

**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and Restated Reimbursement Agreement”), effective September 18, 2018, between the Owner and City, which replaced and superseded the Original Agreement; and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