

## **SEWER OVER-SIZING REFUNDING AGREEMENT**

THIS SEWER OVER-SIZING REFUNDING AGREEMENT (this "Agreement") is made and entered into this by and between the CITY OF LAS VEGAS, a Nevada municipal corporation and TRI POINTE HOMES NEVADA, INC., a Nevada Corporation ("Developer"). The City and Developer are sometimes collectively referred to herein as the "Parties".

This Agreement is effective on the date of approval by the City and Developer, whichever date is later, as long as approval by one is within sixty (60) calendar days of approval by the other (the "Effective Date").

### **RECITALS**

WHEREAS, the City is the governmental entity to which is delegated the responsibility of providing sewer services within its corporate boundaries; and

WHEREAS, the limited financial resources of the City prevent the immediate expansion of its municipal sewer system as development is occurring; and

WHEREAS, the Administrative Code of the City permits the expansion of such municipal sewer system through the use of private funds at the discretion of the City; and

WHEREAS, said Code further provides that the City may reimburse a developer who constructs, at the request of the City, a sewer trunk line of a size which is in excess of the size that would otherwise be required to serve its development for a portion of the costs which such developer incurs in constructing such over-sized sewer trunk line, or both; and

WHEREAS, the Developer is engaged in the development of that certain parcel of real property as a residential subdivision (the "Development") and said Development has been approved by the City; and

WHEREAS, the City and Developer have entered into that certain Off-Site Improvement Agreement that provides for the installation by the Developer of off-site improvements (the "Improvements") and for performance security in order to secure the faithful performance of all of the terms, conditions, and covenants under the Off-Site Improvement Agreement (the "Performance Security"); and

WHEREAS, it is the intent of the Parties hereto to provide for, as part of the Improvements, the construction and installation of such a size which is in excess of the size that would otherwise be required to serve the Development (the "Sewer Project") and the reimbursement to the Developer of that portion of the costs of the entire Sewer Project that are attributable to constructing and installing it at a size which is in excess of the size that would otherwise be required to serve the Development.

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises and agreements which are hereinafter set forth, the Parties agree as follows:

### **AGREEMENT**

#### **SECTION I-DEFINITIONS**

"*Agreement*" shall have the meaning set forth in the first paragraph of this Agreement.

"*Developer*" shall have the meaning set forth in the first paragraph of this Agreement.

"*Developer Parties*" shall have the meaning set forth in Section XI of this Agreement.

"*Development*" shall have the meaning set forth in the fifth Recital.

*“Effective Date”* shall have the meaning set forth in the second paragraph of this Agreement.

*“Improvements”* shall have the meaning set forth in the sixth Recital.

*“NRS”* shall mean the Nevada Revised Statutes, as they may be amended by the Nevada State Legislature from time to time.

*“Off-Site Improvement Agreement”* means the agreement between the City and the Developer obligating the Developer and successor owners of the parcel(s) to install improvements that are defined by approved off-site improvement plans and the approved performance bond estimate.

*“Over-Sizing”* means the difference between the diameter of the Sewer Project, had the Sewer Project been constructed and installed at the size which would otherwise be required to serve the Development, and the diameter of the Sewer Project, at the request of the City, that is actually constructed and installed.

*“Performance Security”* shall have the meaning set forth in the sixth Recital.

*“Plans and Specifications”* means the engineering designs, drawings and specifications which give a detailed description of the complete construction and installation of the Sewer Project, including the Over-Sizing, which plans and specifications have heretofore been submitted to, and approved by, the City. Copies of the plans and specifications are on file with the City's Department of Building and Safety.

*“Sewer Project”* shall have the meaning set forth in the seventh Recital.

*“Uniform Standard Specifications”* means the latest edition of those publications entitled, “Uniform Standard Specifications for Public Works Construction, Off-Site Improvements, Clark County Area, Nevada, Third Edition” adopted by the City of Las Vegas, June 16, 1993, and “Design and Construction Standards for Wastewater Collection Systems, 1991” adopted by the City of Las Vegas, August 21, 1991.

## **SECTION II—OBLIGATIONS OF DEVELOPER**

### **1. Covenant of Installation.**

A. The Developer hereby agrees to construct and install the entire Sewer Project, in accordance with the plans and specifications, at its sole cost and expense, subject to the right of the City to designate the type of appurtenances and any other relevant matter which it considers is necessary for the construction of its municipal sewer system provided, however, that the City agrees to reimburse the Developer for the costs which the Developer incurs in the Over-Sizing as provided herein. In this connection, it is acknowledged that the limits of the Sewer Project are designated on **Exhibit A** which is attached hereto and by this reference made a part hereof.

B. The Sewer Project shall include all materials and equipment, such as sewer lines, manholes, lateral stub-outs and other appurtenances which are constructed and installed between the boundary of the Development which is nearest to the terminal point of the City's existing sewer system and such terminal point as is more particularly shown on **Exhibit A**.

C. The Developer agrees to perform all survey and design work which is necessary for the construction and installation of the Sewer Project, in accordance with the plans and specifications, at its sole cost and expense without any right of reimbursement from the City.

### **2. Basis for Estimated Costs.**

A. It is acknowledged that the estimated costs for which the Developer is entitled to reimbursement for constructing and installing the Over-Sizing which are provided for in Section IV hereof are based upon written bids for the installation of the Sewer Project which the Developer has obtained from at least three (3) contractors who are duly licensed by the State of Nevada and are

acceptable to the City. The City may waive the requirement of written bids if good cause for such waiver is shown by the Developer, in which event the estimated costs of the Over-Sizing will be established in a manner which is mutually acceptable to the City and to the Developer. The City and Developer acknowledge that the contract for the construction and installation of the Over-Sizing are exempt from the provision of Chapters 338, 332, and 339 of NRS pursuant to NRS 338.0115.

### 3. Installation Standards.

A. The Developer agrees that the Sewer Project will be installed in a good and workmanlike manner according to the plans and specifications, the Uniform Standard Specifications and the Design and Construction Standards for Wastewater Collection Systems.

## **SECTION III—RIGHT OF REIMBURSEMENT**

1. It is understood and agreed by the Parties that the Developer shall be reimbursed for the costs which it incurs in constructing and installing the Sewer Project. It is specifically understood, however, that all of the costs and expenses of installing a sewer system within the Development are the sole responsibility of the Developer without any right of reimbursement from the City.

## **SECTION IV COSTS OF OVER-SIZING AND AMOUNT REFUNDABLE**

1. It is agreed by the Parties hereto that the costs of the construction and installation of the Over-Sizing which are subject to reimbursement under the terms of this Agreement have been determined pursuant to the calculations set forth on **Exhibit B** which is attached hereto and by this reference made a part hereof.

2. It is acknowledged that the estimated costs of the construction and installation of the Over-Sizing which are set forth on **Exhibit B** are based upon estimates which have been obtained by the Developer and approved by the City and represent the maximum amount to which the Developer will be entitled to reimbursement for the construction and installation of the Sewer Project. All other costs and expenses which the Developer incurs in connection with the Sewer Project shall be the responsibility of the Developer. Additionally, if the actual costs of the construction and installation are less than the estimated costs thereof, the Developer shall be entitled to reimbursement only for such actual costs.

3. Pursuant to the City's Administrative Code, 2019 Edition, if Developer encounters additional costs involving rock or hard material excavation, the Developer shall notify City's Building Department, Off-site Inspection and Testing Division. The City's designated representative will visit the work site and document the amount of hard material excavation encountered. The Developer may request an amendment to this Agreement based on the amount of hard material excavation encountered. As a prerequisite for City consideration for payment for rock or hard material excavation, notification must be provided to the City prior to commencement of any work where additional reimbursement is requested by Developer.

4. The City will not consider additional reimbursement for other costs incurred by Developer that are not specifically contemplated herein, including by way of example and not limitations, plans and specification errors and omissions, time delays of any type, cost increases due to tariffs or economic shortages/inflation, or unanticipated labor cost increases.

## **SECTION V—OBLIGATIONS OF CITY**

1. The City will reimburse the Developer, within thirty (30) calendar days after the City's acceptance of the Sewer Project, for that portion of the costs thereof which are attributable to the Over-Sizing, as the same is determined in accordance with Section IV above. The City's acceptance of the Sewer Project shall not (i) relieve the Developer of any obligation under the Off-Site Improvement Agreement; (ii)

relieve the Developer of the obligation to maintain the Sewer Project until final acceptance of all Improvements; and (iii) obligate the City to release, in part or in full, the Performance Security until final acceptance of all Improvements.

2. As a condition precedent to any such reimbursement, the Developer must submit to the City a written request for payment, a statement of completion that the Sewer Project was constructed pursuant to the approved plans and specifications, a lien release from the Developer's contractor(s) and materials suppliers for all materials and labor, a statement from all subcontractors affirming that they have received payment in full, an itemized invoice reflecting actual costs paid and a bill of sale transferring the ownership of the sewer line and appurtenances to the City.

3. The City agrees, by its final acceptance of the Improvements and completion by Developer of all obligations under the Off-Site Improvement Agreement, to be responsible for the operation and maintenance thereof, except as is otherwise provided in Section X hereof which pertains to repairs that are necessitated by any defective material or faulty workmanship in the construction and installation of the Sewer Project or the faulty design thereof.

#### **SECTION VI—TIME OF PERFORMANCE**

1. This Agreement shall become effective upon the execution hereof and the right of the Developer to reimbursement hereunder shall cease and terminate with respect to the Over-Sizing, when the Developer has received full reimbursement of the costs which are incurred therefor.

#### **SECTION VII—LIMITATION ON AMOUNT OF REIMBURSEMENT**

1. The right of reimbursement for the Over-Sizing shall be limited to the estimated costs of the Over-Sizing which are set forth on Exhibit B or the actual costs which are attributable to the Over-Sizing, whichever is the lesser, subject to adjustment contemplated in Section IV, Paragraph 3.

#### **SECTION VIII—GUARANTEE OF RIGHT OF ACCESS**

1. In order to guarantee that the City will have access to any and all portions of the Sewer Project for the purpose of maintaining and repairing the same, the Developer hereby agrees that:

A. Except as is otherwise provided in Paragraph C hereof, the Developer will dedicate to the City an easement over and across, or fee title to, as requested by the City, a strip of land which is a minimum of twenty (20) feet in width, extending the length of the Sewer Project, and which contains the Sewer Project; and

B. If the Sewer Project is installed on privately owned lands, other than lands which are owned by the Developer, the Developer will obtain and dedicate to the City an easement over and across, or fee title to, as requested by the City, a strip of land which is a minimum of twenty (20) feet in width, extending the length of the Sewer Project, and which contains the Sewer Project; and

C. If the land in which the Sewer Project is installed will become part of a street which will be dedicated for public use, as a part of the Development, the right of access shall be included in the dedication of that street; and

D. Any such dedication shall provide therein that no building, structure, tree, shrub or other improvement or obstacle may be placed in or near the area which is dedicated thereby in such a manner as to interfere with the use of such strip of land in accordance with the provisions hereof, and any easement which is conveyed to the City shall additionally provide for the right of the City to operate, maintain, repair, replace or relocate the Sewer Project or to alter the size, number of pipelines or other appurtenances which are installed therein.

## **SECTION IX—RIGHT OF INSPECTION**

1. The City shall have the right, but not the obligation, at any time and from time to time to inspect the construction and installation of any part of the Sewer Project. The Developer agrees that any inspection of the installation of the Sewer Project which is conducted by the City hereunder or the City's subsequent acceptance of the Sewer Project shall not relieve or release the Developer from its responsibility to correct any defective material or faulty workmanship, or both, in the construction and installation of the Sewer Project or any problem which results from the negligent design thereof as provided in Section X hereof.

## **SECTION X—CORRECTION OF DEFECTIVE MATERIALS, FAULTY WORKMANSHIP AND NEGLIGENT DESIGN**

1. The Developer hereby accepts full responsibility for the quality of the materials and workmanship in the construction and installation of the Sewer Project and for the design thereof and covenants and agrees, for a period of one (1) year after the City's final acceptance of the Improvements and upon notification by the City, to correct any defective material or faulty workmanship, or both, in the construction and installation of the Sewer Project and any problem which results from the negligent design of the Sewer Project. In the event that the Developer fails or refuses to make any such correction, the City shall have the right, but not the obligation, to repair the Sewer Project and the Developer hereby agrees to reimburse the City for the costs which it incurs in so doing.

## **SECTION XI—INDEMNITY**

1. Developer shall protect, indemnify, defend, and hold harmless the City, its officers, employees, and agents from any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, attorney fees and court costs which the City, its officer or employees may suffer, or which may be sought against, recovered from or obtainable against the City, its officers, employees, or agents as a result of, by reason of, or arising out of the negligent acts or omissions of the Developer, its officers, contractors, subcontractors, agents (collectively, the "Developer Parties") or anyone employed or acting on behalf of the Developer Parties, in fulfillment or performance of the terms, conditions, or covenants of this Agreement.

The Developer's obligations in this Section XI do not extend to any claims, damages, losses, expenses, suits, actions, decrees, judgement, attorney fees, and court costs that are a result of the City, its officers, employees, or agents, negligence or willful misconduct.

## **SECTION XII—OWNERSHIP OF SEWER PROJECT**

1. Upon the completion of the Sewer Project, and as a condition precedent to the acceptance thereof by the City, the Developer agrees to furnish to the City a good and sufficient Bill of Sale acceptable to the City Attorney which (i) includes all of the sewer lines and appurtenances which are components of the Sewer Project, (ii) attests to the fact that all of such components are free and clear of all liens and other encumbrances and (iii) conveys to the City all right, title, and interest in and to the Sewer Project.

2. It is understood and agreed that the Sewer Project shall thereafter, upon its acceptance by the City, become and remain the exclusive property of the City.

## **SECTION XIII—RIGHT OF TERMINATION**

1. Except for the obligation of the City which is provided for in subsection 2 of this Section XIII, the City shall have the right to terminate this Agreement at any time prior to Developer commencing construction on the Sewer Project, with or without cause, upon thirty (30) days' prior written notice to the Developer as provided in Section XIV.

2. Any funds which have been expended by or on behalf of the Developer for the construction and installation of the Sewer Project as of the date of the Developer's receipt of such written notice shall be reimbursed to the Developer as hereinabove provided.

#### SECTION XIV—MISCELLANEOUS

1. ASSIGNMENT. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors, legal representatives and assigns.

2. NOTICE. All notices required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address for such party, or (c) one (1) day after deposit with a nationally recognized air courier service such as FedEx. Either party hereto may change its address by giving ten (10) days advance notice to the other party as provided herein. E-mail address and phone and fax numbers, if listed, are for information only.

City: Attn: Engineering Manager—Sewer  
Department of Public Works  
495 S. Main Street, 5<sup>th</sup> Floor  
Las Vegas, NV 89101

Licensee: Attn: Jim Jordano, Vice President of Land Development  
Tri Pointe Homes Nevada, Inc.  
4675 W. Teco Avenue, Suite 115  
Las Vegas, NV 89118

3. SURVIVAL. Termination shall not release either party from any liability or obligation under this Agreement, whether indemnity or otherwise, resulting from the acts, omissions or events happening prior to the date of termination, or, if later, the date when the Improvements are complete.

4. RECORDATION. It is understood and agreed that neither party shall record this Agreement in the public real property records of Clark County, Nevada.

5. CHOICE OF LAW/VENUE/ATTORNEY'S FEES. Any litigation related to this Agreement shall be brought and prosecuted exclusively in the Eighth Judicial District Court of Clark County, Nevada. The governing law shall be the laws of the State of Nevada. In the event that at any time either party institutes any action or proceeding against the other relating to the provisions of this Agreement or any termination or default hereunder, then the unsuccessful party shall be responsible for the reasonable expenses of such action including attorneys' fees, incurred therein by the successful party. **TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE PARTIES SHALL WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT.**

6. NO THIRD-PARTY BENEFICIARIES. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

7. FORCE MAJEURE. Neither party shall be in breach of this Agreement if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, terrorist acts, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, epidemics or

pandemics, quarantine restrictions, or other causes beyond such party's reasonable control (excepting financial inability and hardship). Notwithstanding the foregoing, the occurrence of such events shall not excuse such obligations as this Agreement may otherwise impose on the party to obey, remedy, or avoid such event.

8. SEVERABILITY. It is agreed that, if any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect. It is the intention of the Parties that, if any provision of this Agreement is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

9. NO CLAIMS OF ADVERSE POSSESSION/PRESCRIPTIVE EASEMENT/ABANDONMENT. Licensee acknowledges and agrees that it does not have and will not assert at any time any claim of adverse possession or prescriptive easement with respect to any portion of the Right-of-Way nor any claim that by entering this Agreement, the City has abandoned or vacated the Right-of-Way.

10. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. No supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

11. TIME CALCULATIONS. All references to "days" herein shall mean calendar days unless otherwise stated. The terms "business days" shall mean Monday thru Thursday (the City is closed on Friday), exclusive of holidays observed in Nevada enumerated in Nevada Revised Statute 236.015. Should the calculation of any of the various time periods provided for herein result in an obligation becoming due on a Friday, Saturday, Sunday or legal holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day.

12. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories. Documents executed and faxed or scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such faxed or scanned signatures having the same legal effect as original signatures.

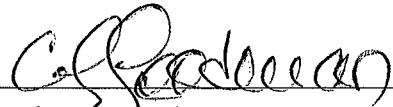
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SEWER OVER-SIZING REFUNDING AGREEMENT

Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date as defined herein.

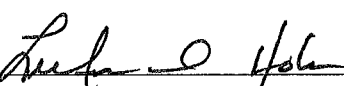
CITY OF LAS VEGAS

By:   
Carolyn G. Goodman, Mayor

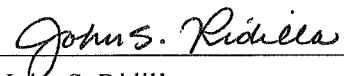
Date of City Council Approval:

June 1, 2022

ATTEST:

By:  6/1/22  
LuAnn Holmes, City Clerk Date

APPROVED AS TO FORM:

By:  4/21/22  
John S. Ridilla Date  
Chief Deputy City Attorney

TRI POINTE HOMES NEVADA, INC.

By:   
Printed Name: Jim Jordano

Title: Vice President of Land Development

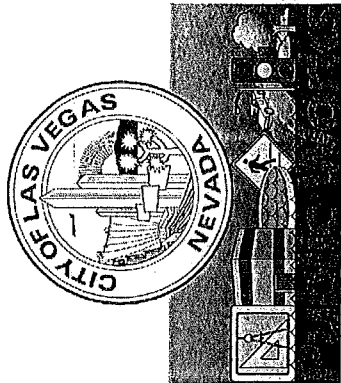
Date: 4/19/22



**EXHIBIT A**

**SEWER PROJECT LIMITS**

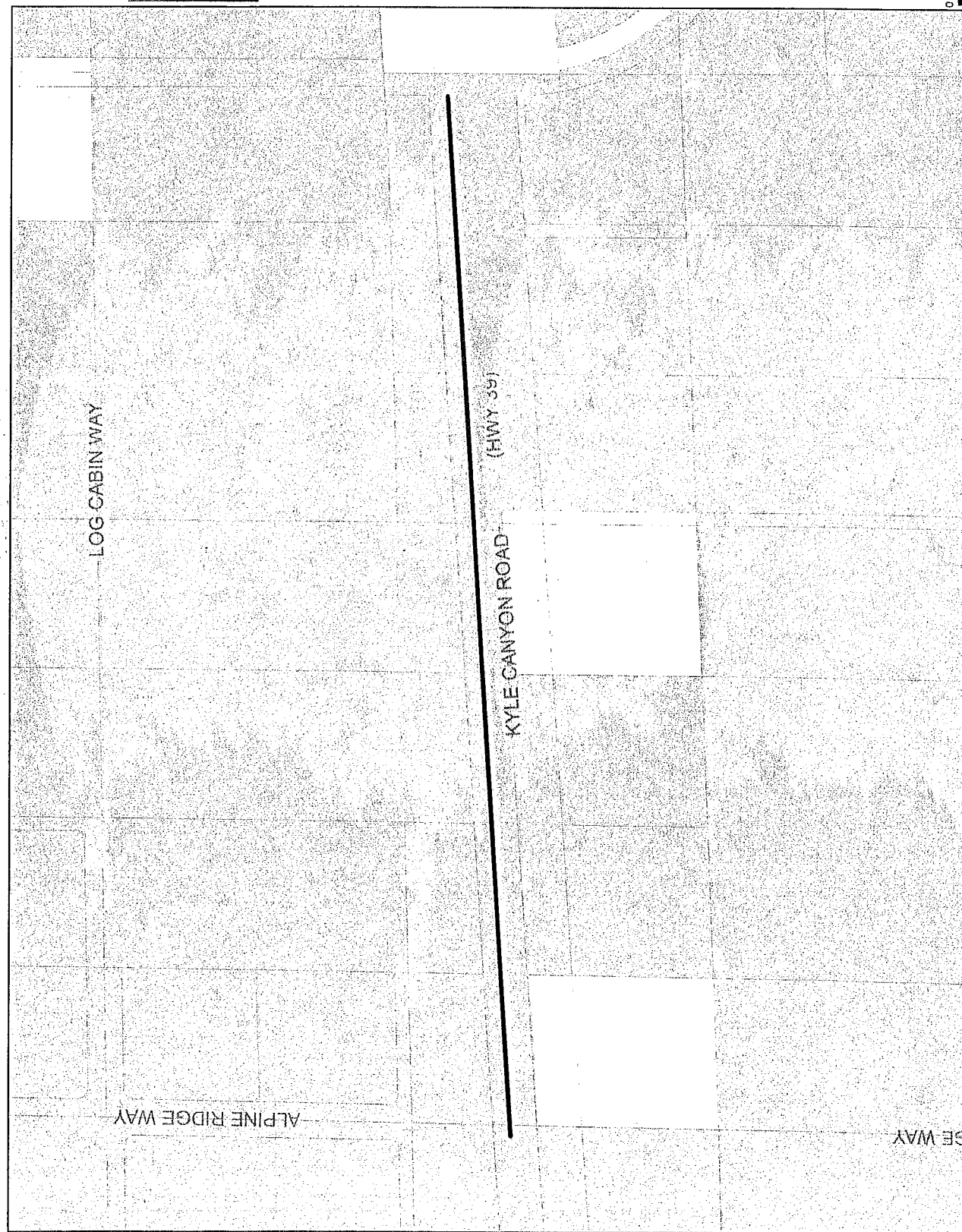
**[SEE ATTACHED]**



## EXHIBIT A

### KYLE CANYON OFFSITE SEWER OVERSIZING REFUNDING AGREEMENT

— Oversizing Sewer Limits



**EXHIBIT B**

OVER-SIZING ESTIMATED REIMBURSEMENT SUMMARY

[SEE ATTACHED]

EXHIBIT "B"  
COST OF CONSTRUCTION

1. Developer: Tri Point Homes Nevada, Inc.  
4675 W. Teco Ave, Suite 115  
Las Vegas, NV 89118
2. Development: Kyle Canyon Offsite Sewer, L21-02191, 307V1241
3. Engineer: Westwood Professional Services  
5725 W. Badura Ave, Suite 100  
Las Vegas, NV 89118
4. Basis for Over-sizing Costs - Prices for the over-sizing portion of this agreement are based upon the lowest cost differential as submitted by:

Bravo Underground, Inc.  
1183 Center Point Dr  
Henderson, NV 89074

Over-sizing Portion of the Project - 8-inch to 21-inch

Mobilization	LS	1	\$11,150.00	\$11,150.00
21" SDR-35	LF	2378	\$294.00	\$699,132.00
72" Lined Manholes	EA	6	\$32,800.00	\$196,800.00
48" Manhole	EA	1	\$9,200.00	\$9,200.00
8" SDR-35 W Cap	LF	48	\$247.00	\$11,856.00
Barricades/Trench Safety/Barrier Rail	LS	1	\$70,300.00	\$70,300.00
Video and Testing	LS	1	\$15,647.00	\$15,647.00

Total Over-Size Item Costs \$1,014,085.00

Project Costs without Over-sizing

Mobilization	LS	1	\$11,150.00	\$11,150.00
8" SDR-35	LF	2511	\$184.00	\$462,024.00
48" Manholes	EA	7	\$9,200.00	\$64,400.00
Barricades/Trench Safety/Barrier Rail	LS	1	\$70,300.00	\$70,300.00
Video and Testing	LS	1	\$8,414.00	\$8,414.00

Total Costs without Over-Sizing \$616,288.00

Pipe Oversizing Reimbursable Amount \$397,797.00