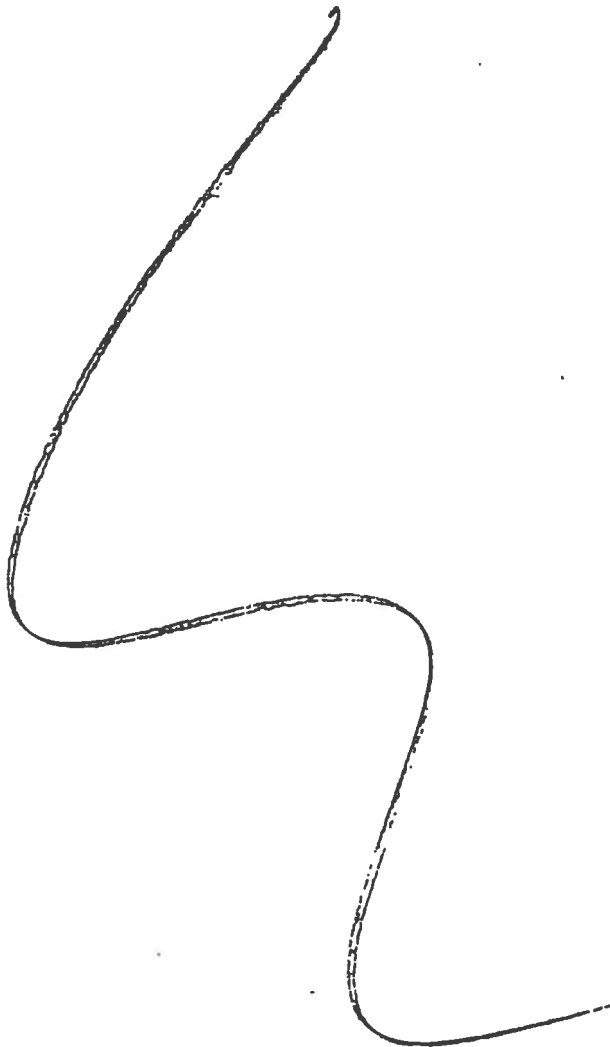
**RUNNING THENCE** South 41 degrees 12 minutes 33 seconds east, a distance of 344.42 feet;

**THENCE** south 8 degrees 47 minutes 39 seconds east, a distance of 206.61 feet to the easterly prolongation of the southerly boundary of Map of Lake Estates;

**THENCE** north 84 degrees, 02 minutes 50 seconds west, along said easterly prolongation of the southerly boundary of Map of Lake Estates, a distance of 105.88 feet;

**THENCE** north 7 degrees 45 minutes 10 seconds west, a distance of 261.89 feet;

**THENCE** north 33 degrees 54 minutes 00 seconds west, a distance of 236.83 feet to the southerly side of Smithtown Boulevard and the point or place of **BEGINNING**.





**SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES  
DIVISION OF ENVIRONMENTAL QUALITY**

**ARTICLE 2, SECTION 220, SUFFOLK COUNTY SANITARY CODE**

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**TO:** Linda Mermelstein, M.D., M.P.H., Acting Commissioner  
**FROM:** James W. Meyers, P.E., Acting Chairman, Board of Review  
**SUBJECT:** *Report of Findings and Recommendations of the Review Board Regarding:  
C08-02-0022 ~ Emilio's Restaurant, Jericho Turnpike, Commack -  
t/o Smithtown - SCTM: #800-89-3-15*

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**APPLICANT:** Mr. Emilio Branchinelli  
2201 Jericho Turnpike  
Commack, NY 11725

**NOTICE OF HEARING:** April 24, 2003

**HEARING DATE:** May 8, 2003

**STATEMENT OF PROBLEM**

The sewage design flow for the project exceeds the population density equivalent as required by Article 6, Section 760-607 of the Suffolk County Sanitary Code. The applicant is proposing to transfer the sanitary density rights from other properties so that the equivalent density complies with Article 6 requirements.

**FINDINGS AND FACTS**

1. Site is 2.6 acres with 24,836 square feet (sq. ft.) of commercial space.
2. Site is in Groundwater Management Zone I.
3. Area is zoned commercial.
4. Public water is available from Suffolk County Water Authority.
5. Depth to groundwater is greater than 19 ft.
6. Soils are good with sand below 3 ft.
7. Proposal calls for increasing seating at a restaurant on the site to 135 seats.
8. Proposal would result in 2,020 gallons-per-day (gpd) sanitary flow at the site. Previous variances have been issued for the site that allowed for 1,588 gpd sanitary flow. The proposal is 432 gpd over allowable flow, or 127% of allowable flow.

Linda Mermelstein, M.D., M.P.H., Acting Commissioner

Hearing Date: May 8, 2003

Subject: Report of Findings and Recommendations of the Review Board Regarding:  
C08-02-0022 ~ Emilio's Restaurant, Jericho Turnpike, Commack -  
Vo Smithtown - SCTM: #800-89-3-15

**FINDINGS AND FACTS (cont'd.)**

9. Proposal calls for transferring development rights (TDR) from tax map parcel #800-167-4-48.1. The allowable flow at this sending parcel is 444 gpd which would offset the 432 gpd overage at the receiving parcel. The TDR sending parcel is also in Groundwater Management Zone I.
10. The Suffolk County Water Authority is willing to accept donation of this parcel with a provision that they reserve the right to develop the property with no sanitary flow.

**DETERMINATION**

It was a 3 to 0 determination of the Board of Review to grant the request for the variance, provided the applicant makes appropriate arrangements to transfer tax parcel #800-167-4-48.1 to the Suffolk County Water Authority at no cost to the Suffolk County Water Authority. This decision is contingent upon the applicant placing covenants and/or other restrictions upon the sending parcel acceptable to the Suffolk County Attorney to prohibit any future sanitary discharge. The applicant will be responsible for making all arrangements for the transfer and covenants and for paying all associated administrative, legal and technical costs. Approval of this application will not affect overall groundwater resources since an equivalent parcel will be sterilized against future sanitary flow.

As per Section 760-609 of the Suffolk County Sanitary Code (Sanitary Code), the approval of the variance is in harmony with the general purpose and intent of the Sanitary Code, to protect groundwater and drinking water supplies, surface water and other natural resources, and public health, safety and welfare. In compliance with Section 760-609(1)(a), the proposed variance is in general conformity with the Sanitary Code. The variance should not impair groundwater, surface water, and drinking water supplies, and, as such, is consistent with criteria specified in Section 760-609(1)(b).

6/20/03  
Date

  
James W. Meyers, PE  
Acting Chairman ~ Board of Review