

AGENDA MEMORANDUM

Orig

DATE: 4/25/84

TO: Board of County Commissioners

FROM: County Administrator

BY: Originating Department County Attorney

SUBJECT: AGENDA ITEM - REGULAR x CONSENT _____ REQUESTED AGENDA DATE 4/26/84

RE: Champion Home Communities, Inc. Wastewater Services Agreement

County Attorney
[Signature]
 APPROVED AS TO FORM

ACTION REQUIRED:

Authorize execution of Agreement with Champion Home Communities, Inc. and Creekwood Investors, Ltd., amending the 1979 agreement with Creekwood and providing for wastewater treatment service and the disposal of effluent.

ACTION(S) REQUIRED: x Execution Acceptance _____ Approval Recording _____ Authorization Adoption _____

COST:
SOURCE:

ATTACHMENTS:
Agreement and Attachments A-D

BOARD RECORDS:
3 Originals to Champion and Creekwood for execution.

AGENDA DISPOSITION

ACTION TAKEN BY THE BOARD:

- APPROVED DEFERRED UNTIL _____ RECEIVED
- DISAPPROVED CONCURRED WITH STAFF RECOMMENDATION REFERRED TO STAFF

OTHER: _____

SPECIAL INSTRUCTIONS: _____

5
EWC RECEIVED

APR 25 1984

LAW OFFICES OF

LANE, TROHN, BERTRAND & WILLIAMS, P. A.

April 25, 1984

RALPH ARTIGLIERE
ROBERT J. BERTRAND
ROBERT M. BRUSH
CHARLES T. CANADY
CHRISTOPHER M. FEAR
DONALD G. JACOBSEN
E. CLINCH KAVANAUGH, III
A. H. LANE
MANUELA C. NAPIER
ROSS E. PAYNE
GARY S. RABIN
H. HAMILTON RICE, JR.
LUCINDA M. STATHIS
ROBERT L. TROHN
JOHN K. VREELAND
DAVID J. WILLIAMS

Board of County Commissioners
MANATEE COUNTY
P. O. DRAWER J
202 EAST WALNUT STREET
LAKELAND, FLORIDA 33802
TELEPHONE (813) 688-7944

233 15TH ST. WEST
P. O. BOX 551
BRADENTON, FLORIDA 33506
TELEPHONE (813) 747-1871

IN REPLY REFER TO:

Bradenton

file w/ Ad Rec

Mr. Edward W. Chance, Chairman
Board of Commissioners of
Manatee County
P. O. Box 1000
Bradenton, FL 33506

In re: Champion/Creekwood

Dear Eddie:

Attorney Rex Schlaybaugh, who represents Champion, cannot be present at the Board meeting of April 26, wherein the contract in the above-referenced matter will be presented to the Board.

He has asked that in the event there are any substantial changes made, that action of the Board be postponed until such time as he can evaluate the changes and be present before the Board, before final action.

This information has been conveyed to Keith Roberts and Al Cogan in Dick Wilford's absence; however, I feel a personal obligation to Mr. Schlaybaugh to notify you of this request.

With kindest personal regards, I am,

Yours most sincerely,

HHR
H. Hamilton Rice, Jr.

HHR/pf

P.S.: None of the above indicates that any substantial changes are forthcoming from their points of view.

AMENDMENT TO AGREEMENT BETWEEN
CREEKWOOD INVESTORS, LTD. AND MANATEE COUNTY, FLORIDA
BY AND BETWEEN ASSIGNEE
CHAMPION HOME COMMUNITIES, INC.,
AND
MANATEE COUNTY, FLORIDA

1 THIS IS AN AMENDMENT TO AN AGREEMENT (the "Amendment")
2 entered into by and between MANATEE COUNTY, a political sub-
3 division of the State of Florida whose mailing address is P. O.
4 Box 1000, Bradenton, Florida 33506, CHAMPION HOME COMMUNITIES,
5 INC. ("Champion"), a Michigan corporation authorized to do busi-
6 ness in the State of Florida whose mailing address is 5573 E.
7 North Street, Dryden, Michigan 48428 and Creekwood Investors,
8 Ltd., a Florida limited partnership whose mailing address is
9 _____
10 ("Creekwood").

11 WHEREAS, Manatee County is building a one and one-half
12 (1.5) million gallon per day (GPD) wastewater treatment plant in
13 East Manatee County upon the land described in Exhibit A; and

14 WHEREAS, Champion is the owner of certain real property
15 described in Exhibit B ("Champion's Property"), which was
16 acquired from Creekwood, and was, in addition to other property,
17 the subject of an agreement between Manatee County and Creekwood,
18 dated March 22, 1979, which is attached as Exhibit C ("the
19 Creekwood Agreement"); and

20 WHEREAS, Aristek/Champion Joint Venture No. 2, the pre-
21 vious title holder to the Champion Property, and Creekwood
22 entered into an Assignment of Agreement dated June 24, 1982,
23 which is attached hereto as Exhibit D ("the Assignment"), under
24 which Champion (as assignee of Aristek/Champion Joint Venture No. 2)
25 was assigned certain rights and assumed certain obligations con-
26 tained in the Creekwood Agreement related to the provision of
27 wastewater treatment service and effluent disposal for Champion's
28 Property; and

29 WHEREAS, Champion, Creekwood and Manatee County desire
30 to amend the Creekwood Agreement (1) to provide Manatee County an
31 opportunity to construct the wastewater treatment plant required
32 while (2) addressing those terms of the Creekwood Agreement, made
33 a part of the Assignment, [from Creekwood to Champion] respecting

1 the provision of wastewater service to up to 950 mobile home
2 dwelling units and other facilities, without affecting any rights
3 under the Creekwood Agreement that have been retained by Creek-
4 wood.

5 WHEREAS, the Assignment requires the approval of Creek-
6 wood and such approval is being granted by its execution hereof;
7 and

8 WHEREAS, Manatee County has determined that construc-
9 tion of the Plant as described herein is in the best interest of
10 Manatee County and will promote the public health, safety and
11 welfare; and

12 WHEREAS, this Amendment will help implement Manatee
13 County's policy that services required by growth shall be paid
14 for by developers responsible for the increased demand for such
15 services; and

16 WHEREAS, Manatee County, by Resolution 83-19 and as
17 authorized by law, has established a Facility Investment Fee
18 ("FIF"); and

19 WHEREAS, the FIF currently being charged to prospective
20 customers by the County is used to pay the cost of facilities
21 that provide both wastewater treatment and effluent disposal;
22 however, Champion's advance payment under this agreement does not
23 relieve Champion of its obligation to provide its own effluent
24 disposal system; and

25 WHEREAS, Manatee County has determined that securing
26 advance payment of FIFs from prospective major users of treatment
27 facilities not yet constructed provides a useful and cost effec-
28 tive method of helping to finance the cost of constructing such
29 facilities, and therefore serves the interests of Manatee County,
30 of the users of the utilities system, and of the system's bond-
31 holder's; and

32 WHEREAS, in order to secure advance payment of FIFs
33 from a prospective major user of facilities, such as Champion,

1 it is necessary to enter into an agreement such as this, recog-
2 nizing those advance payments as satisfying the prospective user's
3 obligation for FIFs that would otherwise be payable at the time
4 service is provided for the prospective user's development; and

5 WHEREAS, because the actual schedule of development by
6 such a prospective user, and therefore the timing of connections
7 to the County's wastewater treatment system cannot be precisely
8 predicted, a good-faith forecast of such development schedule has
9 been made in order to establish the present-value equivalent of
10 the FIFs likely to be due from the prospective user and thereby
11 to facilitate advance payment of those FIFs as contemplated
12 herein; and

13 WHEREAS, under the policies and practices of the Manatee
14 County Public Utilities Department, Champion, upon payment of
15 FIFs for a specified number of units, would be entitled to demand
16 provision of wastewater treatment service for that number of
17 units; but such demand is being deferred with respect to the 950
18 units referenced herein, pending actual need for such service by
19 those units, so that the payment to be made by Champion hereunder
20 constitutes an advance payment; and

21 WHEREAS, the obligation of Champion to pay the FIFs es-
22 tablished by Resolution 83-19 is fully satisfied by (1) the pay-
23 ment provided herein, including the value of the payment's being
24 made in advance, (2) the value of Champion's obligation to pro-
25 vide on its own for ultimate disposal of effluent, and (3) the
26 value of the clarification and settlement of all rights under the
27 Creekwood Agreement assigned to Champion, by the Assignment, all
28 of which matters, taken together, are hereby expressly found to
29 provide a value to Manatee County and the customers and bond-
30 holders of the Manatee County Public Utilities Department equal
31 to payment of the applicable FIF as would be otherwise required
32 for the 950 mobile home dwelling units and other facilities
33 referenced herein.

1 accessories for transport of influent from the Project
2 to a point within twenty (20) feet of the Plant, and
3 (ii) the pipes, lines and valves for transferring the
4 effluent from a point within twenty (20) feet of the
5 effluent pumping station at the plant to the effluent
6 disposal area at the Project.

7 (d) Plant: The Southeast Regional Wastewater
8 Treatment Plant or facility which is being constructed
9 upon the land described in Exhibit A, having a minimum
10 capacity of 180,000 GPD, exclusive of those components
11 that make up the Delivery Systems.

12 (e) Project: The proposed development on
13 Champion's Property that will consist of 950 Dwelling
14 Units, a golf course, clubhouse and recreational facili-
15 ties.

16 3. Paragraph 12 is added as follows:

17 "12. RESPONSIBILITIES OF MANATEE COUNTY:

18 (a) Manatee County, at no cost to Champion
19 except as provided in paragraph 13(a), shall be respon-
20 sible for the design, layout and construction of the
21 Plant, and Champion as a result hereof, and subject to
22 the remedies provided in paragraph 16 hereof, will not
23 construct a sewage treatment facility as contemplated
24 by the Creekwood Agreement.

25 (b) Upon fulfillment of the terms of
26 paragraph 13 by Champion and beginning September 1,
27 1984, Manatee County shall be obligated to provide and
28 Champion shall be entitled to receive upon demand,
29 wastewater treatment service for up to 180,000 GPD for
30 the Project. It is also agreed that Champion has the
31 right to alter or modify the Project and that the allo-
32 cation of any part of the 180,000 GPD wastewater treat-
33 ment service to any facilities, other than a Dwelling
Unit, which are a part of or constitute an altered or

1 modified Project shall be determined by negotiation
2 between Champion or its assigns and Manatee County
3 prior to the time any such facility is connected to the
4 Plant. In making this determination, Manatee County
5 and Champion or its assigns shall look to recognized
6 industry standards which indicate the gallons per day
7 of wastewater produced by the type of facility for
8 which Champion or its assigns require wastewater treat-
9 ment service. The FIF shall be deemed paid for such
10 facilities to the extent to which it would have been
11 deemed paid for the number of Dwelling Units such faci-
12 lities replace. Written notice shall thereupon be
13 given to Champion as to the number of Dwelling Units
14 remaining out of 950 for which the FIF is deemed paid.

15 (c) All treated effluent that is to be
16 disposed of on the Project by Champion shall, at a
17 minimum, be treated by Manatee County in accordance
18 with a method presently approved under Chapter 17-6,
19 Florida Administrative Code (F.A.C.) (which shall
20 result in total suspended solids being 5 mg/l or less
21 and high level disinfection after solid removal) or any
22 other state or Federal regulation replacing or
23 modifying Chapter 17-6 and regulating the treatment of
24 wastewater for disposal on a golf course, except that
25 in no event shall the methods of treatment be of a
26 lesser quality than as presently required by law and
27 hereunder.

28 (d) Upon execution hereof, Manatee County
29 shall immediately begin construction of the Plant.
30 Manatee County acknowledges that Champion is presently
31 the holder of FDER DC 63761 (the "Permit") which
32 authorizes Champion or its agents to construct the
33 sewage treatment facility contemplated by paragraph 4

1 of the Creekwood Agreement, and that until Manatee
2 County substantially completes the Plant, it is not the
3 intention of Champion to transfer ownership of the Per-
4 mit. Manatee County and Champion acknowledge and agree
5 that to facilitate the construction of the Plant, the
6 Permit may need to be modified to reflect the differen-
7 ces between the facility originally proposed under para-
8 graph 4 of the Creekwood Agreement and the Plant Mana-
9 tee County intends to build. Manatee County shall
10 assume all responsibility for obtaining necessary per-
11 mits and shall pay all expenses involved in obtaining
12 any necessary permit, modifications to the Permit, or a
13 transfer of the Permit. Champion will promptly provide
14 all assistance and perform any acts which only Champion
15 is empowered to perform in order to assist Manatee
16 County to obtain any necessary permit, permit modifica-
17 tions or a transfer of the Permit. Champion agrees to
18 act so as not to delay obtaining any permit, permit
19 transfer or the operating permit, and to the extent it
20 does not adversely affect Champion's rights as
21 expressed herein, to affirmatively cooperate with
22 Manatee County for these purposes.

23 (e) Manatee County intends to complete
24 construction of the Plant and wastewater treatment ser-
25 vice therefrom shall be available to Champion up to a
26 maximum limit of 180,000 GPD by September 1, 1984, but
27 in no event shall Manatee County fail to complete the
28 Plant before December 1, 1984. In the event construc-
29 tion has not been completed by September 1, 1984, Mana-
30 tee County at its sole and separate cost and expense
31 will accept and be responsible for the treatment and
32 disposal of all wastewater from the Project up to the
33 maximum limit of 180,000 GPD that has been delivered to

1 the lift station located on the Project.

2 4. Paragraph 13 is added as follows:

3 "13. RESPONSIBILITIES OF CHAMPION:

4 (a) Champion shall pay the sum of Three
5 Hundred Fifty Thousand Dollars (\$350,000.00) to Manatee
6 County which shall be due and payable as provided
7 below. Such payment, along with the good and valuable
8 consideration recited herein, shall constitute payment
9 in full of the FIF applicable to the Project, or the
10 Project as it may be modified in accordance with
11 paragraph 12(b) hereof, at the time the Project facili-
12 ties or such other facilities are connected to the
13 Plant, and such payment relieves Champion or its
14 assigns of further liability for payment of FIFs for
15 these facilities.

16 (b) Prior to being entitled to receive any
17 monies from Champion pursuant to paragraph 13(a),
18 Manatee County shall submit to Champion a written
19 demand therefor and Champion shall have fifteen (15)
20 days from the date of receipt of such written demand to
21 effect payment of the funds requested, up to a maximum
22 amount of Three Hundred Fifty Thousand Dollars
23 (\$350,000.00).

24 (c) Champion will be responsible for the
25 construction of the Delivery Systems. This respon-
26 sibility includes, but is not limited to designing,
27 constructing, and paying all costs for the Delivery
28 Systems sufficient to handle all wastewater contributed
29 by the Project. Champion shall also obtain easements
30 necessary for installation of the Delivery Systems.
31 Manatee County reserves the right to review and approve
32 all plans and specifications for the Delivery Systems,
33 to the extent it has not already done so, as well as
the installation of the Delivery Systems. Manatee

1 County shall withhold approval only upon a deter-
2 mination that the Delivery Systems will not comply with
3 applicable laws and regulations. Manatee County will
4 provide the necessary pump station for pumping the
5 effluent from the Plant to the golf course or other
6 disposal area located on the Project.

7 (d) Manatee County has elected to oversize
8 the force main portion of the Delivery Systems as part
9 of its construction of the Plant. Champion would have
10 constructed, as part of the Delivery Systems, a 6"
11 force main and lift station if Manatee County had not
12 elected to construct a force main as part of the
13 construction of the Plant. In lieu of Champion
14 constructing a redundant 6" force main as part of the
15 Delivery Systems, Manatee County and Champion agree
16 that Champion shall pay to Manatee County in addition
17 to the sum to be paid under paragraph 13(a) hereof, the
18 sum of \$38,000.00 which shall be in lieu of any
19 responsibility of Champion to construct a 6" force main
20 and lift station as part of the Delivery Systems. The
21 above \$38,000.00 shall be due after construction of the
22 force main begins and payment shall be made within fif-
23 teen days after Manatee County has submitted to
24 Champion a written demand therefor. Manatee County
25 shall construct a force main to the Plant and such
26 force main shall be located within the Florida Power
27 and Light Company easement located on the westerly
28 boundary of Champion's Property or, alternatively,
29 Champion and Creekwood shall grant Manatee County a
30 non-exclusive twenty (20) foot utility easement across
31 their respective properties that will allow for the
32 installation of the force main between State Road 70
33 and the land described in Exhibit A. The location

1 of such utility easement shall be established by
2 Champion and Creekwood and shall be reasonably appro-
3 priate for the purposes intended. Champion shall be
4 entitled to interconnect the Delivery Systems to the
5 force main contemplated hereby at no additional cost to
6 Champion.

7 (e) Manatee County shall be responsible for
8 damage, if any, to Champion's Property as a result of
9 any construction activities undertaken by it pursuant to
10 the terms hereof.

11 (f) Champion has the right and obligation to
12 receive an amount of effluent equal to the amount of
13 effluent generated by the Project. Champion shall
14 assume, after completion of the Plant and subject to
15 paragraph 12(e) hereof, all responsibility for disposal
16 of an amount of effluent equal to the amount of
17 effluent produced by the Project which responsibility
18 shall include, but not be limited to, having adequate
19 storage capacity (until such time as Manatee County
20 acquires adequate effluent storage capacity) for waste-
21 water generated by the Project for a three (3) day
22 period at a golf course lake or other lake on the
23 Project designated for such purpose. In no event shall
24 Champion be obligated to accept wastewater for storage
25 if Champion shall be required to elevate the storage
26 area, or provide an impervious liner or fence the golf
27 course lake or other lake, or if it would materially
28 change or alter the site plan for the Project or
29 materially increase the cost of the Project. To the
30 extent Manatee County is required to establish moni-
31 toring wells on the Project for such storage capacity,
32 it shall do so at its cost and at a location required
33 by the Florida Department of Environmental Regulation

1 and approved by Champion. Any such wells shall be
2 operated and maintained by Manatee County without cost
3 to Champion.

4 (g) As provided by paragraph 13(a) hereof,
5 the FIF for the facilities contemplated hereby shall be
6 deemed paid in full. However, Champion shall pay all
7 other applicable fees, charges and rates as legally
8 established from time to time by the Board of County
9 Commissioners of Manatee County, Florida.

10 5. Paragraph 14 is added as follows:

11 "14. WARRANTIES

12 (a) Champion warrants that it has assigned
13 no right or interest to which Champion is now entitled
14 by virtue of the Assignment. Champion additionally
15 warrants that any interest, right, title or claim of
16 Aristek/Champion Joint Venture No. 2 has been properly
17 released and/or assigned to Champion.

18 (b) Manatee County warrants that unless or
19 until the remedy provided under paragraph 16(a) is
20 exercised, it is the sole owner of the plant and is
21 responsible for all claims, damages, demands, expenses,
22 liabilities and losses, asserted by or on behalf of any
23 person, firm, corporation or governmental authority
24 arising or resulting from or in any way connected with
25 the construction or operation of the Plant.

26 (c) Creekwood warrants that it will not
27 exercise against Manatee County or Champion any remedy
28 contained under paragraph (3) of the Assignment.
29 Creekwood additionally warrants that the Assignment
30 is the only valid and binding assignment of the rights
31 and obligations contained in the Creekwood Agreement,
32 that the Assignment is currently valid and binding.
33

1 Creekwood warrants that if the Plant is substantially
2 completed as contemplated herein, it does hereby
3 release and relieve Champion from any responsibility
4 Champion has or may have to construct the sewage treat-
5 ment facility contemplated by paragraph 4 of the
6 Creekwood Agreement.

7 7. Paragraph 16 is added as follows:

8 "16. REMEDIES:

9 (a) If for any reason Manatee County has not
10 substantially completed the Plant by December 1, 1984,
11 it will cooperate with Champion and provide all
12 necessary assistance in amending the Permit as
13 requested by Champion so as to allow Champion to pro-
14 vide service to the Project, including the construction
15 of the facility originally contemplated by Paragraph
16 (4) of the Creekwood Agreement. In addition, Manatee
17 County will refund to Champion the amount needed to
18 complete the Plant and/or to provide wastewater treatment
19 service to the Project, which amount shall not
20 exceed all payments made hereunder by Champion. The
21 Plant shall be deemed substantially completed once
22 installed and able to receive wastewater contributed by
23 the Project, without regard to whether an operating
24 permit has been issued. This remedy shall terminate as
25 of February 5, 1985, unless Champion has provided
26 Manatee County with written notice of the defect, ina-
27 dquacy or incompleteness in the construction of the
28 Plant for which it intends to seek a refund of the
29 funds advanced.

30 (b) The provision of the remedy described
31 in subparagraph (a) above, shall not limit Champion or
32 Creekwood in its right to recovery as a matter of law
33 or equity, for any damages suffered as a result of the
failure of Manatee County to construct the Plant or

1 provide wastewater treatment service according to the
2 terms of this Amendment. However, this remedy shall
3 not include the right to recover damages from Manatee
4 County for failure to complete the Plant as provided
5 herein, (i) if Manatee County has used its best efforts
6 to complete construction of the Plant and if the fail-
7 ure to complete it is the result of limitations or
8 restrictions imposed by any regulatory agency having
9 jurisdiction over construction of the Plant or over
10 wastewater treatment thereby, or (ii) if such failure
11 is beyond the reasonable power and control of Manatee
12 County as a result of fire, flood, hurricane, accident,
13 act of war, civil commotion or other event over which
14 Manatee County does not exercise power or control.

15 8. Paragraph 17 is added as follows:

16 "17. ASSIGNABILITY:

17 (a) the right to obtain sewage treatment
18 services for which the FIF has been paid in full as
19 provided herein, may be assigned to any owner or devel-
20 oper of all or a portion of Champion's Property by
21 providing Manatee County with notice of (1) the name
22 and address of the assignee; (2) the gallons per day
23 of wastewater treatment service that have been assigned;
24 and (3) the legal description of the property which the
25 assignee will own or develop. The right of the
26 assignee to obtain sewage treatment services for which
27 the FIF has been paid shall remain subject to the pro-
28 visions of section 12(b) of this Amendment regarding
29 the amount of wastewater to be generated by a par-
30 ticular structure or facility to which the assignment
31 relates.

32 (b) the full or partial assignment of the
33 Creekwood Agreement as altered by this Amendment,

1 except as provided in (a) above, may not be made
2 without the approval of Manatee County, which approval
3 shall not be unreasonably withheld. After receipt of a
4 request for approval of assignment, Manatee County
5 shall have fifteen (15) days to review the request for
6 assignment. Upon failure to disapprove the request
7 within such time period, the request for all purposes
8 shall be deemed approved. If the request is denied, a
9 statement of the reasons therefor shall be provided.
10 In determining whether to approve a partial assignment,
11 the assignment will be reviewed for the purpose of
12 determining whether the performance of the obligations
13 owed Manatee County, if any, would be adequately
14 assured and whether the duties to be performed by
15 Manatee County would be altered.

16 (c) Manatee County may not assign its
17 responsibilities to provide wastewater treatment as
18 provided hereunder, without the prior written consent
19 of Champion, which consent Champion agrees not to
20 unreasonably withhold.

21 IN WITNESS WHEREOF, the parties hereto have caused this
22 Amendment to be duly executed by their authorized representative.

23 WITNESSES:

CHAMPION HOME COMMUNITIES, INC.
A Michigan Corporation authorized
to do business in the State of
Florida

24 _____
25 _____
26 By: _____
Name:
Title:

27 Date of Execution: _____

28 * *
29 WITNESSES:

CREEKWOOD INVESTORS, LTD.
a Florida Limited Partnership

30 _____
31 _____
32 By: _____
Name:
Title:

33 Date of Execution: _____

ATTEST: R. B. SHORE,
Clerk of Circuit Court

BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA

By: _____
Chairman

Date of Execution: _____