

AMENDED AND RESTATED
TRACE PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

BETWEEN

HIGHPOINTE TRACE, LLC, a California limited liability company

AND

CITY OF SAN MARCOS, TEXAS

**AMENDED AND RESTATED
TRACE PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT**

This Amended and Restated Trace Public Improvement District Financing Agreement (this “**Agreement**”), dated as of September 18, 2018, (the “**Effective Date**”), is entered into between Highpointe Trace, LLC, a California limited liability company (including its Designated Successors and Assigns, the “**Owner**”), Pacesetter Homes, LLC, a Texas limited liability company (including its Designated Successors and Assigns, “**Pacesetter**”), Buffington Texas Classic Homes, LLC, a Texas limited liability company (including its Designated Successors and Assigns, “**Buffington**”), and the City of San Marcos, Texas (the “**City**”), acting by and through its duly authorized representative. Buffington and Pacesetter are sometimes collectively referenced in this Agreement as the “**Consenting Parties**” and the Owner and the City are sometimes collectively referenced in this Agreement as the “**Parties**,” or, each individually, as the “**Party**.”

Recitals:

WHEREAS, Owner and the Consenting Parties own a total of approximately 417.63 acres of land located within the City which is more particularly described in Exhibit “B” attached hereto and made a part hereof (the “**Property**”).

WHEREAS, it is intended that the Property will be developed as a mixed use development (the “**Project**”);

WHEREAS, the City Council authorized the formation of the Trace Public Improvement District (the “**District**”) on October 20, 2015, pursuant to Resolution No. 2015-145R in accordance with the PID Act (as defined in Exhibit “A”);

WHEREAS, the City and Owner have entered into the Trace Public Improvement District Financing Agreement, dated October 20, 2015 (the “**Original Financing Agreement**”);

WHEREAS, the City and Owner have entered into the Trace Public Improvement District Reimbursement Agreement, dated October 18, 2016 (the “**Original Reimbursement Agreement**”);

WHEREAS, the City has adopted Assessment Ordinance No. 2016-42 on October 18, 2016, adopting a service and assessment plan (the “**Original Service and Assessment Plan**”), levying the Initial Special Assessments in the amount of \$11,175,000.00 on the Property (the “**Original Assessment Ordinance**”);

WHEREAS, the 2018 Amended and Restated Service and Assessment Plan was approved by the City on August 7, 2018, amends and replaces the Original Service and Assessment Plan (as amended or updated from time to time the “**2018 SAP**”);

WHEREAS, the City has also approved the levy of additional assessments in the amount of \$10,925,000.00 pursuant to Assessment Ordinance No: _____, dated October 16, 2018 (the “**Additional Assessment Ordinance**”);

WHEREAS, the City and Owner wish to amend and restate the Original Financing Agreement to reflect the approval of, among other things, the 2018 SAP and the levy of additional assessments on the Property pursuant to the Additional Assessment Ordinance;

WHEREAS, the terms of annexation and zoning of the Property have been agreed to by the City and the Owner pursuant to the Trace Planned Development District agreement (as amended from time to time the “**PDD**”) which was approved by the City contemporaneously with the Original Financing Agreement;

WHEREAS, the Agreement Regarding Fire Station (defined herein) was also approved by the City on even date of the Original Financing Agreement;

WHEREAS, the City and Owner have entered into that certain Amended and Restated Trace Public Improvement District Reimbursement Agreement on even date herewith (as the same may be amended from time to time the “**Amended Reimbursement Agreement**”) which supersedes and replaces the Original Reimbursement Agreement;

WHEREAS, the Owner proposes to construct certain improvements over time to serve Property located in the District (or portions thereof) and transfer some or all of those improvements to the City or City in accordance with the terms and provisions of this Agreement;

WHEREAS, the City has adopted the 2018 SAP, approved the Original and Additional Assessment Ordinance, and levied Special Assessments on all of the property located within the District and intends to issue bonds in two or more series for payment of costs associated with the acquisition of the Public Improvements (as defined herein) included in the 2018 SAP, as such plan may be amended from time to time; and

WHEREAS, the City has determined that it is in its best interests to contract with the Owner for the construction and acquisition of the Public Improvements, which will result in the efficient and effective implementation of the 2018 SAP.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I. SCOPE OF AGREEMENT

This Agreement establishes provisions for the apportionment, levying, and collection of Special Assessments on the Property (Article II), the Construction of Public Improvements to be acquired by the City (Article III), funding of Public Improvements through the issuance of PID Bonds (as hereinafter defined), acquisition and maintenance of Public Improvements within the District (Article IV), and the issuance of bonds for the financing of the Public Improvements

(Article V). Definitions used herein are set forth in Exhibit "A" attached hereto and made a part hereof and in the 2018 SAP.

ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS

Section 2.01. Preliminary Matters

(a) On October 20, 2015, the City authorized the formation of the District by Resolution No. 2015-145R. The District includes all of the Property.

(b) Although the Property may be developed in phases, it is anticipated that the Public Improvements will benefit the entire District. As a result, it is currently contemplated that there will be (i) one initial series of bonds issued for the entire District, the "**Initial Major Improvement PID Bonds**" (as further defined in Exhibit "A") and (ii) bonds issued for the entire District at a future date if the Initial Major Improvement PID Bonds are less than the amount of the outstanding Special Assessments, the "**Additional Major Improvement PID Bonds**" (as further defined in Exhibit "A"). It is hereby acknowledged that the Special Assessments have already been levied by the Initial Assessment Ordinance and the Additional Assessment Ordinance and, subject to the Amended Reimbursement Agreement, will be used to secure the Initial Major Improvement PID Bonds and the Additional Major Improvement PID Bonds.

(c) The 2018 SAP was approved by the City on August 7, 2018 and amends and restates the Original Service and Assessment Plan. The 2018 SAP will be updated and amended by the City or its Administrator at least once per year, and submitted for the City Council's review and approval. Notwithstanding the above, it is hereby understood and acknowledged by the Parties that the 2018 SAP may need to be amended over time if there are any changes in the Public Improvements in accordance with the terms set forth in this Agreement. Nevertheless, the basic terms and methodology described in the 2018 SAP will generally apply to the Initial Major Improvement PID Bonds and the Additional Major Improvement PID Bonds.

(d) Special Assessments on any portion of the Property will bear a direct proportional relationship to and be less than or equal to the special benefit of the Public Improvements within the District.

(e) Special Assessments on any portion of the Property may be adjusted in connection with Major Improvement PID Bond issues or otherwise so long as the Special Assessments are determined in accordance with the 2018 SAP.

(f) The Property may also be subject to an Owner's Association assessment.

(g) Prior to the issuance of the PID Bonds, the Owner shall provide an Appraisal to the City for the City's review and approval covering the portion of the Property that are subject to the Special Assessments. The City shall select the appraiser, in consultation with the Owner and the Underwriter, and all reasonable fees of the Appraisal shall be paid by the Owner.

Section 2.02. Apportionment and Levy of Assessments

The City has levied Special Assessments on the Property in accordance herewith and with the 2018 SAP (as such plan is amended from time to time) and the Assessment Ordinance as approved by the City Council in accordance with Article IV hereof. The City's apportionment and levy of Special Assessments has been made in accordance with the PID Act.

Section 2.03. Collection of Assessments

(a) Subject to the terms and conditions of this Agreement, the City covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied pursuant to the Original Assessment Ordinance and Additional Assessment Ordinance in accordance with the 2018 SAP during the term of this Agreement in the manner and to the maximum extent permitted by applicable law and subject to Section 2.06(b) of this Agreement. The City covenants and agrees that to the extent permitted by applicable law and Section 2.06(b) of this Agreement, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until the Major Improvement PID Bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full, defeasance, or otherwise. The City shall use best efforts to collect the Special Assessments consistent with the City's policies and standard practices applicable to the collection of City ad valorem taxes and assessments.

(b) It is hereby acknowledged that Special Assessments can be used for the following purposes: (i) prior to or after completion of the applicable Public Improvements, but prior to the issuance of Major Improvement PID Bonds for those Public Improvements, Owner will be reimbursed for Actual Costs associated with those Public Improvements from Special Assessments collected by the City and held by the City pursuant to the Amended Reimbursement Agreement and (ii) after Major Improvement PID Bonds are issued with respect to any given completed Public Improvements, the Special Assessments will be used first to secure such Major Improvement PID Bonds and second, to the extent any such Special Assessments are remaining after payments are made on the Major Improvement PID Bonds, to reimburse Owner for any Actual Costs not reimbursed by the Major Improvement PID Bonds. Any reimbursement obligation to Owner under the Amended Reimbursement Agreement or as provided above will be subordinate to payment of the applicable Major Improvement PID Bonds.

(c) Notwithstanding anything to the contrary contained herein or in the 2018 SAP, once Major Improvement PID Bonds have been issued the Special Assessment Revenues collected annually from the Property will be deposited in the Pledged Revenue Fund and thereafter transferred in the priority as set forth in the Indenture.

(d) Further notwithstanding anything to the contrary contained herein, the City covenants and agrees to use best efforts to contract with the Hays County Tax Assessor's office for the collection of the Special Assessments such that the Special Assessments will be included on the ad valorem tax bill(s) for the Property and will be collected as part of and in the same manner as ad valorem taxes.

Section 2.04. Approval and Recordation of Special Assessments through Landowner Agreement

A Landowner Agreement (herein so called) in which the Owner (who was the only Landowner within the District at the time the District was created) approved and accepted the apportionment of Special Assessments and the levy of the Special Assessments by the City was entered into by the Owner and the City on October 18, 2016. The Landowner Agreement (a) evidences the Owner's intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Special Assessments; and (b) provides that the liens created by the levy of the Special Assessments are a first and prior lien on the Property, subject only to liens for ad valorem taxes of the State, County, City, school district, road district and special improvement district.

Section 2.05 Reimbursement Of Owner-Expended Costs

(a) Owner's right, title and interest into the payments of unreimbursed Actual Costs, 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 unreimbursed Actual Costs to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Subject to the terms of Section 8.03 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 unreimbursed Actual Costs (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.

Section 2.06. Mandatory Prepayment Amount / 2018 Annual Installment

(a) Prior to the earlier of (i) the date of issuance of the Additional Major Improvement PID Bonds or (ii) August 31, 2022, the Owner shall prepay Special Assessments in the amount of \$2,600,000.00 that are applicable to the parcels within the District identified as "Retail" and "Business Park" within the PDD (the "Mandatory Prepayment Amount").

(b) In the event the Mandatory Prepayment Amount is not paid in accordance with Section 2.06(b) above, the City shall reduce the outstanding Special Assessments on the District by \$2,600,000.00 for all assessed properties within the District on a pro rata basis based on the amount of outstanding Special Assessments.

(c) The payment of the Mandatory Prepayment Amount which results in a direct reimbursement to the Owner shall not count against any cap on the maximum net PID Bond proceeds as described in Section 5.01(b) of this Agreement.

(d) Prior to the distribution of any Preliminary Offering statement/Preliminary Limited Offering Memorandum for the Initial Major Improvement PID Bonds, the Owner shall pay \$830,500.00 in Annual Installments that were not billed on January 31, 2018.

Section 2.07. Obligations Secured by Pledged Revenues

THE MAJOR IMPROVEMENT PID BONDS ARE SPECIAL OBLIGATIONS OF THE CITY SECURED SOLELY BY PLEDGED REVENUES (AS DEFINED IN THE INDENTURE) AND ANY OTHER FUNDS HELD UNDER THE INDENTURE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE PID BONDS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY AND ARE NOT SECURED EXCEPT AS PROVIDED IN THE INDENTURE. THE OWNERS OF THE BONDS SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND ANY OTHER FUNDS HELD UNDER THE INDENTURE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE OWNERS OF THE BONDS TO PAY THE BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES.

ARTICLE III. CONSTRUCTION AND ACQUISITION

Section 3.01. Acquisition of Public Improvements

The Owner will dedicate some of the applicable Public Improvements identified in the 2018 SAP to the City upon completion of Public Improvements, and the City will accept dedication of such Public Improvements after confirming that the Public Improvements have been completed in accordance with this Agreement and the Regulatory Requirements. Some of the Public Improvements identified in the 2018 SAP will be dedicated to the City by easement and maintained by an Owner's Association.

Section 3.02. Designation of Construction Manager, Construction Engineers

(a) The City hereby designates the Owner, or its assignees, as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, supervision of construction, and the bidding and letting of construction contracts for the construction of the Public Improvements in accordance with the provisions of this Article III and in accordance with any requirements of the City and, as applicable, City approved plans.

(b) Except as otherwise provided herein, inspection of the construction of any Public Improvement being conveyed to the City will be by City Construction Representative or its designee. Any City inspection of a Public Improvement being conveyed to the City will be in accordance with any requirements of the City.

(c) The Owner shall be entitled to a separate Construction Management Fee for the construction of each Segment, unless Owner contracts with a third party to act as the Construction Manager with respect to construction of the Public Improvements. The Construction Management Fee is part of Actual Costs and will be paid as part of the Actual Costs.

(d) The City shall cooperate with the Owner in connection with its services as Construction Manager.

(e) The Owner shall designate the consulting engineers for the Public Improvements for the compensation specified by the Owner.

Section 3.03. Designation of Construction Manager Subcontractor

The City acknowledges and agrees that Owner may subcontract out all or some of the duties of Construction Manager to a third party. Owner may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Public Improvements or distinct Segments thereof provided that such designee has the technical capacity, experience and expertise to perform such construction management duties or obligations. Owner may make such designation under the same terms as set out in Section 8.03(a) of this Agreement.

Section 3.04. Maintenance of Project, Warranties

Unless otherwise provided for, the Owner (or the Owner's Association, as applicable) shall maintain each Public Improvement (or Segment thereof) in good and safe condition until such Public Improvement (or Segment thereof) is accepted by the City. The City's acceptance of Public Improvements shall be in accordance with the City's standard rules and procedures for the type of improvements being constructed. Prior to such acceptance, the Owner shall be responsible for performing any required maintenance on such Public Improvement. On or before the acceptance by the City of a Public Improvement (or Segment thereof), the Owner shall assign to the City all of the Owner's rights in any warranties, guarantees, maintenance obligations, or other evidences of contingent obligations of third persons with respect to such Public Improvement (or Segment thereof).

Section 3.05. Sales and Use Tax Exemptions

(a) The parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Public Improvements to be acquired by the City are exempt under the Texas Tax Code from sales and use taxes levied by the State of Texas, or by any County, City, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309.

(b) The City will provide such certifications to the Owner and/or to suppliers and contractors as may be required to assure the exemptions claimed herein.

(c) The City and the Owner shall cooperate in structuring the construction contracts for the Public Improvements to comply with requirements (including those set forth in Texas Tax Code Section 151.309) for exemption from sales and use taxes.

Section 3.06. Exemption from Public Bidding

It is agreed that the PID will be exempt from any public bidding or other purchasing and procurement policies pursuant to Texas Local Government Code Section 252.022(a)(9) which states that a project is exempt from such policies if “paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.”

ARTICLE IV. PAYMENT FOR PUBLIC IMPROVEMENTS

Section 4.01. Overall Requirements

(a) The City shall not be obligated to provide funds for any Public Improvement except from the proceeds of the Major Improvement PID Bonds or from Special Assessments as provided in Section 2.03(b) above; provided however, the City and the Owner have executed that certain Developer Participation Agreement dated as of May 15, 2018 in which the City has agreed to reimburse the Owner for certain wastewater infrastructure costs. The City makes no warranty, either express or implied, that Special Assessments or the proceeds of the Major Improvement PID Bonds available for the payment of the Actual Cost of the Public Improvements to be constructed for or acquired by the City will be sufficient for the construction or acquisition of all of those particular Public Improvements. The Parties anticipate that the Actual Cost to construct the Public Improvements may be greater than the proceeds of the Major Improvement PID Bonds or from Special Assessments available for Public Improvements and any shortfalls will be funded by the Owner, subject to Section 2.03(b).

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period, the City shall be responsible for all operation and maintenance of such Public Improvements, including all costs thereof and relating thereto except for such Public Improvements conveyed to the City by easement, and which will be maintained by an Owner's Association.

(c) The Public Improvements are intended to be constructed pursuant to the Amended Reimbursement Agreement and paid for by the Owner prior to the issuance of Major Improvement PID Bonds intended to fund such Public Improvements. Such funding of the Public Improvements will be governed by the Amended Reimbursement Agreement and Section 4.02 of this Agreement.

Section 4.02. Payments for Completed Public Improvements

The costs of all Public Improvements will be initially financed through the Amended Reimbursement Agreement. Pursuant to the terms of the Amended Reimbursement Agreement the Owner shall convey, and the City shall acquire, any given Public Improvement for the Actual

Cost, after such Public Improvement is completed and has been accepted by the City. The general process for funding of Public Improvements is as follows:

(a)

(1) The City and Owner have executed the Amended Reimbursement Agreement for the Public Improvements which provides for Special Assessments that will reimburse the Owner for Actual Costs incurred in connection with the Public Improvements until the Major Improvement PID Bonds are issued in amount necessary to reimburse Owner for the Actual Costs of the Public Improvements less any amounts already reimbursed to Owner pursuant to the Amended Reimbursement Agreement, as provided in Section 2.03(b). Additional Major Improvement PID Bonds may be issued in the event the outstanding Special Assessments exceed the amount of outstanding Initial Major Improvement PID Bonds.

(2) The City will approve any necessary updates to the Assessment Ordinances and the 2018 SAP at the time of issuance of any Major Public Improvement PID Bonds.

(3) Owner has constructed, or will construct (or cause the construction of), the Public Improvements.

(4) The City will collect the Special Assessments on the Property. Upon collection of such Special Assessments, the City will place such Special Assessments in a designated account separate from the City's other accounts. As set forth in Section 2.03(b), the funds within the account will be used to reimburse Owner for the Actual Cost of the Major Public Improvements pursuant to terms of the Amended Reimbursement Agreement.

(5) Pursuant to the Bond Issuance Request letter sent by the Owner to the City dated February 9, 2018, the Owner has requested that the City issue the Initial Major Improvement PID Bonds, subject to meeting the requirements and conditions stated herein and State law, to reimburse the Owner for Actual Cost of the Public Improvements (or Segments thereof completed at the time of bond issuance) less any amounts already reimbursed to Owner pursuant to the Amended Reimbursement Agreement. The City shall commence the documentation and preparation for sale of the PID Bonds within 30 days of a Bond Issuance Request from the Owner. The City acknowledges and agrees that the Initial Major Improvement PID Bonds are expected to be issued by November 30, 2018.

(b) To receive funds from the proceeds of the Major Improvement PID Bonds to pay the Actual Cost of a given Public Improvement, the Owner shall deliver to the City and the Project Engineer (i) documentation evidencing the Actual Cost, (ii) documentation evidencing the acceptance of the Public Improvement by the City or Owner's execution of an easement granting the City and the public the right of access to and use of such Public Improvement (as set forth in the PDD), and (iii) an assignment of the warranties and guaranties, if applicable, for such Public Improvement, in form reasonably acceptable to the City. Nothing herein shall prohibit Owner from being reimbursed for design costs associated with a Public Improvement.

(c) At the time of the closing of the Initial Major Improvement PID Bonds, Owner shall, concurrently with the initial draw from the proceeds of the PID Bonds submit to the City a Closing Disbursement Request to the City and the Trustee to be reimbursed for (i) the Unpaid Balance under the Amended Reimbursement Agreement and (ii) any other qualified and permitted costs approved by the City (collectively, the **“Owner Expended Funds”**). The total amount of Initial Owner Expended Funds approved by the City pursuant to this Section shall be referred to herein as the **“Reimbursement Payment.”** Prior to disbursement of proceeds of the Initial Major Improvement PID Bonds, the City will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of the Initial Major Improvement PID Bonds, Owner shall be reimbursed an amount equal to the Initial Reimbursement Payment and such amount shall be transferred to the Trustee for distribution to the Owner or the Owner’s designee.

(d) It is contemplated that Additional Major Improvement PID Bonds may be issued after the Initial Major Improvement PID Bonds are issued in order to reimburse the Owner for the Public Improvements in the Project that were not completed at the time of the Initial Major Improvement PID Bonds. The Additional Major Improvement PID Bonds may also be used to cover the Actual Cost of Public Improvements that were completed at the time the Initial Major Improvement PID Bonds were issued but were not fully reimbursed by the Initial Major Improvement PID Bonds. If the outstanding Initial Major Improvement Bonds plus the outstanding Additional Major Improvement PID Bonds are equal to the outstanding Special Assessments, then Owner’s right to receive any portion of the Assessments shall automatically terminate and thereafter all Special Assessments would be used to pay debt service to the Major Improvement PID Bonds. However, if the outstanding Initial Major Improvement Bonds plus the outstanding Additional Major Improvement PID Bonds are less than the outstanding Special Assessments, then Owner shall continue to receive a portion of the Special Assessments Revenue from the segregated account. The process to receive funds from the proceeds of the Additional Major Improvement PID Bonds shall be the same as the process for the Initial Major Improvement PID Bonds. Notwithstanding the above, the Parties acknowledge and agree that Owner shall deliver to the City a Bond Issuance Request for Additional Major Improvement PID Bonds. The City shall commence the documentation and preparation for sale of the Additional Major Improvement PID Bonds within 30 days of receipt of the Bond Issuance Request.

ARTICLE V. PID BONDS

Section 5.01. Issuance of PID Bonds

(a) Subject to the terms and conditions set forth in this Section V, the City intends to pay for the Public Improvements, by issuing Major Improvement PID Bonds in one or more series. The City will use diligent, reasonable and good faith efforts, subject to meeting the requirements and conditions stated herein and State law, to issue Major Improvement PID Bonds within four months after receiving a Bond Issuance Request from Owner, and subject to the completion of the applicable Public Improvements contemplated to be paid for by the Major Improvement PID Bonds to be issued, provided that Owner can reasonably demonstrate to the City and its financial advisors that (i) the applicable Future PID Bond Test has been satisfied and (ii) there is sufficient security for the Major Improvement PID Bonds, based upon the bond

market conditions existing at the time of such proposed sale. The planning and documentation of a Major Improvement PID Bond issuance shall begin no later than 120 days in advance of the expected completion date of the construction of the Public Improvements to be reimbursed by such Major Improvement PID Bond issuance, as evidenced by a Bond Issuance Request. Notwithstanding the above, the Parties agree that the Developer has made a Bond Issuance Request and City intends to issue Initial Major Improvement PID Bonds on or before November 30, 2018.

(b) The aggregate principal amount of Major Improvement PID Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Public Improvements, (ii) required reserves and capitalized interest of not more than 12 months after the completion of construction of the applicable Public Improvements funded by the PID Bond issue in question and in no event for a period greater than 12 months from the date of the initial delivery of the applicable PID Bonds and (iii) Bond Issuance Costs. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances. In no event, however, will the aggregate principal amount of the Major Improvement PID Bonds exceed \$19,500,000.00 and the maximum net reimbursement shall not exceed \$15,500,000.00, plus the Mandatory Prepayment amount (as defined in the amended Reimbursement Agreement).

(c) The final maturity for each series of PID Bonds shall occur no later than 30 years from the date of the levy of the Additional Special Assessments.

(d) It is the intent of the Owner to request the issuance of at least one but no more than two PID Bonds to provide the agreed upon reimbursements. However, the Owner retains the right to request the agreed upon reimbursements through additional PID Bond issues subject to the condition that the maximum cost of Public Improvements to be reimbursed shall not exceed \$15,500,000.

(e) The maximum annual PID installment equivalent tax rate, calculated as of the date of the pricing of PID Bonds, shall be \$0.50. Special assessments on any given portion of the Property may be adjusted in connection with subsequent PID Bond issues, as long as the maximum annual PID annual installment equivalent tax rate, as described in the foregoing sentence, is not exceeded, and the Special Assessments are determined in accordance with the Original Service and Assessment Plan. Special Assessments on any portion of the Property shall bear a direct proportionate relationship to the special benefit of the Public Improvements to that portion of the Property.

(f) The minimum appraised value to lien ratio at the issuance date of each series of PID Bonds shall be 3 to 1.

(g) The maximum annual permitted increase in PID annual installments shall be 2%.

(h) In addition to any other requirements of this Agreement, including but not limited to City Council approval, Major Improvement PID Bonds are not required to be issued under

this Article V unless (i) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied; (ii) the City receives at the time of issuance of such Major Improvement PID Bonds an opinion of counsel selected by the City stating in effect that the Major Improvement PID Bonds are legal and valid obligations under Texas law and that all preconditions to their issuance under State law have been satisfied; (iii) the Attorney General of the State of Texas has issued an opinion approving issuance of the bonds as required by the PID Act, and (iv) the retail and business park parcels are separate tax parcels with individual tax IDs as provided by the Hays Central Appraisal District.

(i) The City will deliver a certificate relating to any Major Improvement PID Bonds authorized by the City Council (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the “**Tax Certificate**”) containing covenants and agreements designed to satisfy the requirements of Sections 103 and 141 through 150, inclusive, of the Tax Code and the income tax regulations issued thereunder relating to the use of the proceeds of the Major Improvement PID Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of Section 148 of the Tax Code (collectively, “**Bond Proceeds**”).

(j) The foregoing requirements apply to each series of Initial Major Improvement PID Bonds and Additional Major Improvement PID Bonds issued, if any.

Section 5.02. Project Fund

The City hereby covenants and agrees that if Major Improvement PID Bonds are issued, the Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The portion of the proceeds of the Major Improvement PID Bonds issued to pay Actual Costs of Public Improvements and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund.

Section 5.03. Denomination, Maturity, Interest, and Security for Bonds

(a) Each series of Major Improvement PID Bonds is subject to authorization by the City Council. If authorized, the Major Improvement PID Bonds shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the PID Bond Security, all to be as described and provided in the PID Bond Ordinance or Indenture, as applicable.

(b) The final and adopted versions of the PID Bond Ordinance and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the Major Improvement PID Bonds when and as issued and delivered and otherwise contain such terms and provisions as are mutually approved by the City and the Owner.

Section 5.04. Sale of Major Improvement PID Bonds.

The Major Improvement PID Bonds, if issued by the City, shall be marketed and sold through a negotiated competitive or privately placed sale to an approved third party or parties with the cooperation and assistance of the Owner in all respects with respect to the preparation of marketing documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the City and the Owner.

Section 5.05. Phased Issuance of Debt

As previously stated, the proposed bond issuance program is anticipated to entail a minimum of two bond financings that will finance the Public Improvements required for the development of the Project. Following the issuance of the Initial Major Improvement PID Bonds, Additional Major Improvement PID Bonds may be issued over the upcoming years as the value of the Property increases or additional Public Improvements are completed.

Section 5.06 Partial Payment of Assessments

It is hereby acknowledged and agreed that Additional Major Improvement PID Bonds may be covered under a new and separate Indenture; however all of the Special Assessments pledged for the payment of any future PID Bonds will have the same lien priority as the Special Assessments pledged for the payment of the Initial Major Improvement PID Bonds.

If the total Special Assessments levied on a particular Parcel within the Project consist of Special Assessments stemming from two or more different types of PID Bonds and an owner of an Assessed Parcel pays only a portion of the Annual Installment due for such Special Assessments, then such payment will be allocated pro-rata to the payment of the Annual Installment based on the portions of each Special Assessment as it relates to the total Special Assessments. For example, assume that a parcel has Special Assessments totaling \$20,000, \$12,000 of which is for the Initial Major Public Improvement Bonds and \$8,000 of which is for a Additional Major Improvement PID Bond. Further assume that the Annual Installment for such Parcel is \$1,000 which consists of a \$550 annual installment from the Initial Major Public Improvement PID Bonds and a \$450 annual installment from the Additional Major Improvement PID Bonds and an owner of an Assessed Parcel pays \$600, then the \$600 will be allocated as follows:

\$360 (60% of \$600) will go towards the Special Assessment for the Initial Major Public Improvement PID Bonds; and

\$240 (40% of \$600) will go towards the Special Assessment for the Additional Major Improvement PID Bonds

Section 5.07 Dissolution Upon Non-Issuance

Owner or its Designated Successor and Assign may petition the City to dissolve the District if no Major Improvement PID Bonds have been issued within four (4) years from the

Effective Date.

ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION

Section 6.01. Representations and Warranties of City

The City makes the following covenant, representation and warranty for the benefit of the Owner:

The City is a political subdivision of the State of Texas, duly incorporated, organized and existing under the Constitution and general laws of the State, and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute and deliver this Agreement, (ii) to adopt the Assessment Ordinance, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

Section 6.02. Covenants, Representation, and Warranties of Owner

The Owner makes the following representations, warranties and covenants for the benefit of the City:

(a) The Owner represents and warrants that the Owner is a limited liability company duly organized and validly existing under the laws of the State of California, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Owner represents and warrants that the Owner has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Owner.

(c) The Owner represents and warrants that this Agreement is valid and enforceable obligation of the Owner and is enforceable against the Owner in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Owner covenants that once it commences construction of a Segment it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Segment of the Public Improvements to be completed in accordance with this Agreement.

(e) The Owner represents and warrants that (i) it will not request payment from the City for the acquisition of any Public Improvements that are not part of the Project, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to Payment Requests.

(f) For a period of three (3) years after the final Acceptance Date of each applicable Public Improvement, the Owner covenants to maintain proper books of record and account for

the Public Improvements and all costs related thereto. The Owner covenants that such accounting books will be maintained in accordance with sound accounting practices, and will be available for inspection by the City or its agent at any reasonable time during regular business hours upon at least 72 hours' notice.

(g) The Owner agrees to provide the information required pursuant to the Owner Continuing Disclosure Agreement executed by the Owner in connection with the Major Improvement PID Bonds.

(h) The Owner covenants to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Owner further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the Major Improvement PID Bonds and will be, to the best of the knowledge of the officers of the Owner providing such facts and estimates, true, correct and complete as of that date, and (ii) the Owner will make reasonable inquiries to ensure such truth, correctness and completeness. The Owner covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the Major Improvement PID Bonds for federal income tax purposes.

Section 6.03. Indemnification and Hold Harmless by Owner

THE OWNER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (IN THIS SECTION, THE "CITY") AGAINST AND FROM, AND WILL PAY TO THE CITY, THE AMOUNT OF, ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, "DAMAGES"), ARISING DIRECTLY OR INDIRECTLY, FROM (i) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER; (ii) THE NEGLIGENT DESIGN, ENGINEERING, OR CONSTRUCTION BY THE OWNER OF ANY PUBLIC IMPROVEMENT ACQUIRED BY THE CITY; OR (iii) THE OWNER'S NONPAYMENT UNDER CONTRACTS WITH THE OWNER FOR ANY PUBLIC IMPROVEMENT UNDER THIS AGREEMENT. THE OWNER WILL DEFEND THE CITY AGAINST ALL SUCH CLAIMS AND THE CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW.

ARTICLE VII. DEFAULT AND REMEDIES

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its

covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph (c). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the Owner shall not be required to construct any portion of the Public Improvements (or take any other action related to or in furtherance of same) while the City is in default under this Agreement).

(c) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. Notices.

Any notice, communication, or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at

the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent, and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to City: City of San Marcos
 Attn: City Manager
 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

Section 8.02. Fee Arrangement /Administration of District

(a) The Owner agrees that it will pay all of the City's reasonable costs and expenses (including the City's third party advisors and consultants) related to the creation and administration of the District, as well as costs and expenses relating to the development and review of the 2018 SAP (including legal fees and financial advisory fees) ("**City PID Costs**"). Prior to closing of the Initial Major Improvement PID Bonds, the City shall (i) submit to the Owner and the Trustee invoices and other supporting documentation evidencing the City PID Costs and (ii) direct the Trustee to pay these fees, as applicable, to the City or on behalf of the City from proceeds of the Initial Major Improvement PID Bonds. In addition to any City PID Costs pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the Initial Major Improvement PID Bonds, including fees for the review of the District creation and District administration documentation, the preparation of customary bond documents and the obtaining of Attorney General approval for the Initial Major Improvement PID Bonds incurred by the Owner or otherwise, will be paid at closing from proceeds of the Initial Major Improvement PID Bonds.

(b) The Owner shall be solely responsible for the costs associated with the issuance of any Additional Major Improvement PID Bonds. The terms of subparagraph (a) above shall apply to the Owner in the event that any Additional Major Improvement PID Bonds are issued.

(c) The City has entered into a separate agreement with an Administrator to

administer the District after Closing. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the 2018 SAP.

Section 8.03. Assignment

(a) Owner may, in its sole and absolute discretion, transfer or assign its rights or obligations under this Agreement with respect to all or part of the Project from time to time to an Affiliate without the consent of the City. Prior to the issuance of the Initial Major Public Improvement PID Bonds, however, Owner shall not transfer or assign its rights or obligations under this Agreement with respect to all or part of the Project to a non-affiliated entity without the prior consent of the City. After the issuance of the Initial Major Public Improvement PID Bonds, the Owner may transfer or assign its rights or obligations under this Agreement to any party without the City's consent. 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 future obligations under this Agreement and shall have no liability for such obligations with respect to this Agreement for the part of the Project so assigned.

(b) The City hereby acknowledges and agrees that Owner shall have the right to make a collateral assignment of any reimbursements and/or proceeds under this Agreement to any lender on the Project and the City shall execute any documentation reasonably requested by such lender evidencing such fact.

(c) 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.

(d) 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.

Section 8.04. Construction of Certain Terms

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(a) Words importing a gender include either gender.

(b) Words importing the singular include the plural and vice versa.

(c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.

(d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.

(e) A reference to any Party includes, with respect to Owner, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.

(f) All references in this Agreement to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to "Exhibits" are to the designated Exhibits to this Agreement.

(g) The words "herein," "hereof," "hereto," "hereby," "hereunder," and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.

(h) The words "including" and "includes," and words of similar import, are deemed to be followed by the phrase "without limitation."

(i) Unless the context otherwise requires, a reference to the "Property," the "Public Improvements," or the "District" is deemed to be followed by the phrase "or a portion thereof."

(j) Every "request," "order," "demand," "direction," "application," "appointment," "notice," "statement," "certificate," "consent," "approval," "waiver," "identification," or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.

(k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

Section 8.05. Table of Contents; Titles and Headings

The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 8.06. Amendments.

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties and approved by the City Council.

Section 8.07. Time

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 8.08. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 8.09. Entire Agreement

This Agreement contains the entire agreement of the Parties.

Section 8.10. Severability; Waiver

If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 8.11. Owner as Independent Contractor

In performing under this Agreement, it is mutually understood that the Owner is acting as an independent contractor, and not an agent of the City.

Section 8.12. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are/or will be included in the Original Service and Assessment Plan, the Assessment Ordinance, PID Bond Ordinance and/or Indenture. The Owner will provide any continuing disclosures required under the Indenture and will execute a separate agreement outlining Owner's continuing disclosure obligations, if required.

Section 8.13. City's Acceptance of Public Improvements

The City hereby agrees that it will not unreasonably withhold the final acceptance of any of the Public Improvements and will work with the Owner in good faith to expedite review and acceptance of such Public Improvements.

Section 8.14. Agreement Regarding Fire Station

The City hereby acknowledges and agrees that Owner's obligation to provide the Owner Contribution (as defined in the Agreement Regarding Fire Station) is contingent on the City having issued the Major Improvement PID Bonds. Owner will dedicate the fire station site pursuant to the terms of the Agreement Regarding Fire Station which has been approved by the City Council on the date of the Original Financing Agreement.

Section 8.15. Boycotts and Foreign Business Engagements

(a) The Owner represents and warrants, for purposes of Chapter 2270 of the Texas Government Code, that at the time of execution and delivery of this Agreement, neither the Owner, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Owner, boycotts Israel. The Owner agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Owner, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Owner, will boycott Israel during the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this clause (a) has the meaning assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code.

(b) The Owner represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the Owner, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Owner, (1) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (2) is a company listed by the Texas Comptroller under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” as used in this clause (b) has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

Section 8.16. Restatement and Replacement

THIS AMENDED AND RESTATED TRACE PUBLIC IMPROVEMENT DISTRICT FINANCE AGREEMENT RESTATES AND REPLACES THE TRACE PUBLIC IMPROVEMENT DISTRICT FINANCE AGREEMENT DATED EFFECTIVE OCTOBER 20, 2015.

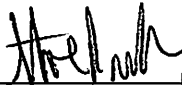
Section 8.16. Exhibits

The following exhibits are attached to and incorporated into this Agreement for all purposes:

- | | | |
|-----------|---|-----------------------------------|
| Exhibit A | - | Definitions |
| Exhibit B | - | Property |
| Exhibit C | - | Form of Certification for Payment |
| Exhibit D | - | Closing Disbursement Request |

[Signature Pages to Follow]

City of San Marcos, Texas

By: 
Name: Steve Parker
Title: Asst City Manager

[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

[Signatures Continue on Next Page]

It is hereby acknowledged that the Consenting Parties are executing this Agreement solely due to the fact that they are owners of a portion of the Property and, except for their obligations expressly set forth under the Landowner's Agreement, the Consenting Parties has no rights, duties or obligations under this Agreement.

CONSENTING PARTIES:

BUFFINGTON TEXAS CLASSIC HOMES, LLC, a
Texas limited liability company

By: BUFFINGTON HOMEBUILDING GROUP, LTD.,
a Texas limited partnership,
its sole member

By: BUFFINGTON HOMEBUILDING
GROUP MANAGEMENT, L.L.C.,
a Texas limited liability company,
its general partner

By: _____

Name: _____

Title: _____

PACESETTER HOMES, LLC,
a Texas limited liability company

By: _____

Name: Thomas Lynch

Its: President

By: _____

Name: LaNelle Deardorf

Its: Assistant Secretary

Exhibit “A”

DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

2018 SAP” has the meaning set forth in the recitals of this Agreement.

“Acceptance Date” means, with respect to a Segment, the date that the Actual Cost thereof is paid to the Owner pursuant to the terms hereof.

“Amended Reimbursement Agreement” means the Amended and Restated Acquisition and Reimbursement Agreement set forth in the recitals that provides for construction and dedication of a Public Improvement (or Segments) to the City prior to the Owner being paid out of the applicable Initial Major Improvement PID Bond or Additional Major Improvement PID Bond proceeds, whereby all or a portion of the Actual Costs will be paid to Owner initially from Special Assessment Revenues reimburse the Owner for actual costs paid by the Owner that are eligible to be paid with Major Improvement PID Bond proceeds.

“Actual Cost(s)” means, with respect to the Public Improvements, the Owner’s demonstrated, reasonable, allocable, and allowable costs of constructing such Authorized Improvement, as specified in a payment request in a form that has been reviewed and approved by the City and in an amount not to exceed the amount for each Public Improvements as set forth in the 2018 SAP (subject to cost overruns). Actual Costs may include (a) the costs incurred by or on behalf of the Owner (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvements, (b) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvements, (c) Construction Management Fee, (d) the costs incurred by or on behalf of the Owner for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, advertising, marketing and research studies, appraisals, legal, accounting and similar professional services, (e) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, (f) all related permitting and public approval expenses, architectural, engineering, and consulting fees, financing charges, taxes, governmental fees and charges, insurance premiums, and all payments for Administrative Expenses after the date of a resolution authorizing such reimbursement, plus Interest, if any, at the lower of (x) the maximum interest rate permitted by the PID Act or (y) the interest rate of the Bonds calculated from the respective dates of the expenditures until the date of reimbursement therefore.

“Additional Assessment Ordinance” has the meaning given in the recitals of this Agreement.

“Additional Major Improvement PID Bonds” means collectively any additional bonds beyond the Initial Major Improvement PID Bonds.

“Administrator” has shall mean P3Works, LLC, or any subsequent person or entity designated by the City.

“Administrative Expenses” means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the District, including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) creating and organizing the District and preparing the assessment roll, (iii) computing, levying, collecting and transmitting the Special Assessments or the installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Special Assessments, (v) issuing, paying and redeeming the Major Improvement PID Bonds, (vi) investing or depositing the Special Assessments, (vii) complying with the PID Act with respect to the Major Improvement PID Bonds, (viii) paying the paying agent/registrar’s and trustee’s fees and expenses (including the fees and expenses of its legal counsel), and (ix) administering the construction of the Public Improvements, in accordance with the terms of this Agreement.

“Affiliate” means entity which is controlled by, controls, or is under common control with Owner.

“Agreement” has the meaning given in the recitals to this Agreement.

“Agreement Regarding Fire Station” means that certain Agreement Regarding Fire Station dated of October 20, 2015 by and between the City and Owner.

“Amended Reimbursement Agreement” has the meaning given in the recitals of this Agreement.

“Annual Installment” shall have the meaning given in the 2018 SAP.

“Appraisal” means each appraisal of the Property (or applicable component thereof, as required by Section 2.01(h) hereof.

“Assessment Ordinance” means each ordinance, resolution or order adopted by the City Council levying the Special Assessments on the Property, as required by Article II of this Agreement. The Original Assessment Ordinance and the Additional Assessment Ordinance are each an “Assessment Ordinance”.

“Attorney General” means the Texas Attorney General’s Office.

“Bond Counsel” means McCall, Parkhurst & Horton LLP.

“Bond Improvement Account” means an account established pursuant to an Indenture and into which the Trustee will deposit Bond Proceeds to be used for the construction of any Public Improvements.

“Bond Issuance Costs” means costs relating to the authorization, sale and issuance of the PID Bonds including, printing costs, costs of reproducing and binding documents, closing

costs, filing and recording fees, initial fees, expenses and charges of the Trustee, including its first annual administration fee, expenses incurred by the City or Owners in connection with the issuance of the Major Improvement PID Bonds (provided such expenses are defined as “issuance costs” under the Tax Code), the SAP Consultant’s fees, bond (underwriter’s) discount or underwriting fee, legal fees and charges, including Bond Counsel, charges for execution, transportation and safekeeping of the Major Improvement PID Bonds and other costs, charges and fees in connection with the issuance of the Major Improvement PID Bonds.

“Bond Issuance Request” means written request made by Owner to the City in good faith as evidenced by Owner’s expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence necessary to support the request.

“Bond Ordinance” shall mean the order or ordinance of the City Council that will authorize and approve the issuance and sale of the Major Improvement PID Bonds and provide for their security and payment, either by the terms of the Bond Ordinance or an Indenture related to the PID Bonds.

“Bond Proceeds” shall have the meaning given to them in Section 5.02(i) hereof.

“Certification for Payment” means the certificate (whether one or more) in substantially the same form as Exhibit “C” attached hereto.

“City” means the City of San Marcos, Texas.

“City Construction Representative” means the City Engineer or such other person selected by the City to oversee the construction of the Public Improvements on behalf of the City.

“City Council” means the City Council of City of San Marcos, Texas.

“City PID Costs” shall have the meaning given in Section 8.02 of this Agreement.

“Closing Disbursement Request” means the request (whether one or more) in substantially the same form as Exhibit “D” attached hereto.

“Construction Manager” means initially the Owner, and thereafter subject to change in accordance with Section 3 of this Agreement. The City acknowledges and agrees that (i) the Owner intends to subcontract out the duties of Construction Manager to a third party and (ii) Owner’s hiring of the initial subcontractor to serve as the Construction Manager shall not be deemed a change in the Construction Manager pursuant to the terms and conditions of Section 3.

“Construction Management Fee” means 4% of the costs incurred by or on behalf of Owner for the construction of each Segment. The Construction Management Fee is part of the Actual Costs.

“Cost of Issuance Account” shall have the meaning given in the Indenture.

“County” means Hays County, Texas.

“Debt” means any bond, note, or other evidence of indebtedness incurred, entered into, or issued by the City related exclusively to the District.

“Designated Successors and Assigns” shall mean (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to all or a portion of the Property, (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.

“District” has the meaning given in the recitals to this Agreement.

“Effective Date” has the meaning given in the recitals to this Agreement.

“Force majeure” shall mean delays due to strikes, acts of God, inability to obtain labor or materials, litigation, enemy action, civil commotion, fire, rain or windstorm, governmental action or inaction, or similar causes, provided such similar causes are beyond the reasonable control of the party whose obligations are affected by such acts.

“Indenture” means the applicable Indenture of Trust between the City and a trustee relating to the issuance of a series of PID Bonds for financing costs of Public Improvements, as it may be amended from time to time.

“Initial Major Improvement PID Bonds” means those certain City of San Marcos, Texas Special Assessment Revenue Bonds, Series [2018] (Trace Public Improvement District Major Public Improvement Project) that will be secured by Special Assessments levied on an assessed parcel in order to fund the Public Improvements.

“Interest” shall mean the interest rate charged for the Major Improvement PID Bonds or such other interest rate as may be required by applicable law.

“Issue Date” means the date of the initial delivery of any of the Major Improvement PID Bonds.

“Major Improvement PID Bonds” or **“PID Bonds”** shall collectively refer to the Initial Major Improvement PID Bonds and the Additional Major Improvement PID Bonds, and singularly the Initial Major Improvement PID Bonds or the Additional Major Improvement PID Bonds.

“Non-Benefited Property” shall have the meaning assigned to it in the 2018 SAP.

“Notice” means any notice, writing, or other communication given under this Agreement.

“Original Assessment Ordinance” has the meaning given in the recitals to this Agreement.

“Original Financing Agreement” has the meaning given in the recitals to this Agreement.

“Original Reimbursement Agreement” has the meaning given in the recitals to this Agreement.

“Original Service and Assessment Plan” has the meaning given in the recitals to this Agreement.

“Owner” has the meaning given in the recitals to this Agreement.

“Owner’s Association” means a homeowner’s association or property owner’s association.

“Owner Association Property” means property within the boundaries of the PID that is owned by or irrevocably offered for dedication to, whether in fee simple or through an exclusive use easement, an Owners’ Association established for the benefit of a group of homeowners or property owners within the PID.

“Owner Continuing Disclosure Agreement” shall have the meaning given in the Indenture or any purchase agreement relating to the sale of the Major Improvement PID Bonds.

“Owner Expended Funds” has the meaning given in Section 4.02(c) of this Agreement.

“Party” means the Owner or the City, as parties to this Agreement, and **“Parties”** means collectively, the Owner and the City.

“Payment Request” means the document to be provided by the Owner to substantiate the Actual Cost of one or more Segments.

“PDD” has the meaning given in the recitals to this Agreement.

“PID Act” means Chapter 372, Local Government Code, as amended.

“PID Bond Ordinance” means and refers to the order(s) or ordinances of the City Council that will authorize and approve the issuance and sale of the Major Improvement PID Bonds and provide for their security and payment, either under the terms of the bond order or a trust indenture related to the Major Improvement PID Bonds.

“PID Bond Security” means the funds that are to be pledged in or pursuant to the PID Bond Ordinance or the Indenture to the payment of the debt service requirements on the Major Improvement PID Bonds, consisting of the Special Assessments, including earnings and income derived from the investment or deposit of Special Assessments in the special funds or accounts created and established for the payment and security of the Major Improvement PID Bonds, unless such earnings are required to be deposited into a rebate fund for payment to the federal government.

“Pledged Revenue Fund” means the separate and unique fund established by the City under such name pursuant to the Indenture wherein the Special Assessment Revenues are deposited.

“Prepayment” means the payment of all or a portion of a Special Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of a Special Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Special Assessment.

“Project” has the meaning given in the recitals to this Agreement.

“Project Costs” means the total of all Actual Costs.

“Project Engineer” means the civil engineer or firm of civil engineers selected by the Owner to perform the duties set forth herein, which is currently Texas Engineering Solutions. Owner reserves the right to replace the Project Engineer at any time in Owner’s sole discretion.

“Project Fund” means the separate and unique fund established by the City under such name pursuant to the Indenture as described in Section 5.02 hereof.

“Property” has the meaning given in the recitals to this Agreement.

“Public Improvements” mean the improvements permitted by the PID Act and described in the 2018 SAP for which Special Assessments are levied against the Assessed Property that receives a special benefit from such improvement as depicted on Appendix D to the 2018 SAP.

“Public Property” means property, plat, real property, right of way and easements located within the boundaries of the District that is owned by or irrevocably offered for dedication to the federal government, the State of Texas, the County, the City, a school district, a public utility provider or any other political subdivision or public agency, whether in fee simple, through an exclusive use easement, or through a public utility easement.

“Regulatory Requirements” means the requirements and provisions of the City over the Public Improvements, as adjusted by the PUD.

“Reimbursement Payment” has the meaning given in Section 4.02(c) of this Agreement.

“SAP Consultant” means Development Planning & Financing Group, Inc.

“Segment” or “Segments” means the discrete portions of the Public Improvements identified as such.

“Special Assessments” means the assessments levied against properties in the District, as provided for in the Initial Assessment Ordinance and in the Additional Assessment Ordinance,

including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Special Assessment Revenues” means money collected by or on behalf of the City from any one or more of the following: (i) a Special Assessment levied against an assessed parcel, or Annual Installment payment thereof, including any interest on such Special Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs (as defined in the Indenture), and (iv) Foreclosure Proceeds (as defined in the Indenture).

“State” means the State of Texas.

“Tax Certificate” shall have the meaning given in Section 6.02(a) hereof.

“Tax Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“Transfer” shall have the meaning given in Section 2.05(b) hereof.

“Transferee” shall have the meaning given in Section 2.05(b) hereof.

“Trustee” means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

“Underwriter” means FMSBonds, Inc.

“Unpaid Balance” shall have the meaning given in the Amended Reimbursement Agreement.

Exhibit “B”

PROPERTY DESCRIPTION FOR PROJECT

Exhibit “C”
FORM OF CERTIFICATION FOR PAYMENT
(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 _____ (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: _____

Jurisdiction Name: Travis County
Bella Fortuna Public Improvement District
Certification of Payment #:
Date:

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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 _____. 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: _____

Jurisdiction Name: Travis County
Bella Fortuna Public Improvement District
Certification of Payment #:
Date:

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ATTACHMENT B TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[bills paid affidavit – attached]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[receipts – attached]

Exhibit "D"

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is a lawfully authorized representative for Highpointe Trace, LLC (the "**Owner**") and requests payment from the Costs of Issuance Account of the Project Fund (as defined in the Amended and Restated Trace Public Improvement District Financing Agreement) from _____ (the "**Trustee**") in the amount of _____ (\$_____) to be transferred from the [Cost of Issuance Account of the Project Fund] upon the delivery of the [_____] Bonds] for costs incurred in the establishment, administration, and operation of the Trace Public Improvement District (the "**District**"), as follows.

In connection to the above referenced payment, the Owner represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Owner, is qualified to execute this Closing Disbursement Request on behalf of the Owner, and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.

3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Owner with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with the 2018 SAP. The itemized costs are as follows:

[insert itemized list of costs here]

TOTAL REQUESTED: \$ _____

4. The Owner is in compliance with the terms and provisions of the Amended and Restated Trace Public Improvement District Financing Agreement, the Indenture and the 2018 SAP.

5. All conditions set forth in the Indenture and [the Acquisition and Reimbursement Agreement for _____] for the payment hereby requested have been satisfied.

6. The Owner agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete its review.

Payments requested hereunder shall be made as directed below:

[Information regarding Payee, amount, and deposit instructions]

I hereby declare that the above representations and warranties are true and correct.

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

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Closing Disbursement Request. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Certificate submitted to the Trustee directing payments to be made from Costs Issuance Account upon delivery of the Bonds.

CITY OF SAN MARCOS, TEXAS

By: _____
Name: _____
Title: _____