



Towamencin Township

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Appendix A-25.4

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Board of Supervisors

David C. Onorato - Chairman

Michael J. Becker - Vice-Chairman

Richard D. Lanning, Jr. - Treasurer/Secretary

Theodore D. Dorand

John V. Gottschall, III

Manager

John A. Granger

December 17, 1997


J. Delton Plank
Franconia Township Authority
P.O. Box 120
Franconia, PA 18924

Dear Del:

Enclosed is a fully executed copy of the agreement for Asher's Chocolates. Four copies of the agreement have been forwarded to Richard McBride.

Thank you.

Sincerely,


John A. Granger
Township Manager

JAG/sl

pc: Dennis Alig (w/enc.)
Legal File - Asher Candies
✓429.98

AGREEMENT

THIS AGREEMENT made this 17 day of December 1997 by and among TOWAMENCIN TOWNSHIP (hereinafter the "Township"), FRANCONIA TOWNSHIP AUTHORITY (hereinafter "Franconia"), UPPER GWYNEDD-TOWAMENCIN MUNICIPAL AUTHORITY (hereinafter "Authority") and J.D.J. ASSOCIATES (hereinafter call the "Partnership").

W I T N E S S E T H

WHEREAS, the Authority has constructed and operates a wastewater treatment facility known as the Upper Gwynedd-Towamencin Municipal Authority Wastewater Treatment Facility (hereinafter "Wastewater Treatment Plant") and owns the collection and conveyance facilities tributary to the Wastewater Treatment Plant; and

WHEREAS, the Township operates, maintains and has full administrative and technical responsibility for the wastewater collection and conveyance system known as the Township Sewer System (hereinafter the "Sewer System") under a Lease and a Service Agreement with the Authority; and

WHEREAS, the Authority and the Township entered in an Interjurisdictional Pretreatment Agreement, dated June 14, 1984; and

WHEREAS, Paragraph 1 of the June 14, 1984 Interjurisdictional Pretreatment Agreement between the Authority and the Township provides for the negotiating and development of agreements between the Authority, the Township and industrial users who are located

outside the Township but discharge into the Sewer System for subsequent treatment by the Wastewater Treatment Plant; and

WHEREAS, the Partnership recognizes and has determined that it is necessary and desirable to continue to utilize the Sewer System and the Wastewater Treatment Plan for conveyance and treatment, as applicable, of its wastewater; and

WHEREAS, the discharge of wastewater into the Sewer System by the Partnership is subject to the Partnership's Pretreatment Obligations, as defined herein; and

WHEREAS, the Partnership has constructed certain facilities in order to comply with its Pretreatment Obligation, as defined herein (the "Pretreatment Facility").

NOW, THEREFORE, in consideration of the promises herein contained, the parties agree hereto, intending to be legally bound, covenant and agree as follows:

Definitions

ARTICLE 1

"Pretreatment Obligation" as used herein, shall mean the duties imposed on, as the case may be, the Authority, the Township or the Partnership, to require or comply with regulations providing for treatment of wastewater prior to discharge into the Sewer System, as those duties may be imposed by the Pretreatment Ordinance, Pretreatment Program, or any and all applicable Federal or State laws, statutes, rules, regulations, court orders or consent decrees.

"Pretreatment Ordinance" shall mean ordinance No. 84-6 of the Township, as it may be amended or reenacted, from time to time, or

any successor ordinance, resolution, or regulation adopted by the Township with respect to a Pretreatment Obligation.

"Pretreatment Program" shall mean the rules and regulations adopted by the Authority as its Industrial Waste Pretreatment Program, as they may be amended or reenacted, from time to time, or any successor resolution, rule or regulation adopted by the Authority with respect to discharges into the Sewer System imposing a Pretreatment Obligation.

"Sewer Use Ordinance" shall mean Ordinance No. 87-12 of the Township, as it may be amended or reenacted, from time to time, or any successor ordinance, resolution, or regulation adopted by the Township with respect to discharges into the Sewer System.

"NPDES Permit" shall mean the National Point Discharge Elimination system, permit, together with the standards of discharge quality imposed under such Permit, issued to the Authority with respect to the discharges from the Wastewater Treatment Plant, as may be issued from time to time, and any successor permit or license issued to the Authority by any Federal, state or local administrative agency, or body, having jurisdiction over the Authority or regulating discharges from the Wastewater Treatment Plant.

"Uncontrollable Circumstance" shall mean any or all of the following acts, events or conditions, to the extent that it would prevent the operation of the Wastewater Treatment Plant or Sewer System:

- (i) an Act of God, fire, flood, earthquake, explosion, sabotage, lightning or similar circumstance, riot, war insurrection, strike or labor dispute; or

(ii) the entry of a valid and enforceable injunctive or restraining order or judgment of any Federal or state court, administrative agency, or body, having jurisdiction over the Authority or Township.

AUTHORITY OBLIGATIONS

ARTICLE 2

Section 2.01. The Authority agrees to receive, through the Sewer System, wastewater from the Partnership, meeting the requirements of the Pretreatment Ordinance and subject to the provisions hereof, for treatment by the Wastewater Treatment Plant.

Section 2.02. Pursuant to the Interjurisdictional Agreement, the Authority is monitoring compliance by the Partnership under the Pretreatment Ordinance. In addition to the remedies provided by said Ordinance, the Authority reserves and retains the right to limit the volume and/or strength of the wastewater discharged by the Partnership to achieve standards of discharge by the Authority in conformity with its NPDES Permit, together with all applicable Federal or state laws, statutes, rules, regulations, court orders or consent decrees.

Section 2.03. The Authority agrees to permit the Township or the Partnership to enter the facilities of the Authority, at reasonable times, for the purpose of inspecting the treatment of wastewater or reviewing records and other documents pertaining to the treatment of the Partnership's wastewater.

Section 2.04. The Authority agrees that it will not discontinue operation of its Wastewater Treatment Plant and other

facilities during the term of this Agreement except as a result of an Uncontrollable Circumstance.

TOWNSHIP OBLIGATIONS

ARTICLE 3

Section 3.01. The Township agrees to receive and transport, through its Sewer system, wastewater from the Partnership meeting the Partnership's Pretreatment Obligation and subject to the provisions hereof for treatment at the Wastewater Treatment Plant.

Section 3.02. The Township hereby grants and delegates to the Authority the power and authority to monitor compliance by the Partnership under its Pretreatment Obligation and to limit the volume and/or strength of wastewater received from the Partnership in conformity with the Partnership's Pretreatment Obligation and the provisions hereof. The Township agrees to furnish any information within its control required by the Authority concerning compliance by the Partnership with its Pretreatment Obligation and to help aid and assist the Authority in obtaining information or data from other sources. The Township retains the right to exercise any legal remedy to limit excessive flows of wastewater from the Partnership or to contain or correct any hazardous or unhealthful conditions.

Section 3.03. The Township agrees to impose charges upon the Partnership for receiving and treatment of wastewater in accordance with the formula set forth in Pretreatment Ordinance 84-6 as amended.

Section 3.04. The Township agrees to make available, upon reasonable notice by the Authority and/or the Partnership, any

record, sample or document concerning the receipt of wastewater or the Sewer System and to make the Sewer System available for inspection by the Authority and/or the Partnership.

Section 3.05. The Township agrees that it will not discontinue its operation of the Sewer System except as a result of an Uncontrollable Circumstance; provided, however, that this Section shall not be deemed to preclude the Township from delegating, assigning, or relinquishing its operation of the Sewer System to the Authority or a successor operator of the Sewer System.

PARTNERSHIP OBLIGATIONS

ARTICLE 4

Section 4.01. The Partnership agrees that all ultimate discharge of its wastewater will be into the Sewer System for treatment at the Wastewater Treatment Plant. The Partnership agrees that the quantity of wastewater discharged by the Partnership shall be in compliance with the provisions hereof and that it will not disconnect from the Sewer System or limit the volume of its wastewater by means of other discharges or disposal of the wastewater, except for recycling of wastewater within the Partnership's plant, during the terms of this Agreement except as limited by this Agreement, without the prior consent of the Township and the Authority.

Section 4.02. The Partnership agrees to be subject to the provisions of the Towamencin Sewer Use Ordinance, except with respect to such matters as are expressly provided for in this

Agreement. In the event of conflict between the Towamencin Sewer Use Ordinance and this Agreement, whichever is more stringent shall be given effect. The Partnership agrees that its wastewater is subject to pretreatment prior to discharge into the Sewer System. The Partnership agrees that it will design, construct, reconstruct and maintain its Pretreatment Facility in accordance with the Pretreatment Ordinance or submit an alternative method of handling process Wastes and that, prior to discharge, it will obtain a discharge permit from the Authority (the "Discharge Permit"). The Discharge Permit shall set forth various conditions governing the strength and volume of wastewater to be discharged. The Partnership further agrees to apply for renewals of its Discharge Permit from time to time as required by the terms of the Pretreatment Ordinance and to pay all reasonable fees associated with the implementation and requirements of its Pretreatment Obligation.

Section 4.03. The Partnership agrees to operate, maintain, and upgrade, if necessary, its Pretreatment Facility so that the wastewater discharged by the Partnership shall conform to the requirements of the Partnership's Pretreatment Obligation and be in conformity with the Discharge Permit. The Partnership further agrees that it will employ and provide a sufficient number of properly trained persons to operate its Pretreatment Facility so as to comply with its Pretreatment Obligation.

Section 4.04. The Partnership agrees that it will retain records, conduct tests, take samples and provide for other monitoring of its compliance with its Pretreatment Obligation as

required by the Township or Authority, and the Partnership further agrees to permit the Township or the Authority to enter the Partnership's property at reasonable hours, but without prior notice, for the purpose of making inspections, taking samples, and reviewing records and other documents concerning the wastewater discharged by the Partnership and the Partnership's operation of its Pretreatment Facility.

Section 4.05. The Partnership agrees to pay the charges imposed by the Township for the reception and treatment of wastewater in accordance with the formula set forth in Pretreatment Ordinance 84-6 as amended. The Partnership acknowledges and agrees that it has reviewed and is familiar with the Rules, Regulations, and Rate Determination processes of the Township and that the same are fair and reasonable. The Partnership agrees to pay interest at the rate of one and one-half percent (1.5%) per month on any charge unpaid for a period of thirty (30) days after the date of receipt of the bill, together with applicable laboratory reports and other backup data, with said interest to be calculated from the date of receipt of said billing.

CAPACITY ALLOCATION & FLOW QUANTITIES

ARTICLE 5

Section 5.01. The Partnership is hereby acknowledged to have a capacity allocation of 5,320 gallons per day ("gpd"). The Partnership agrees that the average daily flow, calculated from flow data for any given calendar month, shall not exceed 5,320 gpd for the period of this Agreement or any subsequent renewal of this

Agreement without first obtaining the permission of the Township and the Authority and paying the capital contribution and connections fees in effect at the time of the request.

Section 5.02. The Partnership acknowledges that its rate of flow discharge, or peak flow rate, has impact on the available conveyance capacity of the Sewer system and the operations of the Wastewater Treatment Plant. Because of this impact, the Partnership agrees to limit its peak flow discharge rate to one hundred forty percent (140%) of its allowable average daily flow rate, or 7,448 gpd for any stated one (1) day period. Failure of the Partnership to limit its peak flow discharge rate to this level shall require the Partnership to pay for any costs associated with clean-up of overflows, treatment plant upsets or operational problems, or regulatory agency fines. In the event that the Partnership fails to limit its peak flow discharge rate as required, the Township and/or Authority shall require the Partnership to pay for any and all costs associated with the clean-up of overflows, treatment plant upsets, operational problems, or regulatory agency fines.

TAPPING FEE REIMBURSEMENT

ARTICLE 6

Section 6.01. The Partnership is constructing a sewer line at its expense, which sewer line will be connected to the Sewer System. Further, the Partnership is paying a tapping fee relative to the capacity being allocated to it pursuant to this Agreement. Should an owner of another property which is not in or a part of

the property currently owned by the Partnership connect a service line directly to the sewer line being constructed by the Partnership within ten (10) years of the date of the acceptance of the dedication of such sewer line, the Authority shall notify the Partnership by certified mail of the receipt by the Authority of a tapping fee collected as a result of such connection within thirty (30) days of its receipt of such tapping fee.

Section 6.02. The Authority shall reimburse the Partnership an amount equal to the then distribution or collection part of such tapping fee as a result of such subsequent connection provided that the Partnership submits to the Authority in writing a claim for such reimbursement within one hundred twenty (120) days of its mailing to the Partnership of the above-described certified mail notice. Should said Partnership fail to submit a timely claim for such reimbursement as provided hereinabove, said reimbursement shall revert to and become the sole property of the Authority.

Section 6.03. There shall be deducted from the amount of the reimbursement described in Section 6.02 hereof an amount equal to five percent (5%) of such reimbursement payment, which such shall be deemed to represent an appropriate charge for administrative expenses and services rendered in calculating, collecting, monitoring and disbursing said reimbursement payment.

Section 6.04. Notwithstanding the foregoing, the total reimbursement to which the Partnership shall be entitled shall not exceed a sum equal to (i) the total cost of all labor and material, engineering design charges, the cost of performance and maintenance bonds, authority review and inspection charges, as well as flushing

and televising charges and any and all other charges incurred or paid by the Partnership involved in the dedication and acceptance of the above-referenced sewer line, (ii) multiplied by a fraction the numerator of which shall be the EDU's contributed to the sewer line by owners of other properties and the denominator of which shall all EDU's contributed to the sewer line.

GENERAL PROVISIONS

ARTICLE 7

Section 7.01. The parties hereto agree that this Agreement shall continue for a period of ten (10) years from the date of this Agreement, at the conclusion of which term, the Agreement shall be renewed for an additional period of ten (10) years unless any one of the parties shall give notice two (2) years prior to the anniversary date of this Agreement of a desire to terminate or renegotiate this Agreement.

Section 7.02. This Agreement shall be binding upon and shall enure to the benefit of the successors and assigns of the parties hereto.

Section 7.03. In the event any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision hereof and the remaining provisions shall be construed and enforced as if such invalid provision had not been contained herein. This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement by their duly authorized officers and affixed their seals hereto, all as of the day and year first above written.

Attest:

[Signature]

TOWAMENCIN TOWNSHIP

BY: [Signature]

Attest:

[Signature]

UPPER GWYNEDD-TOWAMENCIN
MUNICIPAL AUTHORITY

BY: [Signature]

Witness:

[Signature]

J.D.J. ASSOCIATES

BY: [Signature]

Attest:

[Signature]

FRANCONIA TOWNSHIP AUTHORITY

BY: [Signature]