

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Assignment & Amendment of Utility Agreements for water and sewer service

DEPARTMENT: Environmental Services

DIVISION: Business Office

AUTHORIZED BY: *R.G. Adolphe* CONTACT: Becky Noggle EXT. 2143
Robert G. Adolphe, P.E., Director Sr. Coordinator

Agenda Date <u>10/22/02</u> Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/>	Public Hearing – 7:00 <input type="checkbox"/>		

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute the Assignment and Amendment of Utility Agreements for water and sewer service.

BACKGROUND:

Assignment and Amendment of Utility Agreements for water and sewer service between Seminole County and Fox Chase Partners for the project known as Mystic Cove Apartments, for 54,709 gpd for water and 49,499 for sewer. District 1

Reviewed by:
Co Atty: <u>na</u>
DFS: <u>n/a</u>
Other: <u>n/a</u>
DCM: <u><i>[Signature]</i></u>
CM: _____
File No. <u>CESA03</u>



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Becky Noggle, Sr. Coordinator
Environmental Services Department

From: Susan E. Dietrich, ^{sed}Assistant County Attorney
Ext. 7254

Date: September 16, 2002

Subject: O-G Road Trust for Mystic Cove Apartments

In response to your recent request, I reviewed the Assignment & Amendment of Utility Agreements for Water and Sewer Service you transmitted for the above referenced developer's project. The Agreements are acceptable as submitted; however, I did not review the Agreements for accuracy of capacity allocation or other technical matters.

I am returning the signed original documents for placement on the next available Board of County Commissioners' agenda.

Please call if you have any questions.

SED/dg

Attachment

Assignment & Amendment of Utility Agreement for Water Service

Assignment & Amendment of Utility Agreement for Sewer Service

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ASSIGNMENT AND AMENDMENT OF UTILITY AGREEMENT FOR SEWER SERVICE

THIS ASSIGNMENT AND AMENDMENT is made and entered into this ____ day of _____, 20____, by and between **O-G ROAD TRUST**, a Certified Registered Trust, whose address is 617 Wymore Road, Winter Park, Florida 32789, hereinafter referred to as "DEVELOPER," **FOX CHASE PARTNERS, LTD.**, a Florida Limited Partnership, whose address is 1551 Sandspur Road, Maitland, Florida 32751, hereinafter referred to as "PURCHASER" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

WHEREAS, DEVELOPER and COUNTY entered into an Utility Agreement For Sewer Services dated April 15, 1988, hereinafter referred to as the "Agreement," for provision of said service by the COUNTY to the property of DEVELOPER as depicted in Exhibit "A," attached hereto and incorporated herein, hereinafter referred to as the "Property"; and

WHEREAS, pursuant to the Agreement, COUNTY allocated certain sewer services for the use of the Property; and

WHEREAS, on May 21, 2002, DEVELOPER sold and conveyed the property to PURCHASER; and

WHEREAS, DEVELOPER desires to assign all rights and obligations in the Agreement to PURCHASER and PURCHASER desires to obtain and assume all rights and obligations of the DEVELOPER thereunder; and

WHEREAS, DEVELOPER has the right to assign and COUNTY has the right, in accordance with Paragraph 27 of the Agreement, to consent to said assignment, which consent shall not be unreasonably withheld; and

WHEREAS, the parties further desire to amend the Agreement so as to enable the parties to continue to enjoy the mutual benefits it provides; and

WHEREAS, Section 31 of the Agreement provides that any amendments shall be valid only when expressed in writing and duly signed by the parties,

NOW, THEREFORE, in consideration of the promises and mutual covenants stated and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DEVELOPER, PURCHASER and COUNTY agree as follows:

1. AMENDMENTS.

(a) Section 3 of the Agreement is amended to read:

SECTION 3. CAPACITY ALLOCATION. The parties agree that the capacity needed to provide service to the Property is 49,499 gallons per day for sewage collection which is estimated to be 165 ERC.

* * * * *

(b) Exhibit "C" of the Agreement is deleted and Revised Exhibit "C" hereto is substituted therefor.

2. ASSIGNMENT.

(a) **Recitals.** The foregoing recitals are incorporated herein as covenants and agreements and are made a part hereof.

(b) **Assignment.** DEVELOPER hereby assigns and transfers to PURCHASER all rights and obligations of DEVELOPER as set forth in the

Agreement including the original reservation of 4,625 gallons per day for sewer services and sewer connection fees of THIRTY-TWO THOUSAND THREE HUNDRED SEVENTY-FIVE AND 00/100 DOLLARS (\$32,375.00) previously paid to COUNTY on 4-15-88 by DEVELOPER along with the additional 44,874 gallons per day for sewer services reserved hereunder and sewer connection fees of ONE HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED THIRTY-SEVEN AND 72/100 DOLLARS (\$141,737.72) to be paid to COUNTY by PURCHASER at the time of building permit issuance.

(c) **Assumption.** PURCHASER hereby assumes all rights and obligations of DEVELOPER as set forth in the Agreement and this Assignment and Amendment and agrees to perform such obligations as described in the Agreement and this Assignment and Amendment.

(d) **Monthly Service Charge.** DEVELOPER represents and warrants that it has paid all monthly service charges due to COUNTY in accordance with the Agreement through the date hereof. PURCHASER hereby agrees to pay the monthly service charges and sewer connection fees due to COUNTY pursuant to the Agreement subsequent to the date hereof.

(e) **Capacity Not Required.** In the event the entire reservation of gallons per day provided in the Agreement is not needed for development of the Property by PURCHASER, the excess reservation shall revert to COUNTY for reallocation in accordance with COUNTY procedures.

(f) **Notice.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for

whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For DEVELOPER:

O-G Road Trust, a Certified Registered Trust
Brantly W. Clayton, Trustee
617 Wymore Road
Winter Park, Florida 32789

For PURCHASER:

Fox Chase Partners, Ltd.
1551 Sandspur Road
Maitland, Florida 32751

For COUNTY:

Director of Environmental Services
500 West Lake Mary Boulevard
Sanford, Florida 32773-7499

(g) **Successors and Assigns.** The provisions of this Assignment and Amendment shall inure to the benefit of and be binding upon PURCHASER and its successors and upon DEVELOPER and its successors.

(h) **Entire Agreement.**

(1) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Assignment and Amendment that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicted upon any prior representations or agreements, whether oral or written.

(2) It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

(i) **Headings.** All sections and descriptive headings in this Assignment and Amendment are inserted for convenience only, and shall not affect the construction or interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have made and executed this instrument for the purpose herein expressed.

Lisa K James
Witness
[Signature]
Witness

O-G Road Trust, a Certified
Registered Trust

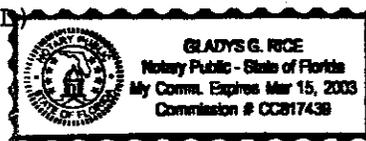
By: [Signature]
BRANTLY W. CLAYTON, Trustee

Date: 9/11/02

STATE OF FLORIDA)
COUNTY OF)

I HEREBY CERTIFY that, on this 11th day of Sept., 2002, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared BRANTLY W. CLAYTON who is personally known to me or who has produced _____ as identification and did take an oath.

Gladys G. Rice
Notary Public in and for the County
and State Aforementioned
(NOTARY SEAL)



PURCHASER:

FOX CHASE PARTNERS, LTD.,
a Florida Limited Partnership
By: CED Capital Holdings 2002 J, LLC,
a Florida Limited Liability company,
as general partner

Gladys G. Rice
Witness

Mary Ellen Carmack
Witness

By: JAY P BROCK, Manager

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that, on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JAY P. BROCK, Manager of CED capital Holdings 2002 J, LLC, a Florida Limited Liability company and general partner of Fox Chase Partners, Ltd., a Florida Limited Partnership, who is personally known to me or who has produced _____ as identification and who did excute the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 11th day of September, 2002.

Mary Ellen Carmack

Notary Public

My commission expires:

MARY ELLEN CARMACK
Notary Public, State of Florida
My Comm. Expires Feb. 12, 2006
Comm. No. DD 093695

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency

As authorized for execution by
the Board of County Commissioners
at their _____, 20____
regular meeting.

Susan E. Smith 9-16-02

County Attorney
SED/lpk
8/23/02
assign-am sewer agt clayton-foxchase

Attachment:
Revised Exhibit "C" - Water Connection Fees

EXHIBIT "C"

Sewer Connection Fees

Developer agrees to pay Seminole County the following connection fees to induce the County to reserve the following plant capacities for Developer's proposed connections within the "Property". Developer understands that the plant capacities are only reserved upon payment of Charges by Developer to Seminole County. The fees set forth below are the connection fees in effect as of the date of this Developer Agreement and are subject to changes in accordance with the terms thereof.

Payment Schedule

<u>Customer Category</u>	<u>Number of Units</u>	<u>ERC Factor</u>	<u>Total ERCs</u>	<u>Total Gallons</u>	<u>Charge Per Gallon</u>	<u>Total Charges</u>
Commercial	N/A	300	165	49,499 (4,625)	\$7.00	\$ 346,493.00 (\$ 32,375.00)
						\$ 314,118.00

**TOTAL PROJECTED CAPACITY NEEDED 49,499 GPD
ASSIGNMENT OF CAPACITY 4,625 GPD
TOTAL ADDITIONAL GPD NEEDED = 44,874 GPD**

FEEES HAVE NOT BEEN SATISFIED—\$ 314,118.00

ASSIGNMENT AND AMENDMENT OF UTILITY AGREEMENT FOR WATER SERVICE

THIS ASSIGNMENT AND AMENDMENT is made and entered into this _____ day of _____, 20____, by and between **O-G ROAD TRUST**, a Certified Registered Trust, whose address is 617 Wymore Road, Winter Park, Florida 32789, hereinafter referred to as "DEVELOPER," **FOX CHASE PARTNERS, LTD.**, a Florida Limited Partnership, whose address is 1551 Sandspur Road, Maitland, Florida 32751, hereinafter referred to as "PURCHASER" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

WHEREAS, DEVELOPER and COUNTY entered into an Utility Agreement For Water Services dated April 15, 1988, hereinafter referred to as the "Agreement," for provision of said service by the COUNTY to the property of DEVELOPER as depicted in Exhibit "A," attached hereto and incorporated herein, hereinafter referred to as the "Property"; and

WHEREAS, pursuant to the Agreement, COUNTY allocated certain water services for the use of the Property; and

WHEREAS, on May 21, 2002, DEVELOPER sold and conveyed the property to PURCHASER; and

WHEREAS, DEVELOPER desires to assign all rights and obligations in the Agreement to PURCHASER and PURCHASER desires to obtain and assume all rights and obligations of the DEVELOPER thereunder; and

WHEREAS, DEVELOPER has the right to assign and COUNTY has the right, in accordance with Paragraph 24 of the Agreement, to consent to said assignment, which consent shall not be unreasonably withheld; and

WHEREAS, the parties further desire to amend the Agreement so as to enable the parties to continue to enjoy the mutual benefits it provides; and

WHEREAS, Section 27 of the Agreement provides that any amendments shall be valid only when expressed in writing and duly signed by the parties,

NOW, THEREFORE, in consideration of the promises and mutual covenants stated and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DEVELOPER, PURCHASER and COUNTY agree as follows:

1. AMENDMENTS.

(a) Section 3 of the Agreement is amended to read:

SECTION 3. CAPACITY ALLOCATION. The parties agree that the capacity needed to provide service to the Property is 54,709 gallons per day for potable water supply which is estimated to be 156 ERC.

* * * * *

(b) Exhibit "C" of the Agreement is deleted and Revised Exhibit "C" hereto is substituted therefor.

2. ASSIGNMENT.

(a) **Recitals.** The foregoing recitals are incorporated herein as covenants and agreements and are made a part hereof.

(b) **Assignment.** DEVELOPER hereby assigns and transfers to PURCHASER all rights and obligations of DEVELOPER as set forth in the

Agreement including the original reservation of 4,625 gallons per day for water services and water connection fees of THIRTEEN THOUSAND EIGHTY-EIGHT AND 75/100 DOLLARS (\$13,088.75) previously paid to COUNTY on 4.15.88 by DEVELOPER along with the additional 50,084 gallons per day for water services reserved hereunder and water connection fees of ONE HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED THIRTY-SEVEN AND 72/100 DOLLARS (\$141,737.72) to be paid to COUNTY by PURCHASER at the time of building permit issuance.

(c) **Assumption.** PURCHASER hereby assumes all rights and obligations of DEVELOPER as set forth in the Agreement and this Assignment and Amendment and agrees to perform such obligations as described in the Agreement and this Assignment and Amendment.

(d) **Monthly Service Charge.** DEVELOPER represents and warrants that it has paid all monthly service charges due to COUNTY in accordance with the Agreement through the date hereof. PURCHASER hereby agrees to pay the monthly service charges and water connection fees due to COUNTY pursuant to the Agreement subsequent to the date hereof.

(e) **Capacity Not Required.** In the event the entire reservation of gallons per day provided in the Agreement is not needed for development of the Property by PURCHASER, the excess reservation shall revert to COUNTY for reallocation in accordance with COUNTY procedures.

(f) **Notice.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for

whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For DEVELOPER:

O-G Trust, a Certified Registered Trust
Brantly W. Clayton, Trustee
617 Wymore Road
Winter Park, Florida 32789

For PURCHASER:

Fox Chase Partners, Ltd.
1551 Sandspur Road
Maitland, Florida 32751

For COUNTY:

Director of Environmental Services
500 West Lake Mary Boulevard
Sanford, Florida 32773-7499

(g) **Successors and Assigns.** The provisions of this Assignment and Amendment shall inure to the benefit of and be binding upon PURCHASER and its successors and upon DEVELOPER and its successors.

(h) **Entire Agreement.**

(1) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Assignment and Amendment that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicted upon any prior representations or agreements, whether oral or written.

(2) It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

(i) **Headings.** All sections and descriptive headings in this Assignment and Amendment are inserted for convenience only, and shall not affect the construction or interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have made and executed this instrument for the purpose herein expressed.

Lisa K. James
Witness
[Signature]
Witness

O-G ROAD TRUST, a Certified Registered Trust

By: [Signature]
BRANTLY W. CLAYTON, Trustee

Date: 9/11/02

STATE OF FLORIDA)
COUNTY OF)

I HEREBY CERTIFY that, on this 11th day of Sept, 2002, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared BRANTLY W. CLAYTON who is personally known to me or who has produced _____ as identification and did take an oath.

Gladys G. Rice
Notary Public in and for the County and State Aforementioned
(NOTARY SEAL)



PURCHASER:

FOX CHASE PARTNERS, LTD.,
a Florida Limited Partnership
By: CED Capital Holdings 2002 J, LLC,
a Florida Limited Liability company,
as general partner

Gladys G. Rice
Witness

Mary Ellen Carmack
Witness

By: _____
JAY P. BROCK, Manager

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that, on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JAY P. BROCK, Manager of CED capital Holdings 2002 J, LLC, a Florida Limited Liability company and general partner of Fox Chase Partners, Ltd., a Florida Limited Partnership, who is personally known to me or who has produced _____ as identification and who did excute the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 17th day of September, 2002.

Mary Ellen Carmack
Notary Public
My commission expires:

MARY ELLEN CARMACK
Notary Public, State of Florida
My Comm. Expires Feb. 12, 2006
Comm. No. DD 093695

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency

As authorized for execution by
the Board of County Commissioners
at their _____, 20____
regular meeting.

Susan E. Mitchell 8-16-02
County Attorney
SED/lpk
8/23/02
assign-am water agt clayton-foxchase

Attachment:

Revised Exhibit "C" - Water Connection Fees

EXHIBIT "C"

Water Connection Fees

Developer agrees to pay Seminole County the following connection fees to induce the County to reserve the following plant capacities for Developer's proposed connections within the "Property". Developer understands that the plant capacities are only reserved upon payment of Charges by Developer to Seminole County. The fees set forth below are the connection fees in effect as of the date of this Developer Agreement and are subject to changes in accordance with the terms thereof.

Payment Schedule

<u>Customer Category</u>	<u>Number of Units</u>	<u>ERC Factor</u>	<u>Total ERCs</u>	<u>Total Gallons</u>	<u>Charge Per Gallon</u>	<u>Total Charges</u>
Commercial	N/A	350	156	54,709 (4,625)	\$2.83	\$ 154,826.47 (\$ 13,088.75)
						\$ 141,737.72

**TOTAL PROJECTED CAPACITY NEEDED 54,709 GPD
ASSIGNMENT OF CAPACITY 4,625 GPD
TOTAL ADDITIONAL GPD NEEDED = 50,084 GPD**

FEEES HAVE NOT BEEN SATISFIED=\$ 141,737.72