

RESOLUTION NO. 2024-05-03

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN APPROVING A FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PERFORMANCE AND 380 AGREEMENT BETWEEN THE CITY OF EVERMAN, THE EVERMAN ECONOMIC DEVELOPMENT CORPORATION, AND MUNAY DEVELOPMENT PARTNERS, LLC ; APPROVING A FIRST AMENDED AND RESTATED RESTRICTION AGREEMENT BETWEEN THE CITY OF EVERMAN AND MUNAY DEVELOPMENT PARTNERS, LLC; AUTHORIZING THE CITY MANAGER TO SIGN THE SAME ON BEHALF OF THE CITY; PROVIDING FOR A REPEALING CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Everman has previously approved an Everman Economic Development Corporation ("EEDC") project and related Performance Agreement and simultaneously approved and entered into an Economic Development Performance and 380 Agreement Between the City of Everman, the Everman Economic Development Corporation and Munay Development Partners, Inc. (the "Agreement"); and

**WHEREAS**, in connection with the Agreement, the City Council has also previously approved and entered into a Restriction Agreement with regard to the property that is the subject of the Agreement (the "Restriction Agreement"); and

**WHEREAS**, the parties to the Agreement and the Restriction Agreement desire to amend those agreements by entering into a First Amendment to the Agreement and an Amended and Restated Restriction Agreement and such amendments have been recommended by City and EEDC staff; and

**WHEREAS**, upon full review and consideration of the proposed First Amendment to the Agreement and the Amended and Restated Restriction Agreement, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, that the EEDC Project as amended and stated therein should be approved, and that the City Manager should be authorized to sign the First Amendment to the Agreement and the Amended and Restated Restriction Agreement on behalf of the City of Everman.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE EVERMAN, TEXAS:**

**SECTION 1.** The First Amendment to Economic Development Performance and 380 Agreement Between the City of Everman, the Everman Economic Development Corporation, and Munay Development Partners, LLC, attached hereto and incorporated herein by this reference as Exhibit "A," and the Everman Economic Development Corporation project set forth therein are hereby approved and City Manager is authorized to execute the First Amendment in

substantially the form attached hereto as Exhibit "A" and any necessary and related documents on behalf of the City of Everman.

**SECTION 2.** The Amended and Restated Restriction Agreement between the City of Everman and Munay Development Partners, LLC, attached hereto and incorporated herein by this reference as Exhibit "B" is hereby approved and the City Manager is hereby authorized to execute the Amended and Restated Restriction Agreement in substantially the form attached hereto as Exhibit "B" and all necessary and related documents on behalf of the City of Everman.

**SECTION 3.** All resolutions in conflict with the provisions of this Resolution shall be, and the same are, hereby repealed, provided, however, that all other provisions of said resolutions that are not in conflict herewith shall remain in full force and effect.

**SECTION 4.** This resolution shall take effect immediately from and after its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the Everman Economic Development Corporation this the \_\_\_\_ day of \_\_\_\_\_, 2023.

**APPROVED:**

**CITY OF EVERMAN**

\_\_\_\_\_  
Ray Richardson, Mayor

**ATTEST:**

\_\_\_\_\_  
Mindi Parks, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Kyle Barry, Asst. City Attorney  
4878-1354-5353, v. 1

**EXHIBIT A**

**[First Amendment to Economic Development Performance and 380 Agreement  
Between the City of Everman, the Everman Economic Development Corporation  
and Munay Development Partners, LLC]**



**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PERFORMANCE  
AND 380 AGREEMENT BETWEEN THE CITY OF EVERMAN,  
THE EVERMAN ECONOMIC DEVELOPMENT CORPORATION  
AND MUNAY DEVELOPMENT PARTNERS, LLC**

This First Amendment to Economic Development Performance and 380 Agreement is made as of the date first signed by the authorized representatives of the Parties (the "Effective Date") by and between the City of Everman, ("City"), the Everman Economic Development Corporation ("EEOC"), and Munay Development Partners, LLC ("Munay"), each of which may be referred to herein as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, the Parties entered into that certain Economic Development Performance and 380 Agreement (the "Agreement") on September 21, 2022; and

**WHEREAS**, the Parties desire to amend the Agreement as set forth herein below through this First Amendment to Economic Development Performance and 380 Agreement Between the City of Everman, the Everman Economic Development Corporation, and Munay Development Partners, LLC (the "Amendment" or "First Amendment");

**NOW, THEREFORE**, in consideration of good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

**SECTION 1.** Unless otherwise defined herein, the terms used herein with initial capital letters shall have the same meanings assigned to such terms in the Agreement.

**SECTION 2.** A new Exhibit "B" is added, attached, and incorporated by this reference to the Agreement. The new Exhibit "B," a site plan for the Development, is attached hereto and incorporated herein by this reference as "Exhibit "B".

**SECTION 3.** The Agreement is amended by repealing and replacing Article 1, "Definitions" in its entirety to read as follows:

**"ARTICLE I  
DEFINITIONS**

1.01 "Agreement" means the Economic Development Performance and 380 Agreement between the City of Everman, the Everman Economic Development Corporation, and Munay Development Partners, LLC, as the same may be from time to time amended.

1.02 "Bankruptcy or Insolvency" shall mean the dissolution or termination of Munay's existence as a going business, insolvency, appointment of receiver for any part of Munay's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Munay and such proceeding is not dismissed within ninety (90) days after the filing thereof.

1.03 "Capital Investment" means all costs paid and incurred by Munay relating to the design and construction of the Improvements on the Property, including the actual construction costs and other costs of all buildings, structures, infrastructure, fixed machinery and



equipment, utilities, landscaping, and onsite and offsite improvement. As to these elements, Capital Investment shall include without limitation all labor and materials, engineering costs, surveying costs, fees of consultants, designers and other professionals, landscape design, fees related to platting, inspections, reviews, and required permits, geotechnical investigation, and construction material testing. Capital Investment shall not include costs for purchase of the Property, nor for financing the construction or marketing of the Improvements.

1.04 "City" means the City of Everman, Texas.

1.05 "Closing Date" means the date the City and/or Everman Economic Development Corporation convey title to the Property to Munay Development Partners, LLC.

1.06 "Commencement Date" shall mean the date upon which completion of construction has been reached for Phase I Improvements, Phase II Improvements, and Phase III Improvements.

1.07 "Commencement of Construction of Phase I Improvements" means that for Phase I Improvements, as that term is defined herein, the (i) the detailed plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Phase I Improvements, (ii) all necessary permits for the construction of the Phase I Improvements have been issued by the applicable governmental authorities, and (iii) grading of the Property and construction of the vertical elements of the Phase I Improvements (whether located above or below ground) has commenced.

1.08 "Commencement of Construction of Phase II Improvements" means that for Phase II Improvements, as that term is defined herein, the (i) the detailed plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Phase II Improvements, (ii) all necessary permits for the construction of the Phase II Improvements have been issued by the applicable governmental authorities, and (iii) grading of the Property and construction of the vertical elements of the Phase II Improvements (whether located above or below ground) has commenced.

1.09 "Commencement of Construction of Phase III Improvements" means that for Phase III Improvements, as that term is defined herein, the (i) the detailed plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Phase III Improvements, (ii) all necessary permits for the construction of the Phase III Improvements have been issued by the applicable governmental authorities, and (iii) grading of the Property and construction of the vertical elements of the Phase III Improvements (whether located above or below ground) has commenced.

1.10 "Completion of Construction of Phase I Improvements" shall mean substantial completion and issuance of a final certificate of occupancy by City for occupancy of the Phase I Improvements.

1.11 "Completion of Construction of Phase II Improvements" shall mean substantial completion and issuance of a final certificate of occupancy by City for occupancy of the Phase II Improvements.

1.12 "Completion of Construction of Phase III Improvements" shall mean substantial completion and issuance of a final certificate of occupancy by City for occupancy of the Phase III Improvements.

1.13 "Development" shall mean the design and construction of the Improvements, as that term is defined herein, on the Property."

1.14 "EEDC" shall mean the Everman Economic Development Corporation.

1.15 "Effective Date" shall mean September 21, 2022.

1.16 "Expiration Date" shall mean the fifth (5<sup>th</sup>) anniversary of the Completion of Construction.

1.17 "Facilities" shall mean the Improvements, as that term is defined herein, on the Property.

1.18 "Grant" shall mean an economic development grant in the amount of \$330,000.00 provided by City and/or EEDC and applied as a credit at the closing of the purchase by Munay of the Property.

1.19 "Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

1.20 "Improvements" shall mean (i) twelve (12) retail units of approximately 1,000 square feet each, (ii) one (1) restaurant facility of not less than 2,500 square feet, and (iii) either one (1) medical facility of approximately 6,000 square feet or an additional six (6) retail units of approximately 1,000 square feet each constructed on the Property along with all required driveways, parking areas, lighting, signage, landscaping, infrastructure, fencing, and related appurtenances and in accordance with the site plan attached hereto and incorporated herein as Exhibit "B."

1.21 "Incentives" shall mean the Grant and other acts or items of value provided to Munay by EEDC and City.

1.22 "Munay" shall mean Munay Development Partners, LLC.

1.23 "Phase I Improvements" shall mean twelve (12) retail units of approximately 1,000 square feet each constructed on the Property along with all necessary and related driveways, parking lots, infrastructure, landscaping, signage, and a six (6') foot high screening wall or fence to be constructed in accordance with the City's Fencing and Screening requirements along the property lines along both sides and the rear of the property and composed of wood or masonry.

1.24 "Phase II Improvements" shall mean one (1) restaurant facility of not less than 2,500 square feet constructed on the Property along with all necessary and related driveways, parking lots, infrastructure, landscaping, and signage.



1.25 "Phase III Improvements" shall mean either one (1) medical facility of approximately 6,000 square feet or an additional six (6) retail units of approximately 1,000 square feet each along with all necessary and related driveways, parking lots, infrastructure, landscaping, and signage.

1.26 "Project" means provision of the Incentives by EEDC and City, the purchase of the Property by Munay, the design and construction of the Improvements thereon, and the continuous use and occupancy of the Improvements for the Required Use as set forth in this Agreement.

1.27 "Property" means the real property otherwise known as Block 3, Lot 3R (404 King Street), Block 2, Lot 11R (405 King Street), Block 3, Lot 2R (406 King Street), Block 3, Lot 1R (408 King Street), Block 2, Lot 12R (403 King Street), Block 2, Lot 6R (406 N. Race Street), Block 2, Lot 7R (408 N. Race Street), Block 2, Lot 8R (410 N. Race Street), Block 2, Lot 9R (412 N. Race Street), Block 3, Lot 4R (502 N. Race Street), and Block 2, Lot 10R (414 N. Race Street), all in the City of Everman, Tarrant County, Texas, as depicted in Exhibit "A"

1.28 "Related Agreement" shall mean any agreement, other than this Agreement, by and between Munay and EEDC and/or the City.

1.29 "Required Use" shall mean continuous occupancy of the Improvements by Munay for one or more of the following uses:

(i) For the Phase I retail units and any Phase III retail units:

Bakery and confectionary shop – Non-industrial  
Ice Cream and Frozen Yogurt Parlors or Shops  
Restaurants, cafes, cafeterias, Drive Through Service  
Package Liquor Stores, Cocktail Lounges and Taverns, and Breweries  
Drug, Apothecaries, Pharmacies and Sundry  
Book, Stationary, Newsstands, Gift, Tobacco, Souvenir & Novelty Shop  
Arts, Crafts, Hobby and Fabric Shops  
Household Furnishings and Fixture Stores  
Antique Shop  
Instructed Music, Dance, Art and Drama Studios  
Fitness Center  
Motion Picture Theaters  
Bowling Alleys  
Amusement, Arcade (also video arcade)  
Amusement, Commercial Indoor

(ii) For the Phase II restaurant facility:

Restaurant (dine-in)

(iii) For the Phase III medical facility:

Medical, Dental, Chiropractice, Optometry, Podiatry, and Veterinarian  
Offices and Clinics  
Hospital, Medical Clinics (providing acute/extended patient care)"

**SECTION FOUR.** The term "Opening Date", whenever and wherever used in the Agreement, shall mean the Commencement Date as that term is defined herein.



**SECTION FIVE.** Article 4, "Term" of the Agreement is repealed and replaced in its entirety to read as follows:

**"ARTICLE 4  
TERM**

4.01 The term of this Agreement shall commence on the Effective Date and will terminate on the Expiration Date."

**SECTION SIX.** Article 5, "Covenants of Munay Development Partners, LLC" of the Agreement is hereby renamed "Conditions to Grant and Incentives" and repealed and replaced in its entirety to read as follows:

**"ARTICLE 5  
CONDITIONS TO GRANT AND INCENTIVES**

Munay shall during the term of the Agreement satisfy and comply with the terms and conditions of the Agreement and specifically, each term and condition of this Article 5. The obligations of EEDC and City to provide the Grant and the Incentives or any portion thereof shall be conditioned upon Munay's compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article 5.

5.01 Good Standing. Munay shall not have an uncured breach or default of this Agreement or a Related Agreement.

5.02 Replat of Property. On or before the Commencement of Construction of Phase I Improvements, Munay shall replat the parcels making of the Property into one parcel and file the plat of record in the Tarrant County Real Property Records.

5.03 Commencement of Construction of Phase I Improvements. Commencement of Construction of Phase I Improvements, as that term is herein defined, shall occur not later than March 1, 2024.

5.04 Commencement of Construction of Phase II Improvements. Commencement of Construction of Phase II Improvements, as that term is herein defined, shall occur not later than January 1, 2025.

5.05 Commencement of Construction of Phase III Improvements. Commencement of Construction of Phase III Improvements, as that term is herein defined, shall occur not later than January 27, 2026.

5.06 Completion of Construction of Phase I Improvements. Completion of Construction of Phase I Improvements, as that term is herein defined, shall occur not later than January 27, 2025.

5.07 Completion of Construction of Phase II Improvements. Completion of Construction of Phase II Improvements, as that term is herein defined, shall occur not later than January 1, 2026.

5.08 Completion of Construction of Phase III Improvements. Completion of Construction of Phase III Improvements, as that term is herein defined, shall occur not later than September 27, 2026.

5.09 Compliance with City Laws and Regulations. The Improvements shall be constructed, used, and maintained in accordance with all City of Everman ordinances, development regulations and standards, and adopted Building Codes, Fire Codes, and other relevant Codes adopted by the City and applicable to the Improvements.

5.10 Continuous Use and Occupancy for Required Use. During the term of this Agreement commencing on the Commencement Date and continuing thereafter until the Expiration Date, Munay shall continuously occupy or cause to be occupied by its lessee(s) and/or purchaser(s), the Property and the Improvements, all of which shall not be used during the term of the Agreement for any purpose other than the Required Use as defined herein. Further, during the term of this Agreement, such occupation and use shall not cease as to any unit, part, or portion of the Improvements, for more than thirty (30) days except in connection with, and to the extent of, an event of Force Majeure as defined in Article 12 of this Agreement.

5.11 Capital Investment. Munay's Capital Investment for the Improvements as of the Completion of Construction of Phase III Improvements shall be not less than \$3,603,737.00, inclusive of hard and soft costs. Munay shall, not later than fifteen (15) calendar days after the date of Completion of Construction of Phase III Improvements or upon declaration of any default hereunder, deliver to EEDC and City copies of all records, contracts, receipts, invoices, bills, proofs of payment, and such other information as EEDC or City may reasonably request to document compliance with the required Capital Investment. In the event the total cost of the construction of the Improvements, as reasonably verified by EEDC, is less than \$3,603,737.00, Munay shall, within thirty (30) days of receipt by Munay of written demand by EEDC, pay the EEDC the difference in value between \$3,603,737.00 and the final total cost of the construction of the Improvements as reasonably verified by EEDC. Company's obligations under this provision 5.10 survive termination of this Agreement."

**SECTION SIX.** Article 8, "Incentives Provided by the EEDC to Munay" is hereby repealed and replaced in its entirety to read as follows:

"ARTICLE 8  
GRANT BY EEDC

3.1 Grant. SEDC agrees, subject to the continued satisfaction of all the terms and conditions of this Agreement by Munay and the obligation of Munay to repay the value of the Grant and the costs incurred by EEDC, to provide the Grant to Munay as a credit to be applied to the purchase price of the Property at the closing of thereof.

3.2 Escrow and Closing Fees. EEDC will pay the closing costs associated with the purchase of the Property by Munay from EEDC and/or City and will pay one-half of the escrow fee related thereto.

3.3 Grant Limitations. Under no circumstances shall the obligations of EEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. EEDC shall not be obligated to pay any commercial bank, lender or similar



institution for any loan or credit agreement made by Company. None of the obligations of EEDC under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

3.4 Current Revenue. The Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by EEDC. EEDC shall have no obligation or liability to provide any Grant except as allowed by law. EEDC shall not be required to provide any of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction."

**SECTION SEVEN.** Article 10 "Default and Remedies" is hereby repealed and replaced in its entirety to read as follows:

**Article V**  
**Termination; Repayment**

10.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by EEDC, if any Impositions owed to EEDC, City or the State of Texas by Munay shall have become delinquent (provided, however, Munay retains the right to timely and properly protest and contest any such taxes or Impositions), and such delinquency is not cured within thirty (30) days following Munay's receipt of written notice thereof;
- (d) upon written notice by EEDC, if Munay suffers an event of Bankruptcy or Insolvency; or
- (e) upon written notice by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

10.2 Repayment Required Due to Breach of Section 10.1(b). In the event the Agreement is terminated by SEDC pursuant to Section 10.1 (b):

- (a) due to a breach of the obligation set forth in section 5.02 and/or 5.03 hereof, Munay shall immediately refund to the EEDC an amount equal to the one hundred percent (100%) of value of the Grant as defined herein;
- (b) due to a breach of the obligation set forth in section 5.04 and/or 5.06 hereof, Munay shall immediately refund to the EEDC an amount equal to eighty percent (80%) of the value of the Grant as defined herein;



- (c) due to a breach of the obligation set forth in section 5.05 and/or 5.07 hereof, Munay shall immediately refund to the EEDC an amount equal to seventy (70%) percent of the value of the Grant as defined herein;
- (d) due to a breach of the obligation set forth in section 5.08 hereof, Munay shall immediately refund to the EEDC an amount equal to sixty (60%) percent of the value of the Grant as defined herein;
- (e) due to a breach of the obligation set forth in section 5.01 that is not also a breach of section 5.02 through 5.11, Munay shall immediately refund to the EEDC an amount equal to fifty (50%) percent of the value of the Grant as defined herein; and
- (f) due to a breach of an obligation set forth in section 5.10 hereof, Munay shall immediately refund to the EEDC an amount as follows:
  - i. If the breach occurs on a date that is more than four years prior to the Expiration Date, Munay shall refund an amount equal to one hundred percent (100%) of the value of the Grant, as defined herein;
  - ii. If the breach occurs on a date that is more than three years, but less than four years, prior to Expiration Date, Munay shall refund an amount equal to eighty percent (80%) of the value of the Grant, as defined herein;
  - iii. If the breach occurs on a date that is more than two, but less than three years prior to the Expiration Date, Munay shall refund an amount equal to sixty percent (60%) of the value of the Grant as defined herein;
  - iv. If the breach occurs on a date that is more than one, but less than two, year(s) prior to the Expiration Date, Munay shall refund an amount equal to forty percent (40%) of the value of the Grant as defined herein; and
  - v. If the breach occurs on a date that is less than one year prior to the Expiration Date, Munay shall refund an amount equal to twenty percent (20%) of the value of the Grant as defined herein.

The repayment obligations of Munay set forth in this Section 10.2 shall survive termination of this Agreement.

10.3 Repayment Due to Breach of Section 10.1(c), (d), and/or (e). In the event the Agreement is terminated by EEDC pursuant to Section 10.1(c), (d), and/or (e), Munay shall immediately refund to EEDC an amount equal to the Grant, as defined herein, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the SEDC) as its prime or base commercial lending rate from the date on which the Grant is provided (Closing Date) by EEDC until refunded by Munay. The repayment obligation of Munay set forth in this Section 10.3 shall survive termination of this Agreement.

10.4 Offsets. City and/or EEDC may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City and/or EEDC from Munay, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement, or otherwise, and regardless of whether or

not the debt due EEDC and/or City has been reduced to judgment by a court.”

**SECTION EIGHT.** The Parties agree that Munay shall be released from compliance with Exhibit A to the Commercial Contract -Unimproved Property executed between the Parties with regard to the Property to the extent that any of the terms thereof conflict with the Agreement and that the conflicting terms as set forth in the Agreement shall control as though set forth in full in said Exhibit A to the Commercial Contract – Unimproved Property.

**SECTION NINE.** The Agreement shall continue in full force and effect except as herein amended. If any terms or conditions contained in this First Amendment are inconsistent with the Agreement, the terms and conditions of this First Amendment shall be controlling.

**EXECUTED** this the \_\_\_\_ day of \_\_\_\_\_, 2023.

**MUNAY DEVELOPMENT PARTNERS, LLC,  
a Texas Limited Liability Company**

By: \_\_\_\_\_  
Alvaro Munoz, Managing Member

STATE OF TEXAS                   §  
COUNTY OF TARRANT       §

This instrument was acknowledged before me on the date set forth below by Alvaro Munoz for and on behalf of Munay Development Partners, LLC, who stated on his oath that he is a managing member of Munay Development Partners, LLC, a Texas limited liability company, and that on the date set forth above he signed the above and foregoing document on behalf of Munay Development Partners, LLC after having been first duly authorized so to do.

Witness my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

[Notary Seal]

My Commission Expires: \_\_\_\_\_

**MUNAY DEVELOPMENT PARTNERS, LLC,  
a Texas Limited Liability Company**

By: \_\_\_\_\_  
Fernando Enrique Urcelay-Torrada, Managing Member

STATE OF TEXAS                   §  
COUNTY OF TARRANT       §

This instrument was acknowledged before me on the date set forth below by Fernando Enrique Urcelay-Torrada for and on behalf of Munay Development Partners, LLC, who stated on his oath that he is a managing member of Munay Development Partners, LLC, a Texas limited liability company, and that on the date set forth above he signed the above and foregoing document on behalf of Munay Development Partners, LLC after having been first duly authorized so to do.

Witness my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

[Notary Seal]

My Commission Expires: \_\_\_\_\_

**MUNAY DEVELOPMENT PARTNERS, LLC,**  
**a Texas Limited Liability Company**

By: \_\_\_\_\_  
Juan Enrique Munoz, Managing Member

STATE OF TEXAS                   §  
COUNTY OF TARRANT       §

This instrument was acknowledged before me on the date set forth below by Juan Enrique Munoz for and on behalf of Munay Development Partners, LLC, who stated on his oath that he is a managing member of Munay Development Partners, LLC, a Texas limited liability company, and that on the date set forth above he signed the above and foregoing document on behalf of Munay Development Partners, LLC after having been first duly authorized so to do.

Witness my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

[Notary Seal]



My Commission Expires: \_\_\_\_\_

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**EVERMAN ECONOMIC DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
Michael Nicoletti, Executive Director

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF EVERMAN, TEXAS**

By: \_\_\_\_\_  
Craig Spencer, City Manager

Approved as to form:

By: \_\_\_\_\_  
Victoria W. Thomas, City Attorney  
and EEDC General Counsel  
4854-3904-5255, v. 1  
\_\_\_\_\_

4854-3904-5255, v. 1

**EXHIBIT B**  
**[Site Plan]**

**EXHIBIT B**  
**[First Amended and Restated Restriction Agreement]**

4878-1354-5353, v. 1



WHEN RECORDED RETURN TO:

City of Everman, Texas  
Attn: City Secretary  
212 North Race Street  
Everman, Texas 76140

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**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

STATE OF TEXAS	§	FIRST AMENDED AND RESTATED RESTRICTION
	§	AGREEMENT
COUNTY OF TARRANT	§	(With Option to Repurchase and Right of First Refusal)

This **FIRST AMENDED AND RESTATED RESTRICTION AGREEMENT** ("**Amended Restriction Agreement**") is made and entered into as of the Effective Date by and between the **City of Everman** ("**City**"), a Texas home rule municipality, and **Munay Development Partners, LLC**, a Texas limited liability company ("**Developer**") (City and Developer sometimes hereafter collectively referred to as "**Parties**" or separately as "**a Party**" or "**the Party**")

#### **RECITALS**

**WHEREAS**, the Parties have previously entered into that certain Restriction Agreement (the "Restriction Agreement") in conjunction with the Economic Development Performance and 380 Agreement between the City of Everman, the Everman Economic Development Corporation, and Munay Development Partners, LLC (the "Performance Agreement") regarding development of Property located at 403 King Street, 404 King Street, 405 King Street, 408 King Street, 406 N. Race Street, 408 N. Race Street, 410 N. Race Street, 412 N. Race Street, 414 N. Race Street, and 502 N. Race Street, all as more particularly described in the Performance Agreement and the Restriction Agreement (the "Property"); and

**WHEREAS**, the Parties have executed a First Amendment to the Performance Agreement and simultaneously therewith, desire to execute this First Amende and Restated Restriction Agreement;

**NOW, THEREFORE**, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that the Restriction Agreement is hereby replaced in its entirety with this First Amended and Restated Restriction Agreement which shall read in its entirety as follows:

#### **FIRST AMENDED AND RESTATED RESTRICTION AGREEMENT**

##### **Article I**

##### **Property Subject to Declaration**

The Property, as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference, shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Developer

and any subsequent owners of all or any part of the Property (as hereinafter defined) for the term specified in Section 6.3, subject to the terms of this Amended Restriction Agreement.

## **Article II Definitions**

For purposes of this Amended Restriction Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

“City” means the City of Everman, Texas.

“Commencement Date” means the date upon which completion of construction has been reached for Phase I Improvements, Phase II Improvements and Phase III Improvements.

“Commencement of Construction of Phase I Improvements” means that for Phase I Improvements, as that term is defined herein, the (i) the detailed plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Phase I Improvements, (ii) all necessary permits for the construction of the Phase I Improvements have been issued by the applicable governmental authorities, and (iii) grading of the Property and construction of the vertical elements of the Phase I Improvements (whether located above or below ground) has commenced.

“Commencement of Construction of Phase II Improvements” means that for Phase II Improvements, as that term is defined herein, the (i) the detailed plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Phase II Improvements, (ii) all necessary permits for the construction of the Phase II Improvements have been issued by the applicable governmental authorities, and (iii) grading of the Property and construction of the vertical elements of the Phase II Improvements (whether located above or below ground) has commenced.

“Commencement of Construction of Phase III Improvements” means that for Phase III Improvements, as that term is defined herein, the (i) the detailed plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Phase III Improvements, (ii) all necessary permits for the construction of the Phase III Improvements have been issued by the applicable governmental authorities, and (iii) grading of the Property and construction of the vertical elements of the Phase III Improvements (whether located above or below ground) has commenced.

“Completion of Construction of Phase I Improvements” shall mean substantial completion and issuance of a final certificate of occupancy by City for occupancy of the Phase I Improvements.

“Completion of Construction of Phase II Improvements” shall mean substantial completion and issuance of a final certificate of occupancy by City for occupancy of the Phase II Improvements.

“Completion of Construction of Phase III Improvements” shall mean substantial completion and issuance of a final certificate of occupancy by City for occupancy of the Phase III Improvements.



“Development” shall mean the design and construction of the Improvements, as that term is defined herein, on the Property.”

“EEDC” shall mean the Everman Economic Development Corporation.

“Effective Date” means the date this Amended Restriction Agreement is signed by the Parties.

“Eligible Costs” means the costs incurred and paid by Developer for the construction of the Improvements that have been established by copies of documents delivered by Developer to City and reasonably acceptable to City providing evidence that Developer has in fact incurred and paid (not been merely invoiced for) such costs which documentary evidence must include the details of the items constituting Eligible Costs for which such expenditures were made. Eligible Costs shall not include costs for the acquisition of the Property, architectural, engineering, surveying, legal, or other professional services costs or fees, interest, finance, or the cost of financing, construction management, management fees, consultant fees or other soft costs incurred by Developer and directly associated with the design and construction of the Improvements.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages, adverse weather conditions, transportation delays or difficulties, shortages of materials or labor, financial institution shutdowns, epidemic or pandemic, electronic funds transfer delays or difficulties, and economic disruptions.

“Improvements” shall mean (i) twelve (12) retail units of approximately 1,000 square feet each, (ii) one (1) restaurant facility of not less than 2,500 square feet, and (iii) either one (1) medical facility of approximately 6,000 square feet or an additional six (6) retail units of approximately 1,000 square feet each constructed on the Property along with all required driveways, parking areas, lighting, signage, landscaping, infrastructure, fencing, and related appurtenances and in accordance with the site plan attached hereto and incorporated herein as Exhibit “B” and for the Required Uses as defined in the Performance Agreement.

“Munay” shall mean Munay Development Partners, LLC.

“Option Price” means an amount equal to:

- (a) Three Hundred, Thirty Thousand and No/100 Dollars (\$330,000.00); plus
- (b) If Commencement of Phase I Improvements, Commencement of Construction of Phase II Improvements, and/or Commencement of Construction of Phase II Improvements has occurred, the amount of Eligible Costs paid by Developer as of the date of exercise of the Option by City; less



- (c) All closing costs and expenses paid or incurred by City and/or EEDC pursuant to the Purchase and Sale Agreement executed between the Parties regarding the Property and pursuant to the exercise of the option.

“Option Period” means that period of time commencing on **March 1, 2024** and ending on **November 27, 2026**.

“Phase I Improvements” shall mean twelve (12) retail units of approximately 1,000 square feet each constructed on the Property along with all necessary and related driveways, parking lots, infrastructure, landscaping, signage, and a six (6’) foot high screening wall or fence to be constructed in accordance with the City’s Fencing and Screening requirements along the property lines along both sides and the rear of the property and composed of wood or masonry.

“Phase II Improvements” shall mean one (1) restaurant facility of not less than 2,500 square feet constructed on the Property along with all necessary and related driveways, parking lots, infrastructure, landscaping, and signage.

“Phase III Improvements” shall mean either one (1) medical facility of approximately 6,000 square feet or an additional six (6) retail units of approximately 1,000 square feet each along with all necessary and related driveways, parking lots, infrastructure, landscaping, and signage.

“Property” means the real property otherwise known as Block 3, Lot 3R (404 King Street), Block 2, Lot 11R (405 King Street), Block 3, Lot 2R (406 King Street), Block 3, Lot 1R (408 King Street), Block 2, Lot 12R (403 King Street), Block 2, Lot 6R (406 N. Race Street), Block 2, Lot 7R (408 N. Race Street), Block 2, Lot 8R (410 N. Race Street), Block 2, Lot 9R (412 N. Race Street), Block 3, Lot 4R (502 N. Race Street), and Block 2, Lot 10R (414 N. Race Street), all in the City of Everman, Tarrant County, Texas, as depicted in Exhibit “A”

“Purchase Agreement” shall mean that certain Purchase and Sale Agreement, as amended or assigned, by and between City and/or EEDC and Developer, relating to the sale of the Property by City and/or EEDC to Developer.

“Required Use” shall mean continuous occupancy of the Improvements by Munay for one or more of the following uses:

- (i) For the Phase I retail units and any Phase III retail units:
- Bakery and confectionary shop – Non-industrial
  - Ice Cream and Frozen Yogurt Parlors or Shops
  - Restaurants, cafes, cafeterias, Drive Through Service
  - Package Liquor Stores, Cocktail Lounges and Taverns, and Breweries
  - Drug, Apothecaries, Pharmacies and Sundry
  - Book, Stationary, Newsstands, Gift, Tobacco, Souvenir & Novelty Shop
  - Arts, Crafts, Hobby and Fabric Shops
  - Household Furnishings and Fixture Stores
  - Antique Shop
  - Instructed Music, Dance, Art and Drama Studios

- Fitness Center
- Motion Picture Theaters
- Bowling Alleys
- Amusement, Arcade (also video arcade)
- Amusement, Commercial Indoor
- (ii) For the Phase II restaurant facility:
  - Restaurant (dine-in)
- (iii) For the Phase III medical facility:
  - Medical, Dental, Chiropractice, Optometry, Podiatry, and Veterinarian
  - Offices and Clinics
  - Hospital, Medical Clinics (providing acute/extended patient care)”

### **Article III City Repurchase Options**

**3.1 Grant of Repurchase Options.** In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Developer and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Developer, and subject as hereinafter provided, Developer hereby grants to City during the Option Period an option to repurchase the Property (“**the Option**”).

**3.2 Time for Exercising the Option.** Subject to Section 3.3, below, the Option may be exercised by City in its sole discretion prior to the end of the Option Period by providing written notice to Developer any time on or after the following dates:

(a) **March 1, 2024**, if Developer has failed to cause Commencement of Construction of Phase I Improvements to occur on or before said date, which date shall be reasonably extended if delays are due to Force Majeure, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option;

(b) **January 1, 2025**, if Developer has failed to cause Commencement of Construction of Phase II Improvements to occur on or before said date, which date shall be reasonably extended if delays are due to Force Majeure, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option;

(c) **January 27, 2026**, if Developer has failed to cause Commencement of Construction of Phase III Improvements to occur on or before said date, which date shall be reasonably extended if delays are due to Force Majeure, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option;

(d) **January 27, 2025**, if Developer has failed to cause Completion of Construction of Phase I Improvements to occur on or before said date, which date shall be reasonably extended if delays are due to Force Majeure, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option;

(e) **January 1, 2026**, if Developer has failed to cause Completion of Construction of Phase II Improvements to occur on or before said date, which date shall be reasonably extended if delays are due to Force Majeure, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option; and

(f) **September 27, 2026**, if Developer has failed to cause Completion of Construction of Phase III Improvements to occur on or before said date, which date shall be reasonably extended if delays



are due to Force Majeure, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option.

**3.3 Force Majeure.** In the event of Force Majeure, Developer shall have such additional time to cause Commencement of Construction for the current phase and, as may be applicable, any following phases, so long as Developer is diligently and faithfully pursuing the same. The commencement and termination dates of the Option Period(s) shall be extended for the same number of days that the performance of Developer with respect to Commencement of Construction is extended by Force Majeure.

**3.4 Sole Remedy.** Should City exercise its option hereunder, then and in that event, City's sole and exclusive remedy for Developer's failure to comply with the deadlines for the Commencement of Construction and/or Completion of Construction set forth herein shall be the exercise of the Option and repurchase of the Property or portion thereof in accordance with Article VI, below.

#### **Article IV Right of First Refusal**

**4.1 Grant.** Subject to the terms and conditions hereinabove and hereinafter set forth, Developer hereby agrees that City shall have, and hereby grants to City, during the period commencing upon the Effective Date and ending upon the Commencement of Construction of Phase I Improvements ("**the ROFR Period**"), a right of first refusal (the "**ROFR**") to purchase the Property on the terms and conditions set forth herein.

**4.2 Notice of Third-Party Offer.** If (i) Developer receives a bona fide offer for the purchase of any portion of Property that it intends to accept, or (ii) Developer receives any offer to purchase the Property or any portion thereof from any governmental exercise of the power of eminent domain with respect to the Property, Developer shall give notice thereof in writing to City (the "**Third Party Notice**"). The Third-Party Notice shall include a copy of any offer to be made or any offer received by Developer, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

**4.3 City's Exercise of ROFR.** For a period of thirty (30) days after receipt by City of the Third Party Notice, City shall have the right to repurchase the Property, or so much of the Property that is subject to the Third Party Notice, upon the same terms and price as set forth in the Third Party Notice or for the Option Price, whichever is deemed by City to be more favorable to City (the "**ROFR Price**"). The ROFR may be exercised by City by providing written notice to Developer not later than thirty (30) days after City's receipt of the Third-Party Notice. City's notice shall indicate acceptance of the terms set forth in the offer as recited in the Third-Party Notice or the Option Price, as applicable.

**4.4 City Fails to Exercise ROFR.** If City does not elect to exercise the ROFR during the thirty (30) day period following its receipt of the Third-Party Notice:

(a) Developer may sell the Property, or portion thereof, at the price and on the terms and conditions described in the Third-Party Notice during the one hundred eighty (180) day period following the date of the Third-Party Notice; and

(b) City shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. Developer agrees not to sell the Property, or portion thereof, during the ROFR Period at any lower price, on any terms or conditions more favorable to the buyer than those set forth in the Third Party Notice, or at any time after expiration of the one hundred



eighty (180) day period described above, without first giving City the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time; and

(c) The ROFR shall remain in full force and effect with respect to any portion of the Property that is not sold by Developer following City's failure to exercise the ROFR with respect to the portion of the Property described in the Third-Party Notice.

**4.5 No Release of Restrictions Required.** City's failure to exercise the ROFR shall not constitute a release of the Option, City's rights to repurchase the Property pursuant to the Option, or the obligations of any subsequent owner of the Property or portion thereof to comply with the obligations of this Restriction Agreement.

## **Article V**

### **Terms of Sale Upon Exercise of Right**

**5.1 Effect of Exercise of the Right.** Upon any timely exercise of the Option or ROFR (each being "the Right") by City in accordance with the foregoing provisions, the conveyance of the Property, or portion thereof, as applicable to City shall be in accordance with the provisions in this Article V.

**5.2. Title, Survey, and Environmental Reports.**

(a) Not later than the fifteenth (15th) business day after the exercise of the Right, the Developer shall, at Developer's expense, deliver or cause to be delivered to City:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Property to be conveyed to City, setting forth the state of title to the Property or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that Developer may have in its possession with respect to the Property;

(iv) copies of all leases and rental agreements creating a leasehold interest in any portion of the Property; and

(v) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, City shall have the right, at its sole discretion, to cause a boundary or "as-built" survey of the Property to be made by a registered professional land surveyor selected by City. Such survey shall be made at the sole cost and expense of City.

(c) Not later than twenty (20) days after City's receipt of the last of the Title Commitment and the Survey (if applicable), City shall notify Developer and Title Company of any objections to the Survey or Title Commitment. If there are objections by City, Developer shall in good faith attempt to satisfy them prior to Closing, but Developer shall not be obligated to incur any cost in doing so. If Developer delivers written notice to City not later than the tenth (10<sup>th</sup>) calendar day after Developer's receipt of City's objections that Developer is unable to satisfy such objections, City may either waive

such objections and accept title as Developer is able to convey or terminate the exercise of the Right by written notice to Developer and the Title Company.

### **5.3     Closing.**

(a)     The closing of the sale of the Property or portion thereof identified in the notice exercising the Right shall occur not later than forty-five (45) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of Developer and City.

(b)     At the closing, Developer shall deliver to City:

(i)     a special warranty deed in form and substance substantially similar to the form used to convey the Property and related rights and appurtenances from City to Developer, conveying good and indefeasible fee title to the Property described in the notice exercising the Right and/or the survey obtained by City (whichever is the most accurate description) to City, free and clear of any and all encumbrances except the Permitted Exceptions (as defined in Section 5.6), save and except such oil, gas, and other minerals as may have been reserved by prior grantors; and

(ii)    possession of the portion of the Property described in the notice of the exercise of the Right, free of parties in possession.

(c)     At closing, City shall pay the Option Price or the ROFR Price, whichever is applicable, out of which shall be paid all Closing Costs and other costs and expenses to be paid by Developer pursuant to this Article V.

**5.4     Taxes.** Developer shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys' fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs assessed against the Property or portion thereof being repurchased. Developer will pay at Closing the pro-rated amount of ad valorem taxes for the Property for the calendar year of Closing in accordance with Texas Tax Code §26.11.

### **5.5     Closing Costs.**

(a)     Developer will pay and be responsible for the following closing cost:

(i)     the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(ii)    all fees and premiums for Basic Owner's Title Policy, excluding any deletions from, or modifications of or endorsements, to the Basic Owner's Title Policy;

(iii)   the Title Company's escrow fees;

(iv)    all recording fees;

(v)     all costs and expenses incurred by or on behalf of Developer, including Developer's attorney's fees;

(vi)    all costs related to obtaining any releases of liens on the portion of the Property relating to any loans secured by a deed of trust lien on the Property; and



(vii) such other incidental costs and fees customarily paid by sellers of real property in Tarrant County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City will pay and be responsible for the following closing cost:

(i) all fees and premiums for the Survey;

(ii) all fees and premiums for any deletions from, or modifications of or endorsements, to the Basic Owner's Title Policy;

(iii) all costs and expenses incurred by or on behalf of City, including City's attorneys' fees; and

(iv) such other incidental costs and fees customarily paid by purchasers of property in Tarrant County, Texas, for transactions of a similar nature to the transaction contemplated herein.

**5.6 Permitted Exceptions.** City acknowledges and agrees that the Property conveyed pursuant to this Article V will be conveyed by Developer at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by City, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Property by Developer; and (ii) such other matters as City may waive, or as Developer is not otherwise obligated to cure or remove.

**5.7 Conveyance as Is.** City acknowledges and agrees that the Property conveyed pursuant to this Article V will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by Developer as set forth in the Special Warranty Deed, City acknowledges and agrees that Developer will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to City by Developer or any employee or agent of Developer, except as specifically set forth in this Restriction Agreement.

## **Article VI Restrictions**

**6.1 Use of Property.** No building or improvements shall be constructed, reconstructed, erected, altered, or placed on any portion of the Property or Developer's Property other than the Improvements or structures that will be used in conformance with the Required Use. The Property shall be used for no purpose other than the Required Use.

**6.2 Term of Restrictions.** The restrictions set forth in Section 6.1, above, shall commence on the Effective Date and continue thereafter until the expiration of five (5) years following the Commencement Date (the "**Restriction Period**").

**6.3 Sale of Property.** If Developer sells the Property within five (5) years of the Commencement Date, as defined herein, Developer agrees to pay City Sixty Thousand (\$60,000.00) and no/100 Dollars of the sales proceeds, less any property taxes and sales taxes paid to City for the time period between the Commencement Date and the date of closing of the sale of the Property.

## **Article VII Miscellaneous**

**7.1 Enforcement.** City shall have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein



provided. Subject to the limitation set forth in Section 6.1, above, enforcement of the provisions set forth in Section 6.1 contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within two (2) thirty (30) day notice periods after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation and/or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council of the City of Everman to exercise its legislative duties and powers insofar as the Property is concerned. The rights of City under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof, except by expiration of the Term.

**7.2 Amendment.** No amendment or termination of this Restriction Agreement shall be effective unless and until approved by Developer and City; provided, however, City may, without the consent of Developer, terminate and release the restrictions set forth in Section 6.1 and/or Section 6.2. In the event Developer, or subsequent owner of the Property desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, Developer, or subsequent owner, as the case may be, shall file a written application for such change or amendment with City, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by City shall not be effective unless and until an instrument executed by City's Mayor or City Manager is recorded in the Official Public Records in the office of the Tarrant County Clerk in accordance with this Section.

**7.3 Notices.** All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission, by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

**If intended for City, to:**

City Manager  
City of Everman  
112 N. Race Street  
Everman, Texas 76140

**With a copy to:**

Victoria Thomas  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard, Suite 1800  
Dallas, Texas 75201

**If intended for Developer, to:**

Munay Development Partners, LLC  
520 W. Kellis Street  
Fort Worth, Texas 76115-1323

Any Party may at any time and from time to time by notice in writing to the other Party hereto change the name or address of the person to whom notice is to be given as hereinbefore provided.

**7.4 Successors and Assigns.** This Restriction Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

**7.5 Governing Law.** This Restriction Agreement is entered into and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of laws provisions) of the State of Texas.

Venue for any action under this Restriction Agreement shall be in the state district court of Tarrant County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

**7.6 Recording.** The Parties agree that City may record this Restriction Agreement in the Official Public Records in the office of the Tarrant County Clerk. City agrees to execute and file a release of this Restriction Agreement, or the Restriction, Option, ROFR or other applicable portion of this Restriction Agreement, as appropriate, in said records upon request of Developer after the expiration or termination of this Restriction Agreement, or the Restriction, Option, ROFR, or other applicable portion of this Restriction Agreement.

**7.7 Covenants Run with the Property.** This Restriction Agreement and the restrictions, covenants, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property and accomplishing certain public purposes of the City of Everman and, consequently, shall run with the Property and be binding on Developer and all parties having all right, title, or interest in the Property, in whole or in part, and their heirs, successors and assigns. These covenants, conditions and restrictions shall be for the benefit of the City of Everman, Texas. This Restriction Agreement is binding upon Developer and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Property shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of Developer hereunder.

**7.8 Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

**7.9 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no statement, promise, representation, or modification hereof by any person, if any, and whether oral or written, shall be binding upon any Party.

**7.10 Counterparts.** This Agreement may be executed by the Parties in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties.

*(Signatures on Following Page)*

*City's Signature Page*

**SIGNED AND AGREED** on this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF EVERMAN, TEXAS**

By: \_\_\_\_\_  
Craig Spencer, City Manager

**ATTEST:**

\_\_\_\_\_  
Mindi Parks, City Secretary



**MUNAY DEVELOPMENT PARTNERS, LLC,  
a Texas Limited Liability Company**

By: Juan E Munoz

Juan Enrique Munoz, Managing Member

STATE OF TEXAS                   §  
COUNTY OF TARRANT       §

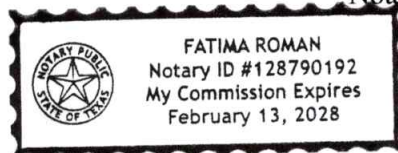
This instrument was acknowledged before me on the date set forth below by Juan Enrique Munoz for and on behalf of Munay Development Partners, LLC, who stated on his oath that he is a managing member of Munay Development Partners, LLC, a Texas limited liability company, and that on the date set forth above he signed the above and foregoing document on behalf of Munay Development Partners, LLC after having been first duly authorized so to do.

Witness my hand and seal this the 25 day of April, 2024.

Fatima Roman

Notary Public

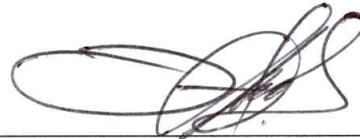
[Notary Seal]



My Commission Expires: 02-13-2028

**MUNAY DEVELOPMENT PARTNERS, LLC,  
a Texas Limited Liability Company**

By: \_\_\_\_\_



Fernando Enrique Urcelay-Torrada, Managing  
Member

STATE OF TEXAS §

COUNTY OF TARRANT §

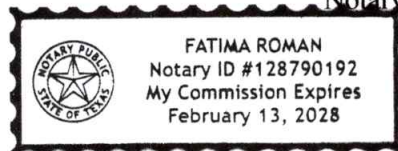
This instrument was acknowledged before me on the date set forth below by Fernando Enrique Urcelay-Torrada for and on behalf of Munay Development Partners, LLC, who stated on his oath that he is a managing member of Munay Development Partners, LLC, a Texas limited liability company, and that on the date set forth above he signed the above and foregoing document on behalf of Munay Development Partners, LLC after having been first duly authorized so to do.

Witness my hand and seal this the 25 day of April, 2024.



Notary Public

[Notary Seal]



My Commission Expires: 02-13-2028

**MUNAY DEVELOPMENT PARTNERS, LLC,  
a Texas Limited Liability Company**

By: Alvaro Munoz  
Alvaro Munoz, Managing Member

STATE OF TEXAS                   §  
COUNTY OF TARRANT       §

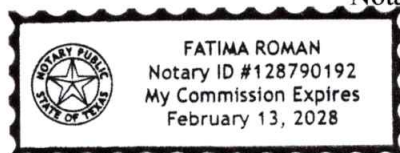
This instrument was acknowledged before me on the date set forth below by Alvaro Munoz for and on behalf of Munay Development Partners, LLC, who stated on his oath that he is a managing member of Munay Development Partners, LLC, a Texas limited liability company, and that on the date set forth above he signed the above and foregoing document on behalf of Munay Development Partners, LLC after having been first duly authorized so to do.

Witness my hand and seal this the 25 day of April, 2024

Fatima Roman

Notary Public

[Notary Seal]



My Commission Expires: 02-13-2028