

**AMENDED AND RESTATED
TRACE PUBLIC IMPROVEMENT DISTRICT
ACQUISITION AND REIMBURSEMENT AGREEMENT**

This Amended and Restated Trace Public Improvement District Acquisition and Reimbursement Agreement (this “Reimbursement Agreement”) is executed between San Marcos, Texas (“City”) and Highpointe Trace, LLC, a California limited liability company (including its Designated Successors and Assigns, the “Owner”) to be effective as of September ____, 2018 (each individually referred to as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, on October 20, 2015, the City Council of the City of San Marcos, Texas (the “City Council”) passed and approved Resolution No. 2015-145R (the “Creation Resolution”) authorizing the creation of the Trace Public Improvement District (the “District”) covering approximately 417.63 acres of land shown on a map thereof in the Creation Resolution (the “District Property”); and

WHEREAS, on October 16, 2016, the City Council and Owner entered into that certain Trace Public Improvement District Reimbursement Agreement (the “Original Agreement”); and

WHEREAS, on October 20, 2015, the City Council approved that certain Trace Public Improvement District Financing Agreement by and between the Owner and the City, which was amended and restated on even date herewith pursuant to that certain Amended and Restated Trace Public Improvement District Financing Agreement (as it may be amended from time to time, the “PID Finance Agreement”); and

WHEREAS, Special Assessments in the amount of \$11,175,000.00 (“Initial Special Assessments”) were previously levied against the Assessed Property within the District for the construction of Public Improvements pursuant to Ordinance No. 2015-146;

WHEREAS, the Parties have agreed that the annual installments on the Initial Special Assessments in the amount of \$830,500 that were due and payable on January 31, 2018 (“2018 Annual Installments”) will be due and payable prior to the distribution of the Preliminary Official Statement;

WHEREAS, additional Special Assessments in the amount of \$10,925,000.00 (the “Additional Special Assessments”) were levied against the Assessed Property within the District for the construction of the Public Improvements by the City Council in accordance with the 2018 Amended and Restated Trace Public Improvement District Service and Assessment Plan (as the same may be amended or updated from time to time, the “SAP”) which was approved by the City Council on August 7, 2018. For purposes herein, Initial Special Assessments and the Additional Special Assessments shall be collectively referred to herein as the “Special Assessments”; and

WHEREAS, the SAP provides that Owner is required to prepay Special Assessments in the amount of \$2,600,000 (“Mandatory Prepayment Amount”) levied against certain parcels within the District (Business Park and Retail Parcels) on the earlier of (i) the date of issuance of the Additional Major Improvement PID Bonds, or (ii) August 31, 2022;

WHEREAS, Owner has completed a portion of the Public Improvements which are more particularly described in the SAP and has commenced the construction of a portion of the Public Improvements which are more particularly described in the SAP; and

WHEREAS, all revenue received and collected by the City from the Special Assessment (excluding any reasonable collection and/or administrative costs, the “Special Assessment Revenue(s)”) shall be deposited into an account held by the City that is segregated from all other funds of the City and used solely for the purposes set forth herein (the “Project Fund”). For the avoidance of doubt, the 2018 Annual Installments and the Mandatory Prepayment Amount shall be included within the definition of “Special Assessment Revenues”; and

WHEREAS, the Parties intend that the Repayment Amount (defined below) shall be reimbursed to Owner from (i) the Project Fund and (ii) the net proceeds of Major Improvement PID Bonds issued by the City and secured by the Project Fund; and

WHEREAS, the City and Owner desire that the Original Agreement become null and void and be replaced and superseded by this Agreement as set forth, herein;

WHEREAS, capitalized terms not defined herein shall have the meaning ascribed to them in the PID Finance Agreement.

NOW THEREFORE, FOR VALUABLE CONSIDERATION THE RECEIPT AND ADEQUACY OF WHICH ARE ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The recitals to this Reimbursement Agreement are true and correct, and are incorporated as part of this Reimbursement Agreement for all purposes.
2. Project Fund. The City shall cause the Special Assessment Revenues to be deposited into the Project Fund.
3. Repayment Amount. Subject to the terms, conditions, and requirements contained herein, the City agrees to reimburse the Owner, and the Owner shall be entitled to receive from the City, the amount equal to the Actual Cost of the Public Improvements (the “Repayment Amount”) plus interest on the unpaid balance in accordance with the terms of this Reimbursement Agreement until _____, 2048 (the “Maturity Date”); provided, however, the Repayment Amount shall not exceed \$15,500,000 plus the Mandatory Prepayment Amount. The Repayment Amount shall be payable to the Owner upon completion of the Public Improvements, solely from: (i) the Special Assessment Revenues deposited in the Project Fund; or (ii) the net proceeds (after payment of costs of issuance) of the Major Improvement PID Bonds issued by the City

and secured by the Special Assessment Revenues; or (iii) a combination of items (i), and (ii). The Repayment Amount is authorized by the Act, was approved by the City Council, and represents the total costs to be assessed against the Assessed Property within the District for the Public Improvements which, upon completion, will be dedicated in fee or by easement and accepted by the City. The unpaid Repayment Amount shall bear simple interest per annum commencing upon the completion of the Public Improvements at the rate of (x) 6.00 % for years one through five and (y) 5.5% for years six through the Maturity Date or until Major Improvement PID Bonds are sold. If any portion of the Repayment Amount remains unpaid after the City issues its Initial Major Improvement PID Bonds, the interest rate paid to the Owner shall be the same as the interest rate on the Major Improvement PID Bonds; provided, however, that such rate shall not exceed 5.5%. The interest rate has been approved by the City Council and complies with the Act.

4. Unpaid Balance. The Repayment Amount, plus interest as described above (collectively, the “Unpaid Balance”), is payable to the Owner and secured under this Reimbursement Agreement solely as described herein. No other City funds, revenue, taxes, income, or property shall be used even if the Unpaid Balance is not paid in full at the Maturity Date. The City acknowledges and agrees that until the Unpaid Balance is paid in full, subject to the Repayment Amount authorized in Section 3, the obligation of the City to use the Project Fund to pay the Unpaid Balance to the Owner is absolute and unconditional and the City does not have, and will not assert, any defenses to such obligation.
5. City Collection Efforts. The City will use all reasonable efforts to receive and collect, or cause to be received and collected, Special Assessment Revenues (including the foreclosure of liens resulting from the nonpayment of the Special Assessments created by the Major Improvement PID Bonds, the Special Assessments or other charges due and owing under the SAP), and upon receipt and collection, immediately deposit the same into the Project Fund. Notwithstanding its collection efforts, if the City fails to receive all or any part of the Special Assessments, such failure and inability shall not constitute default by the City under this Reimbursement Agreement. This Reimbursement Agreement and/or the Major Improvement PID Bonds shall never give rise to or create:
 - a. a charge against the general credit or taxing powers of the City or any other taxing unit; or
 - b. a debt or other obligation of the City payable from any source of revenue, taxes, income, or properties of the City other than from the Special Assessments or from the net proceeds of the Major Improvement PID Bonds.
6. Process for Payment of the Repayment Amount. The Owner may submit (but not more frequently than monthly) to the City a written request for payment from the Project

Fund in the form attached hereto as Schedule 1 (each a “Payment Request”) to disburse a portion of the Repayment Amount to pay for the Actual Cost of constructing the applicable Public Improvements not previously reimbursed. Each Payment Request shall designate the Public Improvements (or portion thereof) to which the Payment Request pertains. This process will continue until the Unpaid Balance is paid in full, whether through the issuance of Major Improvement PID Bonds or not, subject to the Repayment Amount authorized in Section 3.

7. Issuance of Major Improvement PID Bonds. The City intends to issue Major Improvement PID Bonds to reimburse the Developer for the Unpaid Balance. If the outstanding Major Improvement PID Bonds are less than the outstanding Special Assessments, then, in addition to receiving the net proceeds of the Major Improvement PID Bonds, the Owner may continue to receive Special Assessments Revenue up to the Unpaid Balance, subject to the Repayment Amount authorized in Section 3.
8. Termination. Subject to the Repayment Amount authorized in Section 3, once all payments paid to the Owner under this Reimbursement Agreement (including net proceeds of the Major Improvement PID Bonds) equal the Unpaid Balance, this Reimbursement Agreement shall terminate; provided, however that if on the Maturity Date, after application of the net proceeds of any Major Improvement PID Bonds, any portion of the Unpaid Balance remains unpaid, such Unpaid Balance shall be canceled and for all purposes of this Reimbursement Agreement shall be deemed to have been conclusively and irrevocably PAID IN FULL; provided further that if any Assessment Revenue remain due and payable and are uncollected on the Maturity Date, such Assessment Revenue, when, as, and if collected after the Maturity Date, shall be applied to any amounts due in connection with outstanding Major Improvement PID Bonds, and then paid to the Owner and applied to the Unpaid Balance.
9. Non-Recourse Obligation. The obligations of the City under this Reimbursement Agreement are non-recourse and payable only from (i) Special Assessments, or (ii) net proceeds of Major Improvement PID Bonds; and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. None of the City or any of its elected or appointed officials or any of its employees shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of this Reimbursement Agreement or their acts or omission under this Reimbursement Agreement.
10. No Defense. Following the City’s inspection and approval of the Public Improvements, there will be no conditions or defenses to the obligation of the City to use the proceeds of the Major Improvement PID Bonds to pay the Unpaid Balance and to pledge the Special Assessment Revenues as security for such bonds, other than the City's right to pay costs of issuance of such bonds and/or other costs incurred by the City relating to

the Public Improvements. As applicable, the City hereby agrees to transfer such portion of the Special Assessment Revenues to the Trustee under the applicable Indenture.

11. No Waiver. Nothing in this Reimbursement Agreement is intended to constitute a waiver by the City of any remedy the City may otherwise have outside this Reimbursement Agreement against any person or entity involved in the design, construction, or installation of the Public Improvements.
12. Governing Law, Venue. This Reimbursement Agreement is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Reimbursement Agreement. In the event of a dispute involving this Reimbursement Agreement, venue for such dispute shall lie in any court of competent jurisdiction in San Marcos, Texas.
13. Notice. Any notice required or contemplated by this Reimbursement Agreement shall be deemed given at the addresses shown below: (i) when delivered by a national company such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person was the named addressee; or (ii) 24 hours after the notice was deposited with the United States Postal Service, Certified Mail, Return Receipt Requested. Any Party may change its address by delivering written notice of such change in accordance with this section.

If to City: City of San Marcos
Attn: Chief Financial Officer
630 East Hopkins
San Marcos, TX 78666
Facsimile: 512-396-2683

If to Owner: Highpointe Trace, LLC
Attn.: Timothy D. England
2 Venture Suite 350
Irvine, California 92618
Facsimile: 949-472-0198

With a copy to:
Metcalf Wolff Stuart & Williams, LLP
Attn: Steven C. Metcalfe
221 W. 6th, Suite 1300
Austin, Texas 78701
Facsimile: 512.404.2244

14. Invalid Provisions. If any provision of this Reimbursement Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions, and the remainder of this Reimbursement Agreement shall remain in full force and effect.

15. Exclusive Rights of Owner. Owner's right, title and interest into the payments of Repayment Amounts, as described herein, shall be the sole and exclusive property of Owner (or its Transferee) and no other third party shall have any claim or right to such funds unless Owner transfers its rights to its Unpaid Balance to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Subject to the terms of Section 16 hereof, Owner has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Owner's right, title, or interest under this Agreement including, but not limited to, any right, title or interest of Owner in and to payment of its Unpaid Balance (a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"). Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer.

16. Assignment.

- a. Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Reimbursement Agreement with respect to all or part of the Property from time to time to any third party. Owner shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Reimbursement Agreement and shall have no further liability with respect to this Reimbursement Agreement for the part of the Project so assigned.
- b. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.
- c. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.
- d. "Designated Successors and Assigns" shall mean (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Reimbursement Agreement pursuant to this Section 16; (ii) any entity which is the successor by merger or otherwise to all or substantially all of Owner's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner.

17. Failure; Default; Remedies.

- a. If either Party fails to perform an obligation imposed on such Party by this Reimbursement Agreement (a “Failure”) and such Failure is not cured after written notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a “Default.” Upon the occurrence of a Failure by a non-performing Party, the other Party shall notify the non-performing Party in writing specifying in reasonable detail the nature of the Failure. The non-performing Party to whom notice of a Failure is given shall have at least 30 days from receipt of the notice within which to cure the Failure; however, if the Failure cannot reasonably be cured within 30 days and the non-performing Party has diligently pursued a cure within such 30-day period and has provided written notice to the other Party that additional time is needed, then the cure period shall be extended for an additional period (not to exceed 90 days) so long as the non-performing Party is diligently pursuing a cure.
- b. If the Owner is in Default, the City’s sole and exclusive remedy shall be to seek specific enforcement of this Reimbursement Agreement. No Default by the Owner, however, shall: (1) affect the obligations of the City to use the net proceeds of Major Improvement PID Bonds as provided in Section 6 of this Reimbursement Agreement; or (2) entitle the City to terminate this Reimbursement Agreement. In addition to specific enforcement, the City shall be entitled to attorney’s fees, court costs, and other costs of the City to obtain specific enforcement.
- c. If the City is in Default, the Owner’s sole and exclusive remedies shall be to: (1) seek a writ of mandamus to compel performance by the City; or (2) seek specific enforcement of this Reimbursement Agreement.

18. Miscellaneous.

- a. **THIS AMENDED AND RESTATED TRACE PUBLIC IMPROVEMENT DISTRICT REIMBURSEMENT AGREEMENT RESTATES AND REPLACES THE TRACE PUBLIC IMPROVEMENT DISTRICT REIMBURSEMENT AGREEMENT DATED EFFECTIVE OCTOBER 18, 2016 (Resolution No. 2016-149R).**
- b. The failure by a Party to insist upon the strict performance of any provision of this Reimbursement Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party shall not constitute a waiver of such Party’s right to insist and demand strict compliance by such other Party with the provisions of this Reimbursement Agreement.
- c. The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Owner to enforce its remedies under this Reimbursement Agreement.
- d. Nothing in this Reimbursement Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Owner any rights, remedies, or claims under or by reason of this Reimbursement Agreement, and all covenants, conditions, promises, and

agreements in this Reimbursement Agreement shall be for the sole and exclusive benefit of the City and the Owner.

- e. This Reimbursement Agreement may be amended only by written agreement of the Parties.
- f. This Reimbursement Agreement may be executed in counterparts, each of which shall be deemed an original.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this Reimbursement Agreement to be executed as of September ____, 2018, to be effective as of the date written on the first page of this Reimbursement Agreement.

City of San Marcos, Texas

By: _____
Name: _____
Title: _____

[Signatures Continue on Next Page]

HIGHPOINTE TRACE, LLC,

a California limited liability company

By: Highpointe Posey, L.P., a California
limited partnership, Its Managing
Member

By: Highpointe Investments, Inc.,
a California corporation, Its
General Partner

By: _____
Timothy D. England, SVP

Exhibit A

Public Improvements

The Public Improvements described in the SAP.

Schedule 1

Form of Payment Request

(Design – Trace)

_____ (“**Construction Manager**”)
hereby requests payment for the percentage of design costs completed (the “**Design Costs**”) described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Amended and Restated Trace Public Improvement District Financing Agreement between Highpointe TRACE, LLC, a California limited liability company, and the City of San Marcos (the “**City**”), dated as of September __, 2018 (as may be amended from time to time, the “**Finance Agreement**”). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The design work described in Attachment A has been completed in the percentages stated therein.
3. The true and correct Design Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
4. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed design work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.
5. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Design Costs for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date : _____

[Construction Manager Signature Block to be
added]

APPROVAL BY THE CITY

The Design described in Attachment A has been reviewed, verified and approved by the City Construction Representative. Payment of the Design Costs are hereby approved.

Date: _____

CITY OF SAN MARCOS, TEXAS

By: _____

ATTACHMENT A TO CERTIFICATION OF PAYMENT (DESIGN)

<u>Description of Design Work</u>	<u>Percentage of Design Work Completed under this Certification for Payment</u>	<u>Design Costs</u>	<u>Total Percentage of Design Work Completed</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – bills paid affidavit]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – receipts]

FORM OF CERTIFICATION FOR PAYMENT
(Construction – Trace)

_____ (“**Construction Manager**”)
hereby requests payment of the Actual Cost of the work described in Attachment A attached hereto (the “**Draw Actual Costs**”). Capitalized undefined terms shall have the meanings ascribed thereto in the Amended and Restated Trace Public Improvement District Financing Agreement between Highpointe TRACE, LLC and the City of San Marcos, Texas (the “**City**”), dated as of September __, 2018 (as may be amended from time to time, the “**Finance Agreement**”). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
3. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.
4. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Draw Actual Costs of each Segment for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date : _____

[Construction Manager Signature Block to
Be inserted]

JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

Project Engineer

APPROVAL BY THE CITY

The Draw Actual Costs of each Segment described in Attachment A has been reviewed, verified and approved by the City Construction Representative of the City. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: _____

CITY OF SAN MARCOS, TEXAS

By: _____

ATTACHMENT A TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

<u>Segment</u>	<u>Description of Work Completed under this Certification for Payment</u>	<u>Draw Actual Costs</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[bills paid affidavit – attached]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[receipts – attached]