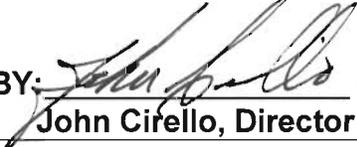


**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT** Amendment to the Conditional Utility Agreement and Exhibit "G" Sewer Oversizing,  
For the project known as Tesoro Townhomes

**DEPARTMENT:** Environmental Services **DIVISION:** Business Office

**AUTHORIZED BY:**  **CONTACT:**  **EXT.** 2148  
**John Cirello, Director** **Bob Briggs, Finance Manager**

Agenda Date 2/27/07 Regular  Consent  Work Session  Briefing   
Public Hearing – 1:30  Public Hearing – 7:00

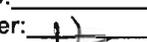
**MOTION/RECOMMENDATION:**

Approve and Authorize Chairman to execute the Amendment to the Conditional Utility Agreement and Exhibit "G" for Sewer service with Metropolis Homes Co., Inc.

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**BACKGROUND:**

The Amendment to the Conditional Utility Agreement and Exhibit "G" for Sewer Service states the terms and conditions under which the Developer of Tesoro Townhomes will construct a 12" force main. Staff has identified the need to oversize the off-site facilities in this portion of the County's service area based on work performed by our master planning engineers. Cost associated with oversizing of these facilities to 12" from a 4" force main for approximately 900 lineal feet is \$41,396.00. Adequate funds for oversizing are available for this project in Water and Sewer Oversizings. District 5 - Carey

Reviewed by:  
Co Atty: N/A  
DFS: \_\_\_\_\_  
Other:   
DCM:   
CM:   
File No. CEAS01

**AMENDMENT TO CONDITIONAL UTILITY AGREEMENT FOR SEWER SERVICE**

**THIS AMENDMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is to that certain Agreement made and entered into on the 12th day of May, 2006, between **METROPOLIS HOMES CO., INC.** whose address is 128 East Colonial Drive, Orlando, Florida 32801, hereinafter referred to as "DEVELOPER," 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**, the DEVELOPER and COUNTY entered into the above referenced Agreement on May 12, 2006, to set forth the terms and conditions upon which the COUNTY will provide and DEVELOPER will receive central sewer service for the property owned by DEVELOPER; and

**WHEREAS**, the parties desire to amend the Agreement so as to enable both 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 by a writing executed by the parties in a manner equal in dignity to the execution of the Agreement,

**NOW, THEREFORE**, in consideration of the mutual understandings and agreements contained herein, the parties agree to amend the Agreement as follows:

1. Section 35 of the Agreement is amended to read:

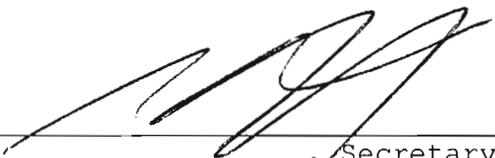
**SECTION 35. CONFLICTS.** In the event of a conflict between this DEVELOPER's Agreement and the Sewer Agreement attached hereto as Exhibit "G," the specific provisions of the Sewer Agreement attached as Exhibit "G" shall govern.

2. Exhibit "G" - Sewer Agreement is attached hereto and hereby incorporated in the Agreement.

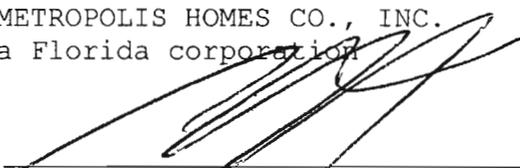
3. Except as herein modified, all terms and conditions of the Agreement shall remain in full force and effect for the term of this Agreement, as originally set forth in said Agreement.

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

ATTEST:

  
\_\_\_\_\_, Secretary

METROPOLIS HOMES CO., INC.  
a Florida corporation

By:   
\_\_\_\_\_  
MANSOUR M. SABETI, President

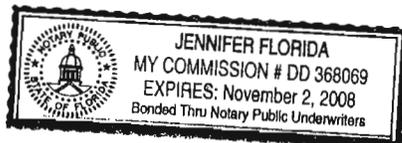
(CORPORATE SEAL)

Date: JANUARY 16, 2007

I HEREBY CERTIFY that, on this 16 day of January, 2007, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared M. Max Sabeti and MANSOUR M. SABETI, as President and Secretary, respectively, of Metropolis Homes Co., Inc., a corporation organized under the laws of the State of Florida, who are personally known to me or who have produced \_\_\_\_\_ as identification and that they did take an oath. They acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of the corporation, and that they also affixed thereto the official seal of the corporation.

NOTARY SEAL

  
\_\_\_\_\_  
Notary Public Signature



BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

ATTEST:

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

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.

As authorized for execution by the Board  
of County Commissioners at its \_\_\_\_\_,  
200\_\_, regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney

SED/sb/lpk  
12/20/06 1/9/07

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Attachment:  
Exhibit "G" - Sewer Agreement

Exhibit "G"

Sewer Agreement

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **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," and **METROPOLIS HOMES CO., INC.**, whose address is 128 East Colonial Drive, Orlando, Florida 32801, hereinafter referred to as "OWNER".

**W I T N E S S E T H:**

**WHEREAS**, OWNER owns certain real property in Seminole County, Florida, hereinafter referred to as "the Property," as described in Exhibit "A," and set forth on the survey in Exhibit "B," attached to the Conditional Utility Agreement For Sewer Service; and

**WHEREAS**, OWNER requires a sewer service system to serve future residential development to be located on the Property; and

**WHEREAS**, OWNER is willing to construct an off-site sewer system and other appurtenant facilities to serve the Property and convey the sewer system and appurtenant facilities to the COUNTY in return for the considerations set forth herein; and

**WHEREAS**, OWNER has executed a Conditional Utility Agreement For Sewer Service to which this Agreement shall be attached as Exhibit "G" and together the Conditional Utility Agreement For Sewer Service and this Agreement (hereinafter referred to as the "Agreement") comprise the complete and entire sewer agreement between the parties,

**NOW, THEREFORE,** in consideration of the premises, the parties mutual covenants and agreements, including the cost of designing, permitting, constructing, conveying and accepting the sewer system as hereinafter defined, the Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

**Section 1. Recitals.** The foregoing premises are true and correct and form a material part of this Agreement upon which the parties have relied.

**Section 2. Definitions.** As used in this Agreement, certain terms and phrases appearing herein are defined as follows:

(a) Sewer System. The term "Sewer System" shall refer to and mean the construction of an off-site sewer transmission system on Orange Boulevard to construct approximately 900 linear feet of a twelve inch (12") force main extending between Missouri Avenue and Oregon Avenue including transmission mains, stub-outs, pipes, valves, fittings and other such pertinent facilities as are routinely placed in public rights-of-way or dedicated easements, excluding service connections. All permits and engineering design and construction contracts, plans and specifications for the Sewer System as and when filed and approved by the County's Planning Department, Development Review Division, are incorporated herein by reference.

(b) Service Area. The term "Service Area" shall mean and consist of the Property which is to be developed and which is described in Exhibit "A" of the Conditional Utility Agreement for Sewer Service.

**Section 3. Agreement to Construct and Convey.** OWNER agrees to construct and convey to the COUNTY the Sewer System and the COUNTY, in reliance on the representations and warranties of OWNER contained herein and subject to the terms and conditions of this Agreement, agrees to accept the Sewer System from OWNER and pay for the cost of construction thereof upon completion of the Sewer System. OWNER represents and warrants that:

(a) OWNER shall cause the Sewer System to be designed, permitted and constructed. Any Federal, State or local permitting fees and approvals, if applicable, shall be the responsibility of the OWNER; provided, however, that the COUNTY shall be responsible for the right-of-way use permit fee, if applicable, the Florida Department of Environmental Protection permit fee and the underground utility permit fee, all related to the off-site sewer main only.

(b) Subject to the terms of this Agreement, the OWNER shall commence construction of the Sewer System within eight (8) months and complete construction within sixteen (16) months of execution of the Agreement.

(c) OWNER's agreement to construct and convey the Sewer System is in addition to OWNER's agreement to construct, install and convey, at OWNER's sole cost and expense, all other sewer transmission, collection and meter facilities necessary to provide sewer service to OWNER's Property pursuant to the Conditional Utility Agreement For Sewer Service.

**Section 4. Conveyance.** In addition to the provisions set forth in Section 11, Title to Installations Constructed by Developer, of the

Conditional Utility Agreement for Sewer Service, the following shall apply:

(a) Conveyance shall be closed at the Seminole County Services Building within fifteen (15) days of the vote relating to conveyance by the Board of County Commissioners.

(b) Real and personal property taxes, if any, shall be the responsibility of the OWNER and prorated as of the date of closing. Any corrective instruments required in connection with perfecting OWNER's title shall be prepared and recorded by OWNER prior to closing.

**Section 5. Construction of Installations.** In addition to the provisions of Section 9 of the Conditional Utility Agreement for Sewer Service, the OWNER shall provide COUNTY with the proposed utility contractor's firm name, key agents, address and brief description of previous applicable jobs so that the COUNTY may approve said contractor prior to establishment of a pre-construction conference. Approval shall not be unreasonably withheld by the COUNTY.

**Section 6. Payment.** COUNTY shall reimburse OWNER for the actual costs incurred in construction of the Sewer System as described in Section 2(a) herein. The anticipated construction costs are set forth in Attachment "A" attached hereto and incorporated herein and shall not exceed FORTY-ONE THOUSAND THREE HUNDRED NINETY-SIX AND NO/100 DOLLARS (\$41,396.00). Actual costs shall include all design, permitting, construction, labor and materials associated with construction of the Sewer System. To be eligible for reimbursement by COUNTY, the costs incurred by OWNER must be reviewed and written

consent obtained from COUNTY by OWNER prior to incurring the costs. These costs shall be based on the contractor's invoices and OWNER's engineer's certification of the invoices and in accordance with cost and pay estimates approved by COUNTY. Payment shall be made as follows:

(a) Notwithstanding any other provision of this Agreement, the total repayment amount shall not exceed the amount of OWNER's contract to construct the Sewer System together with change orders as approved by the COUNTY in writing.

(b) The COUNTY shall reimburse the OWNER for approved costs of design, permitting and construction of the Sewer System upon completion of construction. Payments shall be by COUNTY warrant within forty-five (45) days of receipt and approval by COUNTY of the bill of sale, contractor invoices, engineer certification of completion, Florida Department of Environmental Protection acceptance and clearance, final COUNTY inspection and COUNTY receipt of as-builts related to off-site sewer main in accordance with this Agreement.

**Section 7. Risk of Loss.** OWNER shall bear the risk of loss or damage to the Sewer System prior to conveyance and acceptance by the COUNTY. OWNER shall restore at its expense all loss or damage within a reasonable period of time.

**Section 8. Approval of County.** As a condition precedent to COUNTY's obligations hereunder, the OWNER shall deliver to COUNTY for COUNTY's prior review and approval all plans, specifications, drawings, financial and cost projections, construction and other contracts and corresponding prices prepared for the OWNER regarding

the Sewer System. Under no circumstances shall the review by the COUNTY impose on the COUNTY any liability to the OWNER for faulty design or construction of the Sewer System. It is acknowledged by the parties that the COUNTY review contemplated in this Section is only for the purpose of determining the operational acceptability of the Sewer System and for no other purpose whatsoever. Nothing in this Section shall relieve OWNER of its obligations under this Agreement, the Conditional Utility Agreement for Sewer Service, or other applicable COUNTY regulations and procedures.

**Section 9.** Access to Site. The COUNTY shall provide to the OWNER rights of access and easements over property belonging to or controlled by the COUNTY for installation of the Sewer System as required for the completion of the approved Sewer System and in accordance with the approved plans and specifications. County Development Fees related to development of the adjacent subdivision including underground utilities fees and right-of-way use fees, shall not be waived by this Section.

**Section 10.** Operation and Maintenance. Upon transfer, the COUNTY shall be responsible for operation and maintenance of the Sewer System and shall assure service to all present and future connections to the Property; provided, however, that the COUNTY's obligation shall be consistent with and not greater than the COUNTY's obligation to provide such sewer service to the public generally.

**Section 11.** Indemnification. OWNER agrees to hold harmless and indemnify the COUNTY, its Commissioners, officers, employees and agents from and against any and all claims, losses, damages, or

lawsuits for damages, including any and all court costs and attorney fees arising from or related to the performance of this Agreement between OWNER and COUNTY.

OWNER further agrees to hold harmless and indemnify the COUNTY, its Commissioners, officers, employees and agents from and against any and all claims, losses, damages or lawsuits for damages resulting from:

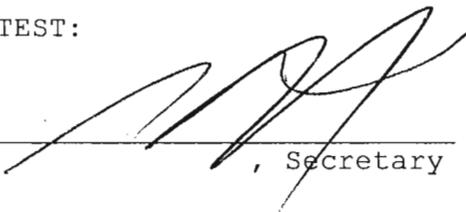
(a) any misrepresentation of a material fact contained in this Agreement or the exhibit attached hereto; or

(b) any breach of warranties made by OWNER pursuant to this Agreement.

**Section 12. County's Liability.** Notwithstanding everything contained herein to the contrary, OWNER understands and agrees that the obligations of the COUNTY, including, but not limited to, the payment of costs to be made hereunder to OWNER shall not be deemed to be or constitute a pledge of the full faith and credit of the general revenues, including non-ad valorem tax revenues of the COUNTY.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
, Secretary

(CORPORATE SEAL)

OWNER

By:   
\_\_\_\_\_  
, President

Date: JAN 3, 2007

SIGNATURE BLOCK CONTINUED ON PAGE 8

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

ATTEST:

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

By: \_\_\_\_\_  
CARLTON HENLEY, 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.

\_\_\_\_\_  
County Attorney

SED/sb  
12/20/06

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Attachment:

Attachment "A" - Construction Costs

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**TESORO TOWNHOMES**

**EXHIBIT 'A'**

**LEGAL DESCRIPTION**

**LOT 1 AND LOT 8 LESS THE NORTH 188.07 FT. OF SAID LOT 8, BLOCK 5,  
SANFORD FARMS, AS RECORDED IN PLAT BOOK 1, PAGES 127 AND 128,  
PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA.**



# Florida Engineering Group, Inc.

Civil • Environmental • Land Development

## ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Tesoro Townhomes

Off-Site Force Main

F.E.G. PROJECT NO. 04-060

### 4" Force Main

ITEM #	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	SUBTOTAL
FM.1					
FM.1	4" DR18 Force Main	L.F.	526.00	\$14.00	\$7,364.00
FM.2	4" Directional Bore	L.F.	374.00	\$45.00	\$16,830.00
FM.3	4" Plug Valve	EA.	1.00	\$325.00	\$325.00
FM.4	4" Plug	EA.	1.00	\$125.00	\$125.00
FM.5	4" Air Relief Valve	EA.	1.00	\$350.00	\$350.00
FM.6	4" M.J. Adapter	EA.	2.00	\$95.00	\$190.00
FM.7	4"x12" Wet-Tap Assembly	EA.	1.00	\$1,500.00	\$1,500.00

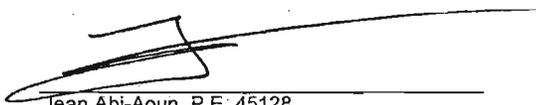
<b>TOTAL</b>	<b>\$26,684.00</b>
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### 12" Force Main

ITEM #	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	SUBTOTAL
FM.1					
FM.1	12" DR18 Force Main	L.F.	526.00	\$35.00	\$18,410.00
FM.2	12" Directional Bore	L.F.	374.00	\$115.00	\$43,010.00
FM.3	12" Plug Valve	EA.	1.00	\$685.00	\$685.00
FM.4	12" Plug	EA.	1.00	\$175.00	\$175.00
FM.5	12" Air Relief Valve	EA.	1.00	\$800.00	\$800.00
FM.6	12" M.J. Adapter	EA.	2.00	\$250.00	\$500.00
FM.7	12"x12" Wet-Tap Assembly	EA.	1.00	\$4,500.00	\$4,500.00

<b>TOTAL</b>	<b>\$68,080.00</b>
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4" Force Main Installation Cost	\$26,684.00
12" Force Main Installation Cost	\$68,080.00
<b>Difference</b>	<b>-\$41,396.00</b>

  
 Jean Abi-Aoun, P.E. 45128  
 Florida Engineering Group, Inc.  
 Certificate No. EB-0006595

11/2/06