

ORDINANCE NO. 2019-__

AN ORDINANCE AMENDING ORDINANCE NO. 2019-03 AUTHORIZING THE ISSUANCE OF THE "CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019 (TRACE PUBLIC IMPROVEMENT DISTRICT)"; APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, AN OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH INCLUDING AMENDMENTS TO THE FINANCING AGREEMENT AND ACQUISITION AND REIMBURSEMENT AGREEMENT; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of San Marcos, Texas (the "City"), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code (the "PID Act"), approved the "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)" (the "Bonds"), in the amount of \$11,885,000 pursuant to Ordinance No. 2019-03 on January 15, 2019; and

WHEREAS, the City desires to amend Ordinance No. 2019-03 in accordance with the terms and conditions set forth herein, primarily to make such modifications that are necessary to assure the exemption from federal income taxation of interest on the Bonds; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, THAT:

Section 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein.

Section 2. Indenture of Trust. The Indenture of Trust attached as Exhibit A to Ordinance No 2019-03 is hereby revised as follows:

(a) "ARTICLE I, Section 1.1" is hereby revised to read as follows:

The definition of "*Commercial Assessment Prepayment*" is deleted in its entirety.

The following definitions are hereby added:

"*Early Prepayment Amount*" means any prepayments made prior to the Early Prepayment Date in the aggregate amount of \$2,600,000 for Assessments levied against any Parcel in the District, as further described in the Financing Agreement. If prepayments of Assessments in an amount equal to the Early Prepayment Amount have not been made by the Early Prepayment Date, then the Assessments will be reduced by \$2,600,000 less any prepayments received as of the Early Prepayment Date, with such

reduction allocated to each Parcel pro rata based on the amount of outstanding Assessment levied against each Parcel.

“*Early Prepayment Date*” means the earlier of (i) the date of issuance of any Additional Bonds or (ii) August 31, 2022.

The following definitions are hereby replaced with the following:

“*Pledged Revenues*” means, collectively, the (i) Assessment Revenues (excluding the portion of the Assessments and Annual Installments collected for the payment of Annual Collection Costs and Delinquent Collection Costs, as set forth in the Service and Assessment Plan, and further excluding the Assessments associated with the Early Prepayment Amount), (ii) the moneys held in any of the Pledged Funds and (iii) any additional revenues that the City may pledge to the payment of the Bonds and Additional Bonds.

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

(b) “ARTICLE XIII, Section 13.2(d)(viii) and (ix)” are hereby revised to read as follows:

(viii) The maximum aggregate principal amount of all Additional Bonds that may be issued is \$7,615,000, however, in no event may the outstanding principal amount of bonds at the time of an issuance exceed the principal amount of outstanding Assessments. Further, any issuance of Refunding Bonds must be par to par, unless law or Attorney General policy is changed to permit another structure.

(ix) There shall be deposited to the Reserve Fund an amount equal to the Reserve Account Requirement taking into account the Outstanding Bonds Similarly Secured and the Additional Bonds then proposed to be issued.

Section 3. Service and Assessment Plan. The Form of Service and Assessment Plan included as Exhibit C to Ordinance No. 2019-03 is hereby revised as follows:

The first paragraph under “Section VI.D.” is hereby deleted in its entirety and replaced with the following.

Pursuant to the PID Financing Agreement, the first \$2,600,000 in prepayments of Assessments levied against Assessed Property that may be made by the owners of any Parcel within the District by the earlier of i) the issuance of Additional PID Bonds, or ii) August 31, 2022 will not be security for any bond issuance but will flow through the Acquisition and Reimbursement Agreement. After receipt of \$2,600,000 in prepayments prior to the applicable date in the preceding sentence, any further prepayments will be part of a trust estate for any outstanding bonds and treated pursuant to the terms of any applicable Indenture. If at least \$2,600,000 in prepayments described above have not

been received prior to the earlier of i) Additional PID Bonds, or ii) August 31, 2022, then the Assessment levied against all property in the PID shall be reduced by \$2,600,000, less any prepayments received as of that date, allocating such reduction to each Parcel pro rata based on the amount of outstanding Assessment levied against each Parcel.

Section 4. Financing Agreement. The "First Amendment to Amended and Restated Trace Public Improvement District Financing Agreement" attached hereto as Exhibit "A" is approved in its entirety.

Section 5. Reimbursement Agreement. The "First Amendment to the Amended and Restated Trace Public Improvement District Reimbursement Agreement" attached hereto as Exhibit "B" is approved in its entirety.

Section 6. Complete Documents. Such revisions to the Indenture of Trust and Service and Assessment Plan may be incorporated into each such document to compile one document containing all original terms and such revisions. The Indenture of Trust and Service and Assessment Plan, as revised herein and prepared in accordance with this Ordinance and Section 6, are each approved in their entirety.

Section 7. Additional Actions. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance.

Section 8. Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 9. Effective Date. This Ordinance is passed on one reading as authorized by Texas Government Code, Section 1201.028, and shall be effective immediately upon its passage and adoption.

[Remainder of page left blank intentionally]

PASSED, APPROVED AND EFFECTIVE this January 29, 2019.

Mayor

ATTEST:

City Clerk

City Manager

(City Seal)

Exhibit "A"
First Amendment to Amended and Restated Trace Public Improvement District
Financing Agreement

**FIRST AMENDMENT TO AMENDED AND RESTATED TRACE PUBLIC
IMPROVEMENT DISTRICT FINANCING AGREEMENT**

This FIRST AMENDMENT TO AMENDED AND RESTATED TRACE PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT (this "First Amendment") is made effective the ____ day of January, 2019 (the "Effective Date"), by and between Highpointe Trace, LLC, a California limited liability company (including its designated successors and assigns, the "Developer"), and the City of San Marcos, Texas (the "City"), a municipal corporation, acting by and through its duly authorized representative (each individually referred to as a "Party" and collectively as the "Parties").

RECITALS

- A. The City and Developer are parties to that certain Amended and Restated Trace Public Improvement District Finance Agreement dated effective September 18, 2018 (as amended, the "Agreement").
- B. WHEREAS, the Developer and the City desire to amend the Agreement in accordance with the terms and conditions set forth below.
- C. Any capitalized terms used in these Recitals and not otherwise defined above shall have the meanings given to them in the Agreement.

NOW, THEREFORE, Developer and City hereby agree as follows:

- 1. Section 2.06 of the Agreement is hereby deleted in its entirety and replaced with the following:

“(a) If prior to the earlier of (i) the date of issuance of the Additional Major Improvement PID Bonds or (ii) August 31, 2022 (the “Early Prepayment Date”), prepayments of Special Assessments do not equal an aggregate amount not to exceed \$2,600,000.00 (the “Early Prepayment Amount”), the City shall reduce the outstanding Special Assessments on the District by \$2,600,000.00, less any prepayments received as of the Early Prepayment Date, for all assessed properties within the District on a pro rata basis based on the amount of outstanding Special Assessments.

(b) The payment of the Early 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.

(c) 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.”

2. Section 5.01(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(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 Early Prepayment Amount."

3. Section References. Unless expressly stated otherwise, any and all references to sections or other enumerated provisions in this First Amendment shall refer to the corresponding sections or provisions in the Agreement.
4. Ratification; Entire Agreement. The Agreement, as amended by this First Amendment, is hereby ratified and affirmed and continues in full force and effect. In the event of any conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment control.
5. Counterparts. This First Amendment may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

WITNESS WHEREOF, City and Developer have executed this First Amendment through their duly authorized representatives to be effective as of the Effective Date.

[Signature pages to follow]

CITY OF SAN MARCOS, TEXAS

By: _____

Name: _____

Title: _____

[CITY SIGNATURE 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

[OWNER SIGNATURE PAGE]

Exhibit "B"
**First Amendment to the Amended and Restated Trace Public Improvement District
Reimbursement Agreement**

**FIRST AMENDMENT TO THE AMENDED AND RESTATED
TRACE PUBLIC IMPROVEMENT DISTRICT
REIMBURSEMENT AGREEMENT**

This First Amendment to the Amended and Restated Trace Public Improvement District Reimbursement Agreement (this “First Amendment”) is executed between the City of San Marcos, Texas (“City”) and Highpointe Trace, LLC, a California limited liability company (including its Designated Successors and Assigns, the “Owner”) (each individually referred to as a “Party” and collectively as the “Parties”) to be effective as of January _____, 2019 (the “Effective Date”).

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; 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 September 18, 2018 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, the City Council approved an Amended and Restated Reimbursement Agreement (the “Amended and Restated Reimbursement Agreement”), effective September 18, 2018, between the Owner and City, which replaced and superseded the Original Agreement; and

WHEREAS, the Owner and City now desire to amend the Amended and Restated Reimbursement Agreement as provided below; and

WHEREAS, the City Council contemporaneously approves an amendment to the PID Finance Agreement, which terms are in accord with this First Amendment; and

WHEREAS, the City Council contemporaneously approves **an update to** the SAP, the terms of which are in accord with this First Amendment; and

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

1. The seventh recital of the Amended and Restated Reimbursement Agreement is hereby deleted in its entirety and replaced with the following:

"WHEREAS, the Finance Agreement provides that if prior to the earlier of (i) the date of issuance of the Additional Major Improvement PID Bonds or (ii) August 31, 2022 (the "Early Prepayment Date"), prepayments of Special Assessments do not equal an aggregate amount not to exceed \$2,600,000.00 (the "Early Prepayment Amount"), the City shall reduce the outstanding Special Assessments on the District by \$2,600,000.00, less any prepayments received as of the Early Prepayment Date, for all assessed properties within the District on a pro rata basis based on the amount of outstanding Special Assessments."

2. The ninth recital of the Amended and Restated Reimbursement Agreement is hereby deleted in its entirety and replaced with the following:

"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 Early Prepayment Amount shall be included within the definition of "Special Assessment Revenues"; and"

3. Section 3 of the Amended and Restated Reimbursement Agreement is hereby deleted in its entirety and replaced with the following:

"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 August 31, 2048 (the "Maturity Date"); provided, however, the Repayment Amount shall not exceed \$15,500,000 plus the Early 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. Ratification; Entire Agreement. The Amended and Restated Reimbursement Agreement, as amended by this First Amendment, is hereby ratified and affirmed and continues in full force and effect. In the event of any conflict between the terms of this First

Amendment and the terms of the Amended and Restated Reimbursement Agreement, the terms of this First Amendment control.

5. Counterparts. This First Amendment may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument:

IN WITNESS WHEREOF, the Parties have executed this First Amendment through their duly authorized representatives to be effective as of the Effective Date

[Signature pages to follow]

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