

Document Number

AMENDED AND RESTATED
COOPERATION, CONTRIBUTION AND
REDEVELOPMENT AGREEMENT

Document Title

**AMENDED AND RESTATED
COOPERATION, CONTRIBUTION AND
REDEVELOPMENT AGREEMENT**

for the

COUTURE PROJECT

**Tax Incremental District No. 82
(East Michigan Street)**

Recording Area

Name and Return Address

Mary L. Schanning
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809 N. Broadway
Milwaukee, WI 53202

396-0511-000

Parcel Identification Number (PIN)

Drafted By:

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as amended by Zoning, Neighborhoods and Development Committee 2-23-2021

1050-2012-1849:

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**AMENDED AND RESTATED
COOPERATION, CONTRIBUTION AND
REDEVELOPMENT AGREEMENT
for the
COUTURE PROJECT**

Tax Incremental District No. 82 – East Michigan

THIS AMENDED AND RESTATED AGREEMENT is made as of the _____ day of _____, 2021, by and among the CITY OF MILWAUKEE, a Wisconsin municipal corporation (“CITY”), the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic created and existing under the laws of the State of Wisconsin (“RACM”) on the one hand, and THE COUTURE LLC, a Wisconsin limited liability company (“COUTURE”), and THE COUTURE HOLDINGS GROUP INC., a Wisconsin business corporation (“CHG”), on the other (The Couture and CHG collectively, the “DEVELOPER”).

RECITALS

1. CITY, RACM, and DEVELOPER agreed upon the basic terms for redevelopment of property located at 909 East Michigan Street, Milwaukee, Wisconsin, as legally described on **Exhibit A** attached hereto and made a part of this Agreement, (the “Property”) and entered into a Cooperation, Contribution and Redevelopment Agreement dated April 28, 2017 (the “Original Development Agreement”), and documented by a Memorandum of Cooperation, Contribution and Redevelopment Agreement recorded at the Milwaukee County Register of Deeds Office on July 10, 2019 as Document No. 10887022.

2. The Parties now desire to amend and restate the Original Development Agreement to provide as set forth therein.

3. In accordance with the Tax Increment Law, as defined below, by passage of Common Council Resolution Files No. 141263, on February 10, 2015; No. 170169 on May 31, 2017; No. 201062 on December 15, 2020; and No. 201365 on March 2, 2021, CITY authorized the execution of this Agreement, created and amended Tax Incremental District No. 82 – East Michigan (“TID 82”) and approved the Project Plan, as defined below, which provides for up to \$50,500,000 to fund (1) the \$17.5 million Public Infrastructure Project, as defined below, (2) the CITY’s costs of \$31 million for construction of infrastructure for the Milwaukee Streetcar and (3) \$2 million for sewer main relocation and additional public infrastructure work, of which \$1.5 million will fund the Sewer Grant, as defined below, and authorized the CITY to take ownership of Unit 3, as defined below.

4. The Property is located within the boundaries of TID 82.

5. DEVELOPER has acquired the Property and intends to undertake the Project, as defined herein.

6. As part of the Project Plan and as further described herein, CITY, acting through RACM, will provide TID 82 funds to DEVELOPER, up to a maximum of \$17,500,000, to fund the design and construction of the Public Infrastructure Project and up to a maximum of \$1,500,000 to fund the Sewer Project.

7. In order to induce CITY and RACM to undertake the activities set forth in this Agreement, DEVELOPER is willing to cooperate with CITY and RACM in the development of the Project in accordance with the terms of this Agreement.

8. In order to promote redevelopment of the Property and to assist in the creation of tax base and public improvements attending to such redevelopment, CITY and RACM are willing to cooperate with each other and DEVELOPER in the redevelopment of the Property in accordance with the terms of this Agreement.

9. RACM, through the adoption of Resolutions No. 10651 on November 17, 2016, No. 10663 on May 4, 2017, and No. 10847 on December 10, 2020, authorized execution of this Agreement.

10. DEVELOPER has approved this Agreement and authorized its execution.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the Parties hereto, CITY, RACM and DEVELOPER hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms when used in this Agreement shall have the following meanings:

“Affiliate” means a person, entity or entities directly or indirectly under the same control or management as DEVELOPER or a person, entity or entities controlling or managing DEVELOPER. DEVELOPER may create one or more Affiliates for the purposes of carrying out the Project, provided, such Affiliate(s) comply with all terms and conditions of this Agreement. Affiliates include, but are not limited to, Couture Holdings LLC, Couture Parking LLC and Transit Hub MKE LLC.

“Agreement” means this Amended and Restated Cooperation, Contribution, and Redevelopment Agreement, including all exhibits, as the same may be from time to time modified or amended as allowed herein.

“Airspace Lease” means a lease granted by CITY in accordance with Section 66.0915(3) or (4) of the Wisconsin Statutes and Section 245-14 of the Milwaukee Code of Ordinances for a Skywalk.

“Architect” means Rinka Inc., a Wisconsin corporation and the architect working with DEVELOPER to design the Project.

“Certificate of Completion” means a certification, in a form substantially similar to that attached as **Exhibit C** hereto and made a part of this Agreement, provided to DEVELOPER by RACM in accordance with this Agreement.

“Closing” means the closing on all financing for the Project with the HUD Insured Lender and any Conventional Lender for the Project which shall also include (1) providing all executed Project Documents to the Parties; (2) providing the Personal Guaranties to CITY and (3) putting the Grant and Sewer Grant funds into escrow pursuant to the Disbursement Agreement.

“Condominium Documents” means collectively, (1) the Declaration of Condominium for the Couture Lakefront, A Condominium, along with the condominium plat attached to it and (2) the Operating Agreement and Bylaws for The Couture Lakefront Condominium Association LLC, both substantially in the form attached hereto as **Exhibit B**.

“Contractor” means the general contractor selected after completion of the bidding process described in Section 2.2.C, below.

“Conventional Lender” has the meaning set forth in Article XIX.

“County Transit Center” means the Milwaukee County Downtown Transit Center building previously located on the Property.

“Couture Project” means the demolition of the County Transit Center (including the existing skywalk across E. Michigan Street) and the construction of the Couture Building at an estimated total cost of approximately \$185 million.

“Couture Building” means a 44-story mixed use high-rise to be constructed on the Property which shall include approximately 300 market rent apartments, 50,000 square feet of retail and restaurant space, and approximately 900 parking spaces. Couture Building does not include the Transportation Concourse or Natural Spaces.

“DCD Commissioner” means CITY’s Commissioner of City Development.

“Detailed Planned Development” means the detailed planned development zoning for the Project that was proposed by DEVELOPER and approved by CITY on April 18, 2017, by passage of Common Council File No. 161479 pursuant to Sec. 295-907 of the Milwaukee Code of Ordinances.

“Disbursement Agreement” means the disbursement agreement to be negotiated and entered into between RACM, the provider of the Primary Financing, DEVELOPER, Contractor, Architect, Title Company and any other necessary parties governing the disbursement of equity funds, loan funds under the Primary Financing and the Grant and Sewer Grant.

“DPW Commissioner” means CITY’s Commissioner of Public Works.

“Easement & Maintenance Agreement” means the Transportation & Public Access Easement and Maintenance & Operation Agreement recorded at the Milwaukee County Register of Deeds Office on August 7, 2019 as Document No. 10895602, as the same may be amended by the Amended and Restated Transportation & Public Access Easement and Maintenance & Operation Agreement that will

be recorded at the Milwaukee County Register of Deeds Office following Closing, attached as **Exhibit D**.

“Environmental Laws” means all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Agency, regulations of the Nuclear Regulatory Agency, and regulations of the Wisconsin Department of Natural Resources now or at any time hereafter in effect.

“Event of Default” has the meaning set forth in Article X.

“Executive Director” means the Executive Director of RACM or the Assistant Executive Director of RACM.

“FTA” means the Federal Transit Administration under the jurisdiction of the United States Department of Transportation.

“Final Plans” means plans and specifications prepared by Architect entitled “100% Construction Document Set—Issued for Bid & Permit” and dated May 4, 2018, that will be used by DEVELOPER for the construction of the Couture Project, the Public Infrastructure Project and the Sewer Project and which were prepared by DEVELOPER in accordance with the Detailed Planned Development, the Transit Plans, the Streetcar Specifications, the HNTB Corporation designed drawings dated March 14, 2018 (entitled IFC Plans, Project WI-03-0095-01), the Sewer Plans and this Agreement, and approved in writing by the DCD Commissioner in consultation with the DPW Commissioner before DEVELOPER begins construction of the Project.

“Grant” means TID 82 funds in an amount not to exceed \$17,500,000 to be paid to CHG by RACM, pursuant to the Disbursement Agreement, for contribution to COUTURE and/or its Affiliates to reimburse DEVELOPER and/or its Affiliates for the actual costs of design and construction of the Public Infrastructure Project.

“HUD” means the U.S. Department of Housing and Urban Development.

“HUD Insured Lender” has the meaning set forth in Article XIX.

“Human Resources Agreement” means the agreement between CITY and DEVELOPER which sets forth requirements for the utilization of Small Business Enterprises and CITY residents for the construction of the Public Infrastructure Project and attached as **Exhibit E**.

“Minimum Assessed Value Agreement” means the document attached as **Exhibit F**.

“Natural Spaces” means approximately 30,000 square feet of publically accessible natural spaces to be located both indoors and outdoors on the Property and made available to serve downtown office employees, residents and the general public as initially shown on **Exhibit G**.

“Original Development Agreement” has the meaning set forth in Recital 1.

“Party” means CITY, RACM or DEVELOPER as the context may require.

“Parties” means CITY, RACM, and DEVELOPER.

“Personal Guaranties” means personal financial guaranties signed by DEVELOPER’s principals, Rick Barrett and Tan Lo, in substantially the same form as **Exhibit P**.

“PILOT Agreement” means the payment in lieu of taxes agreements to be recorded on the Property between CITY and DEVELOPER or Affiliates in substantially the form attached as **Exhibit H**.

“Primary Financing” means a HUD 220-enhanced senior loan to DEVELOPER in an aggregate principal amount to be determined by HUD, with a term equal to the construction period plus 480 months of amortization.

“Project” means collectively the Couture Project, the Public Infrastructure Project, the Sewer Project and the additional obligations of DEVELOPER described in Sections 2.1, 2.2 and 20.2 of this Agreement.

“Project Documents” means this Agreement, the Disbursement Agreement, any required Airspace Lease(s), the Easement & Maintenance Agreement, the PILOT Agreement, the Human Resources Agreement, the Minimum Assessed Value Agreement, the Sewer Easement, the Sewer Project Human Resources Agreement and such other agreements and documents necessary to fulfill the requirements of this Agreement and to complete the Project.

“Project Plan” means the CITY-approved project plan, as amended, required by the Tax Increment Law for TID 82 on file in City’s Department of City Development.

“Property” has the meaning set forth in Recital 1.

“Public Infrastructure Project” means the design and construction of the Transportation Concourse (not including Streetcar Amenities), the Streetcar Structural Support and the Natural Spaces.

“Public Walkways” means publicly accessible pedestrian areas within the Transportation Concourse including all walkways, stairways, escalators and elevators connecting the Transportation Concourse to the Skywalks, the Natural Spaces and to public street rights-of-way.

“Sewer Easement” means a permanent sewer easement in substantially the same form as the document attached as **Exhibit M**.

“Sewer Grant” means TID 82 funds in an amount not to exceed \$1,500,000 to be paid to CHG by RACM pursuant to Section 20.5 of this Agreement for contribution to COUTURE and/or Affiliates to reimburse DEVELOPER and/or Affiliates for the actual costs of the Sewer Project.

“Sewer Plans” has the meaning set forth in Section 20.1.

“Sewer Project” has the meaning set forth in Section 20.1.

“Sewer Project Human Resources Agreement” means the document attached as **Exhibit N**.

“Skywalks” means any skywalk(s) that may be constructed linking the Property to O’Donnell Park to the north, the Lake Michigan lakefront to the east, the future development site across Clybourn Street to the south and the building at 833 East Michigan Street to the west.

“Small Business Enterprise” means a business that has been certified by CITY’s Office of Small Business Development based on the requirements of section 370-25 of the Milwaukee Code of Ordinances.

“Streetcar Amenities” means public transportation facilities designed, installed and owned by the CITY and located within Unit 3, including, but not limited to, a fixed rail public transit or streetcar transit route or any alternative to a fixed rail system such as buses or trolleys as deemed appropriate by CITY in the Streetcar Lane plus any transit related amenities such as a streetcar guideway, loading platform, transit and traffic control equipment, pavement markings, smart kiosks / ticket vending machines, signage, , utilities serving streetcar amenities (unless otherwise specified) and any other public transit related amenities deemed appropriate by CITY. Streetcar Amenities are also referred to as “Transit Amenities” in the Easement & Maintenance Agreement.

“Streetcar Lane” means that certain area consisting of approximately 3,024 square feet in Unit 3, more specifically described as “Area C” on **Exhibit J**.

“Streetcar Specifications” means the Streetcar Design Criteria Manual dated April 28, 2017, on file with and available from CITY’s Department of Public Works, required to be met in the design and construction of the Transportation Concourse and Streetcar Structural Support.

“Streetcar Structural Support” means the portion of the Couture Building and the Transportation Concourse that is the superstructure and substructure of the Transportation Concourse that provides structural support to and meets the load requirements as defined in the Streetcar Specifications.

“Substantial Completion” means completion of the Project in substantial compliance with the Final Plans and in a condition that is approved by the DCD Commissioner, in consultation with DPW Commission, and DEVELOPER’s compliance with all other requirements of this Agreement.

“Tax Increment Law” means section 66.1105, of the Wisconsin Statutes, as amended.

“Termination Date” means the date this Agreement terminates, which shall be the earliest of: (i) the date RACM issues the Certificate of Completion, (ii) the expiration of TID 82, or (iii) the date this Agreement is otherwise terminated in accordance with its terms.

“TID 82” has the meaning set forth in Recital 3.

“TIGER Grant” means the Transportation Investment Generating Economic Recovery Grant, administered by the FTA, awarded to CITY by the United States Department of Transportation for construction of the Streetcar Amenities.

“**Title Company**” means Chicago Title Company or another title company chosen by DEVELOPER.

“**Transit Plans**” means collectively (1) the March 14, 2018, IFC Plans, Project WI-03-0095-01, designed by HNTB Corporation, as may be further amended or revised, and (2) the pages from the Detailed Planned Development attached as **Exhibit I** showing the location of Streetcar Amenities within the Transportation Concourse, as the same may be amended and/or restated by mutual written agreement of the CITY and DEVELOPER. In the event there is a conflict between plans described as (1) and (2), above, the plans in (1) shall control.

“**Transportation Concourse**” means a publicly accessible pedestrian and transportation areas located on a portion of the first and second levels of the Couture Building (which includes, but is not limited to, the Public Walkways, bicycle amenities, the paved roadway to be used by public transit vehicles and any transit lobby and restrooms to be utilized by transit vehicle operators or the public), as well as the parking frame and transportation concourse frame, all as shown on the attached **Exhibit J**. Streetcar Amenities and Natural Spaces are not included in the definition of Transportation Concourse.

“**Unit 3**” means a condominium unit identified and defined as Unit 3 in the Condominium Documents.

1.2. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

A. Words importing the singular number shall include the plural number and vice versa.

B. The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

ARTICLE II

PROJECT DESCRIPTION AND PARTY RESPONSIBILITIES

2.1 Overall Project Description. Subject to the terms and conditions set forth herein, the Project requires DEVELOPER to demolish the County Transit Center including the existing skywalk across East Michigan Street, design and construct the Couture Project and the Public Infrastructure Project in accordance with the Final Plans and comply with all of the obligations of DEVELOPER described in Section 2.2 of this Agreement. To supplement the obligations of DEVELOPER and CITY as described in this Article II, the responsibility matrix attached as **Exhibit K** (as the same may be amended and/or restated by mutual written agreement of CITY and DEVELOPER) provides additional details regarding such obligations.

2.2 DEVELOPER Obligations. In furtherance of the Project, DEVELOPER, or an Affiliate, shall do all of the following:

A. Prepare the Final Plans which the Parties acknowledge have been submitted by DEVELOPER to the CITY and will be considered approved by the CITY upon the issuance of a building permit. Any material changes made to DEVELOPER'S design and construction plans that occur after approval of the Final Plans by the DCD Commissioner must also be approved in writing by the DCD Commissioner in consultation with the DPW Commissioner. DEVELOPER shall incorporate environmentally conscious and sustainable features into the Final Plans in accordance with federal, state and local laws.

B. Commence construction of the Couture Building and the Public Infrastructure Project no later than July 1, 2021. The deadline for commencement of construction may be adjusted, but only with the express approval of and confirmation from the FTA that such adjustment will not have a material adverse impact the availability of the TIGER Grant. Upon the DEVELOPER's determination that an adjustment is reasonably necessary (either to meet the deadline or to stay within the current Project budget), the DEVELOPER and the CITY shall promptly initiate a request for such an adjustment from the FTA and shall work in good faith to pursue such request to a definitive response.

C. With regard to the construction of the Public Infrastructure Project, allow the DPW Commissioner to review the cost estimates from DEVELOPER's contractor to ensure that construction costs funded by the Grant are reasonable and within industry standards and allow a third-party construction consultant selected by CITY and paid for by the Developer to review such bids. At Closing, DEVELOPER shall pay \$100,000 to CITY to cover CITY's third-party construction consultant costs. In the event CITY's consultant costs exceed \$100,000, DEVELOPER shall pay CITY additional costs as the Project progresses. In the event CITY's consultant costs are less than \$100,000, CITY shall return any unused funds to DEVELOPER after completion of the Public Infrastructure Project. Contractors or firms selected by DEVELOPER to construct the Public Infrastructure Project shall be subject to the prior written approval of the DPW Commissioner. In the event the costs of the Public Infrastructure Project are greater than the Grant, DEVELOPER shall pay the additional costs.

D. Construct and maintain the Transportation Concourse, Natural Spaces and Public Walkways in compliance with the Americans with Disabilities Act, as amended from time to time.

E. Construct the Project in accordance with the Final Plans. Any design changes or construction change orders for the Public Infrastructure Project that are proposed by DEVELOPER, its Architect or Contractor following approval of the Final Plans by the DCD Commissioner must also be approved in writing by the DCD Commissioner in consultation with the DPW Commissioner. If such changes are related to the Streetcar Structural Support, such approval shall be by the DPW Commissioner.

F. Complete construction of the Streetcar Structural Support and the Streetcar Lane (exclusive of any Streetcar Amenities) so that CITY may begin construction of the Streetcar Amenities within the Transportation Concourse no later than May 1, 2022. On or before such completion date, DEVELOPER shall provide documentation reasonably adequate to CITY to demonstrate that construction of the Streetcar Structural Support and the Streetcar Lane have been completed in compliance with the Streetcar Specifications. DPW Commissioner shall be satisfied that construction of the Transportation Concourse has been sufficiently completed such that CITY may safely and effectively begin construction of the Streetcar Amenities without interference or delay caused by continuing construction activities of DEVELOPER and its contractors within the Transportation Concourse. This

deadline may be adjusted as the Project progresses, but only upon mutual written consent of DEVELOPER and the DPW Commissioner. Because CITY will need to begin construction on streetcar improvements outside of the Transportation Concourse no later than April 1, 2022, DEVELOPER shall, and shall require its construction contractors to, work with CITY to remove project staging and other impediments that would prohibit CITY from beginning such work outside the Transportation Concourse by April 1, 2022, either on the Property or outside the Property where DEVELOPER may have right-of-way permits for construction activities related to the Project. These deadlines shall be adjusted to conform to the actual Project schedule as it progresses, but only with the express approval of and confirmation from the FTA that such adjustment will not have a material adverse impact the availability of the TIGER Grant. Upon the DEVELOPER's determination that an adjustment is reasonably necessary (either to meet the deadline or to stay within the current Project budget), the DEVELOPER and the CITY shall promptly initiate a request for such an adjustment from the FTA and shall work in good faith to pursue such request to a definitive response.

G. Coordinate construction of the Project to allow reasonably unimpeded access to Unit 3 by CITY and its contractors during construction, installation and testing of the Streetcar Amenities such that the Streetcar Amenities can begin revenue service no later than the time required under Section 2.2.I, below.

H. In the event that DEVELOPER has additional work to do in Unit 3 from the time CITY begins construction of the Streetcar Amenities until Unit 3 is conveyed to CITY or until DEVELOPER no longer needs the right of entry granted by Section 21.6, whichever occurs later, DEVELOPER shall obtain or require its contractors performing such work to obtain builders and liability insurance naming CITY as an additional insured. DEVELOPER shall provide to CITY proof of such insurance coverage at the same time that it provides the documentation required by subsection F, above.

I. Complete construction of the Transportation Concourse such that it can be open to the public and the Streetcar Amenities can begin revenue service no later than June 30, 2022. All lighting, fire life safety equipment, and any other necessary safety equipment to allow temporary occupancy of Unit 3 shall be functional in the Transportation Concourse by June 30, 2022. Furthermore, the DEVELOPER shall take any and all necessary measures to provide a safe environment, including the provision of ADA accessible path(s) between the streetcar loading platform and public sidewalk(s) prior to June 30, 2022. These deadlines shall be adjusted to conform to the actual Project schedule as it progresses, but only with the express approval of and confirmation from the FTA that such adjustment will not have a materials adverse impact the availability of the TIGER Grant. Upon the DEVELOPER's determination that an adjustment is reasonably necessary (either to meet the deadline or to stay within the current Project budget), the DEVELOPER and the CITY shall promptly initiate a request for such an adjustment from the FTA and shall work in good faith to pursue such request to a definitive response.

J. If the Project includes any Skywalks constructed by DEVELOPER or an Affiliate, apply for and enter into an Airspace Lease(s) with CITY in accordance with City of Milwaukee ordinances.

K. Work with CITY and RACM to achieve approval of the Detailed Planned Development zoning and obtain necessary permits and other approvals necessary to complete the Project.

L. Provide evidence reasonably acceptable to the DCD Commissioner of commitments for financing necessary to construct the Project promptly upon receipt of same.

M. Abstain from any actions that would prohibit or preclude CITY from installing and operating the Streetcar Amenities, it being understood that the Grant is being provided to DEVELOPER in exchange for the granting of the Easement & Maintenance Agreement, the conveyance of Unit 3 at no cost to the CITY and for DEVELOPER allowing the Streetcar Amenities to be installed and operated on the Property.

N. Record the Condominium Documents on title to the Property prior to closing on project financing with HUD Insured Lender and make no amendments or revisions to the Condominium Documents prior to conveyance of Unit 3 to CITY as required herein.

O. Convey Unit 3 to CITY at no cost in accordance with Article XXI of this Agreement.

P. Execute and deliver all Project Documents to which it is a party and deliver copies thereof to RACM and CITY to the extent such entities are parties to such documents and obtain from Rick Barrett and Tan Lo the Personal Guaranties and deliver them to CITY at or before Closing. DEVELOPER's ability to obtain and provide the Personal Guaranties to CITY is a material term of this Agreement upon which CITY relies and without which CITY would not agree to the other terms.

Q. Fulfill all of its other obligations set forth in this Agreement and the Project Documents and reach Substantial Completion no later than 42 months after construction commences. In the event that the deadline for Substantial Completion is not met, but all other deadlines in this Section 2.2. have been met, the deadline for Substantial Completion can be extended by written approval of the DPW Commissioner and DCD Commissioner, which approval shall not be unreasonably withheld or delayed as long as work continues to commence on the Project.

R. Include the following acknowledgement of USDOT support and disclaimer in the construction site signage, whether copyrighted or not: "This material is based upon work supported by the USDOT under FTA FY 2015 TIGER Grant No. WI-2017-008. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the USDOT."

2.3 RACM Obligations. In furtherance of the Project, RACM shall:

A. Provide the Grant, as more fully set forth in Article III below, to DEVELOPER as reimbursement for DEVELOPER's actual costs for the Public Infrastructure Project as required by this Agreement and the Disbursement Agreement.

B. Provide the Sewer Grant to DEVELOPER as more fully set forth in Article XX of this Agreement.

C. Assist DEVELOPER in obtaining as expeditiously as possible, all permits, approvals, licenses, certificates, inspections and consents that may be necessary or desirable to enable DEVELOPER to commence and carry out all obligations and actions under this Agreement and the Project Documents.

D. Execute and deliver the Project Documents to which it is a party.

E. Fulfill all of its other obligations set forth in this Agreement and the Project Documents.

2.4 CITY Obligations. In furtherance of the Project, CITY shall:

- A. Provide funds from TID 82 through RACM in an amount sufficient to fund the Grant prior to execution of the Disbursement Agreement.
- B. Provide funds from TID 82 through RACM in an amount sufficient to fund the Sewer Grant as further described in Article XX.
- C. Commence and diligently work to complete construction of the Streetcar Amenities so that they can be put into revenue service no later than the time required under Section 2.2.I, above, so long as the TIGER Grant has not been rescinded by the FTA. The Parties agree that construction of the Streetcar Amenities may commence prior to the conveyance of Unit 3 to CITY.
- D. Assist DEVELOPER in obtaining, as expeditiously as possible, all permits, approvals, variances, licenses, certificates, inspections and consents that may be necessary or desirable to enable DEVELOPER to commence and carry out all obligations and actions under this Agreement and the Project Documents; provided that nothing contained herein shall be deemed to limit or waive CITY's independent right and authority to review and consider each request for such approvals.
- E. Review and, if they meet the requirements of this Agreement, approve the Final Plans.
- F. Execute and deliver the Project Documents to which it is a party.
- G. Accept ownership of Unit 3 in accordance with Article XXI of this Agreement.
- H. Fulfill all of its other obligations set forth in this Agreement and the Project Documents.

ARTICLE III

GRANT & SEWER GRANT

3.1 Background. This Agreement is entered into in furtherance of the Tax Increment Law. Under this Agreement:

- A. CITY agrees to act on behalf of RACM by using its powers, as necessary, to provide for the accomplishment of RACM's redevelopment goals pursuant to sec. 66.1333(13), Wis. Stats., and in order to aid RACM's redevelopment activities so that the Grant and Sewer Grant will qualify as a project cost for TID 82 pursuant to secs. 66.1105(2)(f)(1)(h) and (j), Wis. Stats.
- B. CITY and RACM agree that the Grant and Sewer Grant will be deemed to have been made for the purpose of carrying out redevelopment and assisting in a redevelopment project pursuant to the terms of this Agreement.
- C. DEVELOPER agrees to cause the Project to be implemented and brought to Substantial Completion pursuant to the terms of this Agreement.

3.2 **Findings and Representations.**

A. **CITY.** CITY makes the following findings and representations:

1. The Property lies within TID 82 and exhibits conditions that cause it to be “in need of rehabilitation or conservation work” under the Tax Incremental Law as evidenced by the Project Plan.

2. The Grant is a “project cost” under the Tax Increment Law in multiple respects. *First*, the Grant is a contribution made under sec. 66.1333(13), Wis. Stats., for the purpose of carrying out redevelopment and assisting in a redevelopment project. *Second*, the Grant is a payment towards capital costs including the actual cost to construct public areas for the use of public transportation and pedestrian traffic which is a valid “project cost” pursuant to sec. 66.1105(2)(f)1.a., Wis. Stats.

3. The Sewer Grant is a “project cost” under the Tax Increment Law in multiple respects. *First*, the Sewer Grant is a contribution made under sec. 66.1333(13), Wis. Stats., for the purpose of carrying out redevelopment and assisting in a redevelopment project. *Second*, the Sewer Grant is a payment towards construction of a sewer main as necessary in order to fulfill the Project Plan, which is a valid “project cost” pursuant to sec. 66.1105(2)(f)1.j., Wis. Stats.

4. The Grant and Sewer Grant serve a public purpose by eliminating blighting conditions, enhancing CITY’s tax base, aiding in the creation of new full-time jobs in CITY and inducing appropriate development of the Property.

5. The amounts of the Grant and Sewer Grant are the amounts determined by CITY to be necessary to induce the Project.

6. CITY is incurring the Grant and Sewer Grant as limited and conditional monetary obligations to pay for “project costs” under the Tax Incremental Law, and CITY’s administrative costs in issuing the Grant and Sewer Grant are “project cost[s],” within the meaning of sec. 66.1105(2)(f)1.e., Wis. Stats.

B. **RACM.** RACM makes the following findings and representations:

1. CITY is assisting RACM in improvement and redevelopment of the Property in accordance with the Project Plan.

2. It is not necessary for RACM to acquire the Property for the purpose of assisting private acquisition, improvement, and development of the Property. Section 66.1333(5)(c)1r., Wis. Stats., gives RACM the same duties, powers, and privileges as if RACM had acquired the Property.

3. RACM endorses the Grant and Sewer Grant as contributions made for the purpose of carrying on redevelopment and assisting in a redevelopment project.

C. DEVELOPER. DEVELOPER declares that “but for” the Grant and Sewer Grant, it would not undertake the Project.

3.3 Payments of Grant and Conditions to Payment.

A. The Grant shall be contributed by CITY to RACM for the Public Infrastructure Project and disbursed to DEVELOPER on a reimbursement basis in accordance with the Disbursement Agreement. The Sewer Grant shall be disbursed in accordance with Article XX of this Agreement.

B. The Grant is a monetary obligation of CITY contributing to the actual costs for the design and construction of the Public Infrastructure Project in an amount not to exceed \$17.5 million. The Sewer Grant is a monetary obligation of CITY contributing to the actual costs for construction of the Sewer Project in an amount not to exceed \$1.5 million.

C. No disbursement of any portion of the Grant shall occur until all of the following have occurred:

1. Detailed Planned Development zoning for the Property has been approved.
2. DEVELOPER has provided CITY with evidence of financing for the Project.
3. DEVELOPER has entered into construction contracts for the Project.
4. DEVELOPER has signed all Project Documents.
5. DEVELOPER has obtained a completion guaranty/bond for the Project.
6. CITY has approved the Final Plans.
7. DEVELOPER has incurred actual costs related to the Public Infrastructure Project.

ARTICLE IV

INSPECTIONS

4.1 CITY is responsible for designing the Streetcar Specifications which DEVELOPER, its Architect, Contractor and subcontractors must abide by in the design and construction of the Streetcar Structural Support. DEVELOPER, its Architect, Contractor and subcontractors shall be solely responsible for the completion of all other design aspects of the Couture Project and the Public Infrastructure Project and shall further be responsible for the completion of the construction of the Couture Project and the Public Infrastructure Project in accordance with the Final Plans. Nothing contained in this Agreement shall create or affect any relationship between CITY or RACM, on the one hand, and Contractor or any subcontractor employed or engaged by DEVELOPER, on the other hand, in the design and construction of the Couture Project and the construction of the Public Infrastructure Project.

4.2 Upon notice and during normal business hours, RACM may make reasonable inspections of the Project, including but not limited to inspections on behalf of RACM by CITY's Department of Public Works, Department of City Development and Department of Neighborhood Services, during construction, provided that such inspections do not interfere with the progress of the Project. In order to allow RACM and CITY agencies to undertake these inspections in a meaningful fashion, DEVELOPER shall, upon request, provide RACM with any change orders and shop drawings relating to the Project.

4.3 DEVELOPER shall allow CITY, its staff and its general contractor and project manager for the design and construction of the Streetcar Amenities to access the Property as necessary to conduct inspections for quality assurance purposes during construction of the Streetcar Structural Support and the Transportation Concourse. However, CITY has no obligation to conduct such inspections.

4.4 DEVELOPER shall provide the Executive Director and DPW Commissioner with a certificate of the Architect, upon which the Executive Director and DPW Commissioner may rely, confirming that the Project, including, but not limited to the Streetcar Structural Support, is in compliance with this Agreement and the applicable plans and specifications.

ARTICLE V

ENVIRONMENTAL MATTERS

5.1 DEVELOPER covenants and agrees to comply with all Environmental Laws applicable to DEVELOPER's activities at the Property.

5.2 DEVELOPER covenants and agrees to indemnify and hold RACM and CITY (including, for this purpose, their officers, employees, officials and agents) harmless from and against any and all claims, damages, costs, expenses (including reasonable legal, consulting and engineering fees) and awards of every type and nature arising from any third party claims or causes of action for any violations or alleged violations of Environmental Laws by DEVELOPER (or any persons acting under DEVELOPER's control or direction) or as a result of any environmental contamination present on the Property on the date of this Agreement, excluding any such third party claims or causes of action resulting from or caused by CITY's sewer pipe that exists on the Property on the date of this Agreement and in the future.

5.3 The Parties agree to provide to each other, immediately upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree, or other document, from any source, asserting or alleging a circumstance or condition which:

- A. Constitutes a violation of any Environmental Laws on the Property;
- B. Requires or may require a clean-up, removal, remedial action or other response by or on the part of DEVELOPER or any other person under Environmental Laws; or
- C. Seeks damages or penalties (civil, criminal or punitive) from any of the Parties or any other person for an alleged violation of Environmental Laws on the Property.

D. It is acknowledged and agreed that DEVELOPER may indemnify CITY and RACM only to the extent permitted by HUD requirements (i.e., from insurance proceeds, surplus cash, and non-project funds).

ARTICLE VI

CERTIFICATE OF COMPLETION

6.1 The Project will not be deemed to meet Substantial Completion until DEVELOPER provides RACM with (a) a certificate of substantial completion by the Architect stating that the Project, as constructed, is in compliance with the Final Plans and (b) issuance by CITY of occupancy certificates for the portions of the Couture Building requiring occupancy certificates. Upon receiving this documentation and confirming that Substantial Completion has been met, RACM shall furnish DEVELOPER with the Certificate of Completion.

6.2 The Certificate of Completion shall constitute a conclusive determination of satisfaction and termination of the covenants and agreements listed in this Agreement, except those terms that have a different termination date or that run with the land as described in this Agreement. The Certificate of Completion shall be in recordable form and may be recorded by DEVELOPER at its discretion and cost.

ARTICLE VII

RESTRICTIONS ON USE

7.1 DEVELOPER agrees for itself, and its successors and assigns, and every successor in interest to the Property or any part thereof, to:

A. Devote the Property only to uses compatible with the applicable zoning, but shall not be precluded in any way from thereafter changing the use of the Property, or any portion of it, in any manner consistent with applicable ordinances, covenants, or waivers related to applicable ordinances or covenants; and

B. Not discriminate upon the basis of race, color, creed, sex, national origin or sexual orientation in the sale, lease or rental, use or occupancy of any portion of the Property, or any improvements located or to be located thereon.

ARTICLE VIII

LIMITATION UPON ENCUMBRANCE OF PROPERTY

Prior to Substantial Completion of the Project and except as permitted pursuant to Section 18.8 of this Agreement, neither DEVELOPER, any Affiliate, nor any assignee or successor in interest to the Property shall create or cause any partial or total sale, assignment, conveyance, trust or power to transfer in any other mode or form any portion of the Property or engage in any financing or any other transaction creating any mortgage or other encumbrances or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property except for (a) the Primary Financing, (b) purposes only of obtaining additional funds and/or services to the extent necessary for the construction of the Project, (c) conveyance of Unit 3 to CITY in accordance

with Article XXI of this Agreement and (d) entering into a lease with Milwaukee County in accordance with Article XXI of this Agreement. The Parties agree that for purposes of this Article the payment of the Grant and the Sewer Grant shall not create any encumbrance or lien upon the Property. Notwithstanding the foregoing, DEVELOPER or its Affiliate may: (i) collaterally assign this Agreement to HUD, a HUD Insured Lender or a Conventional Lender, if any; or (ii) assign or transfer all or any portion of the Property and all or any portion of DEVELOPER's rights under this Agreement to an Affiliate. Any transfer described in this Article VIII shall be subject to the provisions of this Agreement, such that DEVELOPER, its Affiliate, or the transferee shall comply with the requirements of this Agreement. DEVELOPER shall provide written notice to RACM prior to any assignment or transfer, of any nature, under this Article VIII.

ARTICLE IX

LIMITS ON DEVELOPER ACTION

9.1 Prior to the issuance of the Certificate of Completion, DEVELOPER shall not do any of the following without the prior written consent of the Executive Director:

- A. Merge with another entity;
- B. Enter into any transaction that would materially adversely affect the ability of DEVELOPER to complete the Project;
- C. Assume additional indebtedness, other than the financing required for the Project (which required financing shall include any predevelopment loans to be satisfied at the time of the Primary Financing), for which the collateral includes any portion of the Property or DEVELOPER's interest in the Property or any portion of the Property;
- D. Assume or guarantee the obligations of any other person or entity that would materially adversely affect the ability of DEVELOPER to complete the Project; or
- E. Enter into a transaction that would cause a material and detrimental change to the DEVELOPER's financial condition.

9.2 The Parties acknowledge and agree, however, that the foregoing restrictions shall not apply to prohibit DEVELOPER from taking any actions required to be taken under the terms of the Primary Financing, including (without limitation) that certain Regulatory Agreement for Multifamily Housing Projects (Form HUD-92466) between DEVELOPER and HUD related to the Project.

ARTICLE X

DEFAULT PROVISIONS

10.1 If any one or more of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default" under and for purposes of this Agreement.

A. Any Party shall default in the performance or observance of any of the covenants, agreements or conditions on the part of such Party set forth in this Agreement or any Project Document and fail to cure such default within thirty (30) days following receipt of written notice from another party specifying such default in sufficient detail so as to afford a cure thereof; provided, however, if such default is of a nature such that it cannot be cured in such 30-day period, the defaulting Party shall have such time as is reasonably necessary to cure such default provided such Party is diligently and in good faith proceeding to cure such default.

B. Any Party shall:

1. Become insolvent;
2. Be unable or admit in writing its inability to pay its debts as they become due;
3. Make a general assignment for the benefit of creditors or to an agent authorized to dissolve a substantial amount of its property;
4. Become subject (either voluntarily or involuntarily) to an order for relief within the meaning of the bankruptcy code and, in the case of an involuntary application, such order is not vacated within 60 days of such order;
5. File a petition to effect a plan or other arrangement with creditors;
6. File an answer to a creditor's petition, admitting the material allegations thereof, for dissolution, reorganization or to effect a plan or other arrangements with creditors;
7. Apply to a court for the appointment of a receiver for any of its assets;
8. Have a receiver appointed for any of its assets (with or without consent) and such receiver shall not be discharged within 60 days after appointment; or
9. Otherwise become the subject of any federal or state bankruptcy or insolvency proceedings, which proceedings are not discharge within 60 days after the initiation of such proceedings.

ARTICLE XI

REMEDIES

11.1 If an Event of Default shall occur, and after notice and the period to cure as provided for in this Agreement, the aggrieved Party may terminate this Agreement and/or pursue any available remedy, either at law or in equity, against the Party in default including but not limited to withholding disbursement of payments provided for in this Agreement, but only to the extent permitted by the Disbursement Agreement.

11.2 Notwithstanding 11.1, for any Event of Default caused by DEVELOPER's failure to meet the deadlines described in Sections 2.2.F and 2.2.I, as may be adjusted pursuant to the terms of this Agreement, the remedy shall be that CITY can seek reimbursement under the terms of the Personal Guaranties.

ARTICLE XII

INSURANCE

DEVELOPER shall provide, or cause to be provided, general liability insurance in the types and amounts set forth on **Exhibit L** attached hereto and made a part of this Agreement. DEVELOPER shall furnish RACM and CITY a certificate or certificates of insurance naming RACM and CITY as additional insureds with respect to the insurance provided pursuant to this Article XII. The certificates shall provide that the insurance company will furnish RACM and CITY with a 30-day written notice of cancellation, non-renewal or material change. The above insurance requirements shall include CITY and RACM, to the extent CITY and RACM have an insurable interest. DEVELOPER's obligations with respect to this Article XII shall terminate with the issuance of the Certificate of Completion.

ARTICLE XIII

INDEMNIFICATION

13.1 DEVELOPER shall indemnify and hold harmless CITY and RACM (for purposes of this Article, collectively the "Indemnified Parties" or individually the "Indemnified Party") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of any third party claims, causes of action, or demands made against or suffered by the Indemnified Parties on account of this Agreement or any actions of DEVELOPER or an Affiliate undertaken pursuant to this Agreement or the making of the Grant or Sewer Grant unless any of the same (i) relate to CITY or RACM failing to perform their obligations to DEVELOPER or (ii) arise out of any negligence or willful misconduct of CITY or RACM. At an Indemnified Party's request, DEVELOPER shall appear for and defend the Indemnified Party, at DEVELOPER's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing. CITY and/or RACM shall promptly notify the DEVELOPER in reasonable detail of any such third-party claim, cause of action or demand for which indemnification or defense will be sought hereunder. The Indemnified Party shall have the right to participate, at its own expense, with respect to any such third-party claim, cause of action or demand. In connection with any third-party claim, cause of action or demand for which indemnification will be sought hereunder, the Parties shall cooperate with each other and provide each other with access to relevant books and records in their possession.

13.2 It is acknowledged and agreed that DEVELOPER may indemnify CITY and RACM only to the extent permitted by HUD requirements (i.e., from insurance proceeds, surplus cash, and non-project funds), but also that if such third party claims, causes of action or demands are based upon DEVELOPER's negligence or willful misconduct, RACM may (subject to the provisions of Article XIX hereof) delay Grant or Sewer Grant payments until such third party claims, causes of action, or demands are resolved.

13.3 If a firm written offer is made to settle any such third-party claim, cause of action or demand and (i) the DEVELOPER proposes to accept such settlement and (ii) DEVELOPER tenders full payment of all monetary consideration required by such settlement and (iii) the proposed settlement will result in a full and complete release and dismissal of all claims, causes of action, and demands made or possibly made against CITY or RACM and (iv) the proposed settlement is not otherwise contrary to CITY's or RACM's respective interests, as determined by CITY's City Attorney, then if the Indemnified Party refuses to consent to such settlement the DEVELOPER shall be excused from, and the Indemnified Party shall be solely responsible for, all further defense of such third-party claim, cause of action or demand, and the maximum liability of the DEVELOPER relating to such third-party claim, cause of action or demand shall be the amount of the proposed settlement plus the amount of the Indemnified Party's other losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees, up to the point of and including the proposed settlement, if the amount thereafter recovered from the Indemnified Party on such third party claim, demand, action or proceeding is greater than the amount of the proposed settlement; provided DEVELOPER first pays the Indemnified Party cash equal to the amount of the proposed settlement plus the Indemnified Party's other losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees.

13.4 Notwithstanding anything to the contrary in this Article XIII, in exchange for the Personal Guaranties to be provided to CITY pursuant to this Agreement, and in exchange for a contribution to the Anti-Displacement Fund administered by MKE United in the amount of One Hundred Thousand Dollars (\$100,000.00) payable by the Developer's principals, Rick Barrett and/or Tan Loa, at closing, CITY hereby limits liability of DEVELOPER and its Affiliates as stated below and waives any potential claims against the Conventional Lender(s) and HUD Insured Lender related to FTA seeking reimbursement of TIGER Grant funds paid to CITY or FTA's refusal to provide TIGER Grant funds for the Streetcar Amenities due to delays caused by DEVELOPER or its Affiliates, contractors or suppliers, Conventional Lender(s) or the HUD Insured Lender that result in the deadlines in Sections 2.2.F and 2.2.I. of this Agreement not being met. Any liability related to the TIGER Grant hereunder shall be limited to an amount not to exceed \$1,411,713, and shall be solely recoverable from Rick Barrett and Tan Lo pursuant to the terms of the Personal Guaranties, and not the DEVELOPER.

ARTICLE XIV

FORCE MAJEURE

If any party is delayed or prevented from the performance of any act required by this Agreement by reason of fire, earthquake, war, flood, riot, strikes, labor disputes, judicial orders, public emergency or regulations, or other causes beyond the reasonable control of the party obligated to perform, performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

ARTICLE XV

CONFLICT OF INTEREST: REPRESENTATIVES NOT INDIVIDUALLY LIABLE

15.1 No member, official, agent or employee of RACM or CITY shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, official, agent or

employee participate in any decision relating to this Agreement which affects such person's personal interests or the interests of any corporation, partnership or association in which such person is, directly or indirectly, interested. No member, official, agent or employee of RACM or CITY shall be personally liable to DEVELOPER, any Affiliate or any successor in interest in the event of any default or breach by RACM or CITY or for any amount which may become due to DEVELOPER or any Affiliate under the terms of this Agreement.

15.2 It is understood and agreed that RACM's obligation to make the Grant and Sewer Grant is absolutely conditioned upon receipt by RACM from CITY of all sums necessary to enable RACM to fulfill its financial obligations under this Agreement. RACM shall not, under any circumstances, be required to advance the Grant or Sewer Grant or any part thereof unless and until the necessary funds have been received by RACM from CITY. RACM shall not in any event be liable to DEVELOPER or any other person by reason of unavailability or delay in availability of the funds intended to be used for the purpose of making the Grant or Sewer Grant.

ARTICLE XVI

NOTICES

Any notice required to be sent to any Party shall be in writing and forwarded to the following, as applicable:

CITY:

Department of City Development
809 North Broadway
Milwaukee, WI 53202
Attn: Commissioner of City Development

With a copy to:

Department of Public Works
841 North Broadway, Suite 501
Milwaukee, WI 53202
Attn: Commissioner of Public Works

With a copy to:

Office of City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Attn: Real Estate Deputy City Attorney

RACM:

Redevelopment Authority of the City of Milwaukee
809 North Broadway
Milwaukee, WI 53202

Attn: Executive Director/Secretary

DEVELOPER:

The Couture LLC
260 East Highland Avenue, Suite 401
Milwaukee, WI 53202
Attn: Rick Barrett

With a copy to:

The Couture Holdings Group Inc.
260 East Highland Avenue, Suite 401
Milwaukee, WI 53202
Attn: Rick Barrett

With a copy to:

Meissner Tierney Fisher & Nichols, S.C.
111 East Kilbourn Avenue, 19th Floor
Milwaukee, WI 53202
Attn: Adam J. Tutaj, Esq.

ARTICLE XVII

RECORDS AND FINANCIAL STATEMENTS

17.1 DEVELOPER shall keep accurate, full and complete books and accounts with respect to the costs to be reimbursed by the Grant and Sewer Grant and shall include a provision in all its contracts related to the Public Infrastructure Project and Sewer Project requiring its contractors and subcontractors to do the same. All such books and accounts shall be maintained in accordance with tax basis accounting principles consistently applied, and shall be kept for a period of seven (7) years subsequent to Substantial Completion.

17.2 During such seven (7) year period, CITY's Comptroller, or his designee, shall have the right, upon reasonable notice to DEVELOPER, its contractors or subcontractors as the case may be, to examine the books and accounts of DEVELOPER, its contractors or subcontractors relating to the Public Infrastructure Project or Sewer Project during normal business hours; provided, however, that such examination shall not occur more frequently than twice annually prior to the occurrence of an Event of Default hereunder.

17.3 During the construction period, DEVELOPER shall maintain internally generated financial statements for the Project, certified as to accuracy. At its discretion, CITY may request said financial statements to be provided within 120 days of the close of any fiscal year.

17.4 To the extent permitted by law, CITY and RACM shall use their best efforts and take all necessary or appropriate measures, in good faith, to maintain the confidentiality of any financial, proprietary or other confidential information received from DEVELOPER or its contractors or

subcontractors, and shall cause their respective agents and independent contractors having access to such information to do the same.

17.5 CITY and RACM are subject to the requirements of the Wisconsin Public Records Law. Wis. Stats. §§ 19.31-39. Under this statute, all documents and records are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure. In the event that CITY or RACM receives a public records request for confidential information provided pursuant to this Agreement, DEVELOPER's claim of confidentiality will be considered in conjunction with the requirements of the Wisconsin Public Records Law as to whether or not to release such materials. In all cases, the Parties will abide by the requirements of the Wisconsin Public Records Law. CITY and RACM agree to provide notice to DEVELOPER in the event that we receive such a request, or in the event of the initiation of legal action to compel the release of such records.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

18.1 Limitations of Waivers. If any term contained in this Agreement should be breached by any Party and thereafter waived by another Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive the same or other or any future breach hereunder on any other occasion. No remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity or by virtue of other contracts. No delay or omission to exercise any right or power occurring upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. To entitle any Party to exercise any remedy reserved or available to it, it shall not be necessary to give any notice other than such notice as may be expressly required by this Agreement.

18.2 Amendments. This Agreement shall not be amended, changed, modified, altered or terminated without the written consent of all Parties.

18.3 Successors. It is intended and agreed that, for the period specified in this Agreement, the covenants of DEVELOPER, or any of its Affiliates, provided in this Agreement shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, RACM and CITY, against the interests of DEVELOPER or any Affiliate (including their respective successors) in and to the Property.

18.4 Exhibits and Recitals. The various exhibits appended to this Agreement and the opening recitals herein are incorporated herein and for all purposes are a part of this Agreement.

18.5 Governing Law and Termination. The laws of the State of Wisconsin shall govern this Agreement. This Agreement shall terminate on the Termination Date.

18.6 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, in all cases because the provision conflicts with any other provision or provisions hereof or

any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the remaining portions of this Agreement, or any part thereof.

18.7 Approvals. Whenever this Agreement requires the consent or approval of RACM or allows the discretion of RACM to be exercised, the Executive Director shall have the authority to provide such consent or approval or to exercise such discretion. Whenever in this Agreement the consent or approval of CITY is required or the discretion of CITY may be exercised, the DCD Commissioner shall have the authority to provide such consent or approval or to exercise such discretion, except as otherwise provided in this Agreement where that authority is given to the DPW Commissioner. Any and all approvals and consents required of any Party hereunder shall not be unreasonably withheld or unduly delayed and shall be granted or withheld consistent with the agreements of the Parties set forth in this Agreement and the Project Documents and with respect to the nature and scope of the development of the Project.

18.8 Assignment. Neither CITY nor RACM shall assign this Agreement without the written consent of DEVELOPER. Prior to Substantial Completion and except as provided in Article VIII, DEVELOPER may not assign its rights or obligations under this Agreement to a third-party without prior written consent of CITY and RACM. DEVELOPER may however, with written notice to CITY and RACM, assign its rights and obligations under this Agreement without the consent of CITY or RACM to any Affiliate or to The Couture Lakefront Condominium Association LLC. DEVELOPER shall be liable for the actions of any assignee fulfilling or attempting to fulfill DEVELOPER's obligations under the terms of this Agreement if such assignee is not party to a written assignment as provided herein.

18.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument. Any Party may execute this Agreement by facsimile; provided that the Party provides an original of the facsimile signature to each other Party within five calendar days of transmission of the facsimile signature.

18.10 Recording. Any Project Documents to be recorded with the Register of Deeds Office shall be recorded at DEVELOPER's expense. DEVELOPER may record a memorandum of this Agreement rather than this Agreement. In the event that a memorandum is the preferred method to record the terms of this Agreement, the Executive Director and DCD Commissioner shall sign such Memorandum on behalf of RACM and CITY, respectively.

ARTICLE XIX

HUD AND FTA REQUIRED PROVISIONS

The Parties acknowledge that the Streetcar Amenities will be funded in part by the TIGER Grant awarded to CITY by the FTA. Notwithstanding any provision in this Agreement, CITY and RACM acknowledge that this Agreement and all of the terms, covenants and provisions hereof and all rights, title, interests, and remedies of CITY and RACM hereunder (and the instruments referenced herein) are, and shall at all times continue to be, subject and subordinate in all respects to the right, title, interest and

remedies of any person or entity who, at any time, provides financing for all or any portion of the Project that is insured by or through any program administered by HUD or any subdivision thereof, including (without limitation) the Federal Housing Administration (any such person or entity being hereinafter referred to as a “HUD Insured Lender”). CITY and RACM agree to make any modifications to this Agreement required by HUD or the HUD Insured Lender as necessary for the Project to meet the requirements of HUD’s 220 or 221(d)4 programs. In the event such modifications would result in a conflict with or default by CITY under any grant agreement between CITY and FTA related to the TIGER Grant and the Streetcar Amenities, CITY and DEVELOPER shall first use their best efforts to meet and confer with representatives from HUD and FTA in an effort to reach a solution that avoids such conflict or default. In the event that DEVELOPER proposes to encumber the Property to secure financing for all or any portion of the Project from any person or entity who is not a HUD Insured Lender (each a “Conventional Lender”), all rights, title, interests, and remedies of CITY and RACM hereunder (and the instruments referenced herein) shall be subject and subordinate to the rights of the Conventional Lender; provided, however, that each such Conventional Lender shall provide an agreement under which such Conventional Lender agrees to recognize all rights, title, interests and remedies of the FTA, pursuant to any grant agreement between CITY and FTA, and of CITY and RACM hereunder (and the Project Documents) in the event of foreclosure, if CITY and RACM are not then in default, so long as CITY and RACM observe and perform all of the obligations, provisions, covenants, and conditions required of CITY and RACM hereunder (and the Project Documents).

ARTICLE XX

SEWER PROJECT

20.1 Sewer Project Description. A CITY-owned sewer main is currently located on the Property in a location that is not compatible with the Couture Project. To accommodate the Couture Project, the DEVELOPER shall relocate that sewer main to another location on the Property as described in Plan File Numbers 246-24 and 246-25 dated March 22, 2017, or alternative plans approved in writing by the DPW Commissioner (the “Sewer Plans”) and comply with the requirements of this Article XX (collectively, the “Sewer Project”).

20.2 DEVELOPER Obligations. In furtherance of the Sewer Project, DEVELOPER, or Affiliate, shall do all of the following:

A. With regard to the construction of the Sewer Project, allow the DPW Commissioner to review the cost estimates from DEVELOPER’s contractor to ensure that construction costs funded by the Sewer Grant are reasonable and within industry standards. Contractors or firms selected by DEVELOPER to construct the Sewer Project shall be subject to the prior written approval of the DPW Commissioner. In the event the costs of the Sewer Project are greater than the Sewer Grant, DEVELOPER shall pay the additional costs.

B. Construct the Sewer Project in accordance with the Sewer Plans. Any design changes or construction change orders for the Sewer Project that are proposed by DEVELOPER following approval of the Sewer Plans by the DPW Commissioner must also be approved in writing by the DPW Commissioner. DEVELOPER’S obligation to construct the Sewer Project means that DEVELOPER shall be responsible for all construction activities related to the Sewer Project including, but not limited

to, bidding, contract letting, construction in accordance with the Sewer Plan, construction inspections, change orders, and providing CITY with as-built surveys. DEVELOPER shall allow CITY, at the discretion of the DPW Commissioner, to inspect and monitor the Sewer Project work by DEVELOPER and its contractors as that work progresses.

C. Grant the Sewer Easement to CITY.

D. Enter into the Sewer Project Human Resources Agreement with CITY.

E. At Closing, DEVELOPER shall pay \$30,000 to CITY to cover CITY's costs for sewer inspection and disbursement review for the Sewer Grant. In the event CITY's sewer inspection and disbursement review costs exceed \$30,000, DEVELOPER shall pay CITY additional costs as the Sewer Project progresses. In the event CITY's sewer inspection and disbursement review costs are less than \$30,000, CITY shall return any unused funds to DEVELOPER after completion of the Sewer Project.

20.3 CITY Obligations. In furtherance of the Sewer Project, CITY shall:

A. Provide funds from TID 82 to RACM in an amount sufficient to fund the Sewer Grant within 30 days after the execution of the Amendment.

B. Accept the Sewer Easement.

20.4 RACM Obligations. In furtherance of the Sewer Project, RACM shall pay the Sewer Grant to DEVELOPER as reimbursement for DEVELOPER's actual costs for the Sewer Project as required by this Article XX and in accordance with the disbursement procedure described in Section 20.5.D., below.

20.5 Sewer Grant.

A. The Sewer Grant shall be contributed by CITY to RACM for the Sewer Project and disbursed to DEVELOPER in monthly payments on a reimbursement basis in accordance with this Article XX.

B. The Sewer Grant is a monetary obligation of CITY contributing to DEVELOPER's actual costs of the Sewer Project in an amount not to exceed \$1.5 million.

C. In the event the costs of the Sewer Project are greater than the Sewer Grant, DEVELOPER shall pay the additional costs. In the event the costs of the Sewer Project are less than the Sewer Grant, the excessive funds in the Sewer Grant shall be retained by RACM and returned to CITY.

D. The process for disbursing the Sewer Grants shall be as follows:

1. After work commences on the Sewer Project, DEVELOPER shall provide to RACM and the DPW Commissioner on a monthly basis a sworn statement setting forth all contractors and materialmen with whom DEVELOPER, or Affiliate, or its general contractor has contracted, amounts of contracts, total amounts paid to date, amounts of current payments and balances due with proof of payments made by DEVELOPER during the preceding month

for costs related to the Sewer Project (with supporting documentation) and copies of all change orders (collectively the “Sewer Project Documentation”);

2. With each monthly disbursement request, DEVELOPER shall provide to RACM and the DPW Commissioner a report or a certification by its general contractor certifying that work included in the disbursement request has been completed and materials are in place as indicated by the request for payment of the DEVELOPER evidenced by the Sewer Project Documentation;

3. With each monthly disbursement request, DEVELOPER shall provide to RACM and the DPW Commissioner written certification from the DEVELOPER’s project engineer that the work and materials included in the disbursement request as described in the Sewer Project Documentation are consistent with the requirements of the Sewer Easement, the Sewer Plans and this Agreement;

4. The DPW Commissioner shall approve or reject DEVELOPER’s request for disbursement of funds within 30 business days of receipt of all of the items in subsections 1 through 3, above. Such approval or rejection shall be provided in writing to DEVELOPER and RACM. If DEVELOPER’s request for disbursement is rejected, the DPW Commissioner shall provide to DEVELOPER written explanation of the reason(s) for the rejection. Non-compliance with the terms of any Project Document is a legitimate reason to reject a disbursement request;

5. Upon approval by the DPW Commissioner of the requested disbursement, RACM shall verify that the requirements of subsection E, below, have been met and, if they continue to be met, then transmit to CHG sufficient funds to cover the requested disbursement, not to exceed a total of \$1.5 million. Disbursement of the Sewer Grant funds shall be made by RACM directly to CHG. It is the intention of the parties named herein that no person that is not a signatory to this Agreement shall be a third party beneficiary of this Agreement, and neither CITY nor RACM owes any duty of care to any such party; and

6. The final disbursement, either at the completion of the Sewer Project or when the cost of the Sewer Project reaches or exceeds \$1.5 million, or 15% of the total Sewer Grant (whichever is greater), shall be withheld by RACM until (a) DEVELOPER provides to the DPW Commissioner lien waivers or releases of lien executed by all parties who provided work or materials as named on the Sewer Project Documentation and (b) DEVELOPER has completed construction of the Sewer Project and CITY has accepted the new sewer, such acceptance shall be in writing by the DPW Commissioner.

E. No disbursement of any portion of the Sewer Grant shall occur until all of the following have occurred:

1. DEVELOPER has provided CITY with evidence that it has obtained sufficient financing for the Project and has closed on such financing.

2. DEVELOPER has signed all Project Documents.

3. DEVELOPER has incurred actual costs related to the Sewer Project and reimbursable by the Sewer Grant.

4. DEVELOPER has provided the DPW Commissioner with evidence (such as construction contracts, financing approvals, timelines from contractors, etc.), sufficient in DPW Commissioner's determination, to confirm that the Couture Project and Public Infrastructure Project are expected and likely to be completed by DEVELOPER in accordance with the Agreement.

F. Approval and payment of DEVELOPER's disbursement requests shall not be construed as CITY's or RACM's agreement or acceptance (a) that the Sewer Project was constructed in accordance with the Sewer Plans or the Project Documents; (b) that the Sewer Project is free from defects; or (c) that the certifications of the DEVELOPER, its general contractor or project engineer are correct.

G. CITY shall be authorized to make inspections of the Sewer Project during the course of construction, and shall determine to its own satisfaction that the work done or materials supplied by DEVELOPER and/or its general contractor and all subcontractors and suppliers have been properly made or supplied in accordance with the Sewer Plans.

ARTICLE XXI

CONVEYANCE OF UNIT 3

21.1 Conveyance Requirement. DEVELOPER shall convey Unit 3 to CITY no later than the date required under Section 2.2.I, above, for the commencement of revenue service of the Streetcar Amenities, in accordance with this Article XXI after DEVELOPER completes construction of the Streetcar Structural Support and all improvements that are DEVELOPER's responsibility within the Transportation Concourse and Unit 3 and provides to CITY written certification from the Architect that the Streetcar Structural Support, Transportation Concourse and Unit 3 were constructed in accordance with the Final Plans and the Streetcar Specifications. This deadline may be adjusted as the Project progresses, but only upon mutual written consent of DEVELOPER and DPW Commissioner. In the event that Unit 3 cannot be conveyed to CITY prior to commencement of revenue service of the Streetcar Amenities, the right of entry granted to CITY pursuant to Section 21.6 shall also be for the purpose of operating the Streetcar Amenities.

21.2 Precondition of Closing. Closing on the conveyance of Unit 3 from DEVELOPER to CITY shall be at the CITY's Real Estate Office at a mutually agreeable date and time, unless some other location is agreed to in writing by DEVELOPER and CITY, but only after the following preconditions have been satisfied:

A. DEVELOPER shall submit the documentation required by Section 21.1 to CITY and CITY has had at least 60 days to review such documentation and to make whatever inspections deemed necessary or appropriate by the DPW Commissioner.

B. DEVELOPER shall certify to CITY in writing that no amendments have been made to the Condominium Documents that have not been reviewed and approved by CITY.

C. DEVELOPER shall obtain a title commitment for Unit 3 and provide a copy to CITY. If the title commitment shows defects or other encumbrances on title that are unacceptable to CITY, CITY shall notify DEVELOPER of such defects or encumbrances and DEVELOPER shall cure and remove such title defects and encumbrances and present CITY with an updated title insurance commitment prior to closing as evidence that the defects and encumbrances have been cured and removed from title. Project Documents and the Condominium Documents shall not be considered objectionable encumbrances on title under this subsection. Liens, mortgages or other encumbrances related to the financing of the Project are presumed to be objectionable to CITY unless waived in writing by CITY.

D. In the event that DEVELOPER has additional work to do on the Project following conveyance of Unit 3 to CITY, DEVELOPER shall provide to CITY proof that DEVELOPER or its contractors performing such work have builders and liability insurance and that CITY is named as an additional insured on such policies for any work performed after closing on Unit 3. DEVELOPER shall maintain or require its contractors to maintain such insurance coverage at all times that DEVELOPER uses the right of entry granted to it under section 21.6, below.

21.3 Form of Deed. DEVELOPER shall convey Unit 3 to CITY by warranty deed at no cost to the CITY, except as provided herein. The warranty deed may contain a deed restriction requiring Unit 3 to be used for public transportation uses. The deed and deed restriction shall be in substantially the same form as the deed and deed restriction attached to this Agreement as **Exhibit O**. The warranty deed and deed restriction shall be promptly recorded at the Milwaukee County Register of Deeds. DEVELOPER shall pay costs for recording the warranty deed and deed restriction including the real estate transfer return fee.

21.4 Proration of Taxes. There shall be no proration of property taxes at closing. DEVELOPER will pay all property taxes for the year during which the closing occurs. Payment of property taxes will be made when the property tax invoice is issued at the end of the year in which the closing occurs rather than based on estimated taxes at closing.

21.5 Recording of Deed. CITY shall promptly file the warranty deed for recording at the Milwaukee County Register of Deeds and shall pay costs for recording the warranty deed except that DEVELOPER shall pay the real estate transfer return fee.

21.6 Continuation of Construction. CITY and DEVELOPER acknowledge that both before and after closing on Unit 3 both DEVELOPER and CITY may be performing work on and within Unit 3. After CITY's commencement of work on installation of the Streetcar Amenities, whether before or after closing on Unit 3, DEVELOPER and CITY agree to use reasonable efforts to not interfere with each other's construction activities. DEVELOPER, CITY and their contractors shall work together to develop mutually agreeable locations for their trailers and staging areas, if needed, and will formulate plans to allow work to continue without delay for either DEVELOPER or CITY. In the event that DEVELOPER and CITY cannot mutually agree, the work of CITY on the Streetcar Amenities shall take priority over any other work still needing to be completed within Unit 3. As necessary for CITY to

complete work on the Streetcar Amenities prior to closing on Unit 3, DEVELOPER hereby grants to CITY a right of entry over Unit 3 as necessary for the purpose of installing the Streetcar Amenities. As necessary for DEVELOPER to complete work on the completion of Unit 3 after closing on Unit 3, CITY hereby grants to DEVELOPER a right of entry over Unit 3 as necessary for the purpose of completing such construction.

21.7 Warranty. Upon completion of Unit 3 by DEVELOPER, DEVELOPER shall cause all warranties obtained by DEVELOPER in connection with the construction of Unit 3 to be assigned to CITY in writing.

21.8 Lease with Milwaukee County. The Parties acknowledge that Milwaukee County is expected to have a lease for part of Unit 3 to operate their bus rapid transit through the Transportation Concourse. DEVELOPER may enter into such a lease with Milwaukee County prior to conveyance of Unit 3 to CITY, but only in a format and with terms and conditions approved in writing by CITY. Such lease, if entered into by DEVELOPER prior to conveyance of Unit 3 to CITY, may not be amended prior to the conveyance of Unit 3 to the CITY without prior written approval from CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

CITY OF MILWAUKEE

Tom Barrett, Mayor

James R. Owczarski, City Clerk

COUNTERSIGNED:

Aycha Sawa, Comptroller

CITY ATTORNEY APPROVAL/AUTHENTICATION

Gregg Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City representatives above per M.C.O. § 304-21, and also authenticates the signatures of those City representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: _____
Gregg Hagopian
Assistant City Attorney
State Bar No. _____
Date: _____

**REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

Frances Hardrick, Chairperson

David P. Misky, Assistant Executive
Director/Secretary

STATE OF WISCONSIN)
)SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2021, Frances Hardrick, Chairperson, of the Redevelopment Authority of the City of Milwaukee, to me known to be the person who executed the foregoing instrument, and to me known to be such Chairperson of the Redevelopment Authority of the City of Milwaukee, and acknowledged that he executed the foregoing instrument as such officer of the Redevelopment Authority of the City of Milwaukee.

(SEAL)

Notary Public, State of Wisconsin
My Commission_____

STATE OF WISCONSIN)
)SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2021, David P. Misky, Assistant Executive Director-Secretary of the Redevelopment Authority of the City of Milwaukee, to me known to be the person who executed the foregoing instrument, and to me known to be such Assistant Executive Director-Secretary of the Redevelopment Authority of the City of Milwaukee, and acknowledged that he executed the foregoing instrument as such officer of the Redevelopment Authority of the City of Milwaukee.

(SEAL)

Notary Public, State of Wisconsin
My Commission_____

THE COUTURE LLC

By: _____
Richard J. Barrett, Manager

STATE OF WISCONSIN)
)SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2021, Richard J. Barrett, Manager of The Couture LLC, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as such officer of The Couture LLC.

(SEAL)

Notary Public, State of Wisconsin
My Commission_____

THE COUTURE HOLDINGS GROUP INC.

By: _____
Richard J. Barrett, President

STATE OF WISCONSIN)
)SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2021 Richard J. Barrett, President of The Couture Holdings Group Inc., to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as such officer of The Couture Holdings Group Inc.

(SEAL)

Notary Public, State of Wisconsin
My Commission_____

EXHIBIT A

Property Description

PARCEL A:

Lot 1 of Certified Survey Map No. 8914, recorded on May 12, 2017 as Document No. 10673467, being part of Lots 7 through 12 in Diederich's Subdivision; Part of Lot 1 in Block 98, and part of vacated East Wisconsin Avenue adjacent in Plat of Milwaukee; Lot 1 and part of Lots 2, 3, 4 and 9 in Block 99, Lots 1, 2, 3 and 4 in Block 109 and part of vacated North Marshall Street in the Division of 13.30 Acres; part of Government Lot 2 and lands, all in the Southwest 1/4 of the fractional Northeast 1/4, the Northwest 1/4 of fractional Southeast 1/4, the Northeast 1/4 of the Southwest 1/4 and the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Tax Key No. 396-0511-000

Address: 909 E. Michigan Street, Milwaukee, WI

PARCEL B:

A non-exclusive easement for vehicular and pedestrian ingress and egress set forth on Easement Agreement recorded on August 30, 2016 as Document No. 10597895.

EXHIBIT B

Condominium Documents

EXHIBIT C

Certificate of Completion

EXHIBIT D

Easement & Maintenance Agreement

EXHIBIT E

HR Agreement

EXHIBIT F

Minimum Assessed Value Agreement

EXHIBIT G

Diagram of Natural Spaces

EXHIBIT H
PILOT Agreement

EXHIBIT I

Transit Plans

THE COUTURE

909 EAST MICHIGAN STREET, MILWAUKEE, WI

DEVELOPMENT PLAN DOCUMENT SUBMITTAL - NOT FOR CONSTRUCTION

FEBRUARY 24, 2017

SHEET INDEX

GENERAL

T-01 THE SHEET & IDENTIFICATION

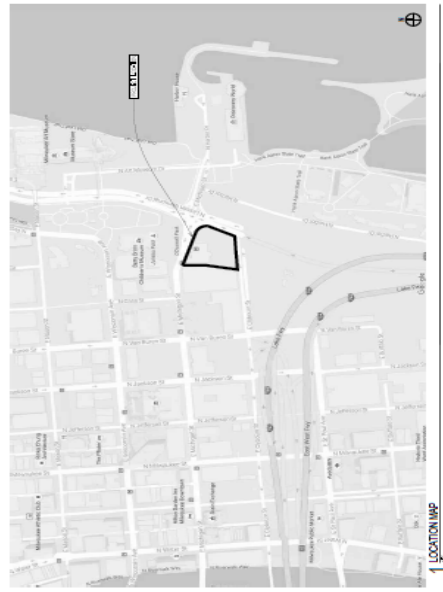
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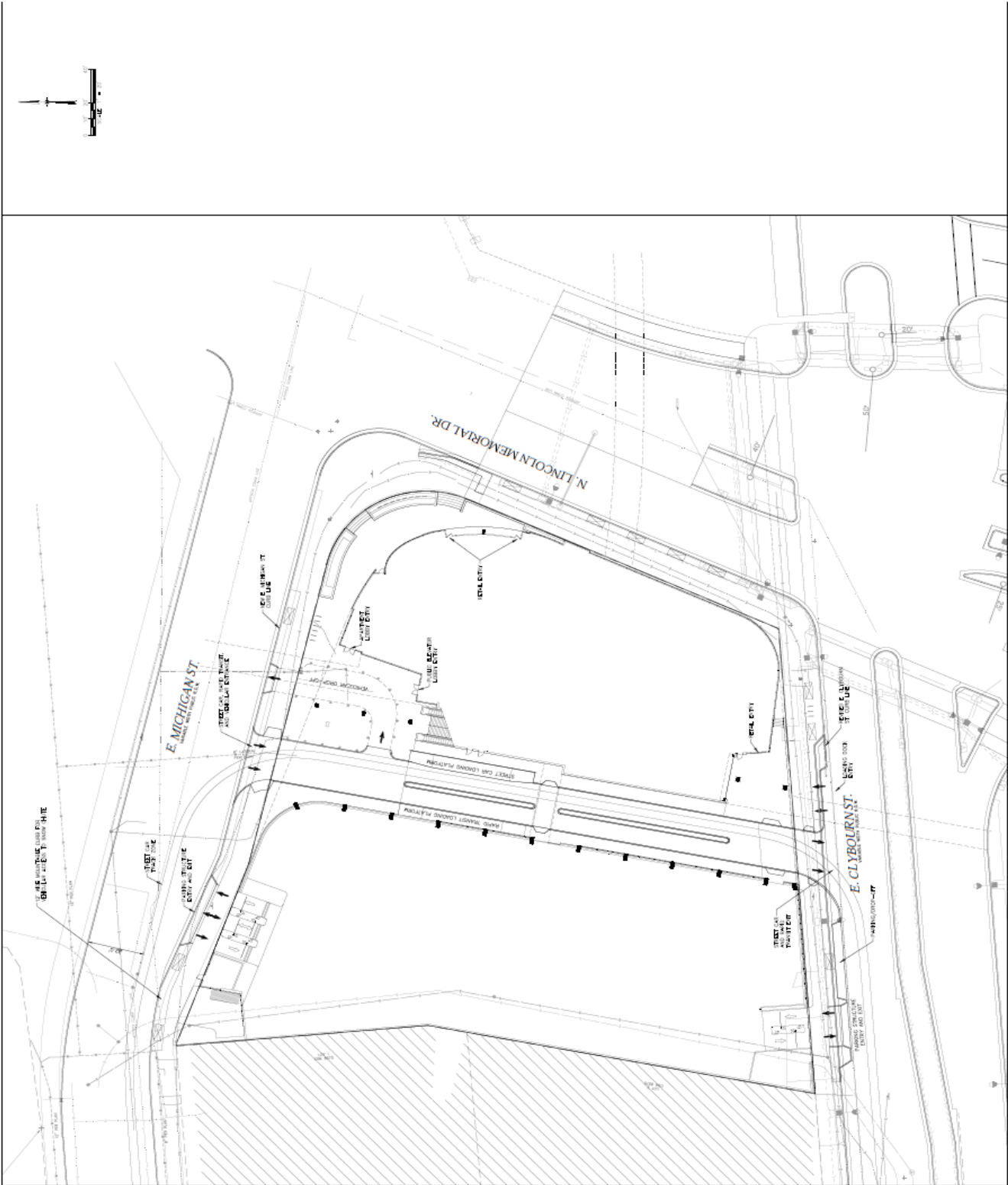
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<p>RINKAICHUNG ARCHITECTURE & INTERIOR DESIGN</p> <p>1111 N. MILWAUKEE AVENUE, SUITE 200 MILWAUKEE, WI 53233 TEL: 414.224.1111 WWW.RINKAICHUNG.COM</p>	<p>THE COUTURE DEVELOPMENT PLAN DOCUMENT SET</p> <p>DATE: FEBRUARY 24, 2017 SCALE: AS SHOWN DRAWN BY: [REDACTED]</p>	<p>TITLE SHEET INDEX & PROJECT INFORMATION</p> <p>DATE: FEBRUARY 24, 2017 SCALE: AS SHOWN DRAWN BY: [REDACTED]</p>	<p>101</p>
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DEVELOPMENT PLAN DOCUMENTS - NOT FOR CONSTRUCTION



SCALE: 1" = 111.11'

EXHIBIT J

Diagram of the Transportation Concourse

EXHIBIT K

Transportation Concourse Responsibilities & Cost Allocation

Feature	Design Responsibility[1]	Design Approval[2]	Construction Responsibility[3]	Construction Approval[4]
Streetcar Guideway Track Slab & Rails	City	Developer	City	Developer
Transportation Concourse Pavement (including ped ramps, drainage)	Developer	City	Developer[6]	City
Streetcar Structural Support	Developer	City	Developer	City
Loading Platform (including ramps, railings, tactical warning, shelter / bench if pursued)[5]	City	Developer	City	Developer
Ticket Vending Machines/ Smart Kiosks [5]	City	Developer	City	Developer
Transportation Concourse Plaza Custom Seating (if pursued)	Developer	City	Developer	City
Monument Sign (if pursued)	Developer	City	Developer	City
Transit and Traffic Control Equipment, Signage and Pavement Markings [5]	City	Developer	City	Developer
Electric Service to Transit Ticket Vending Machine / Smart Kiosk Service Panel	Developer	City	Developer	City
Bike Share Station	City	Developer	City	Developer
Safety Bollards	Developer	City	Developer	City

[1] “Design Responsibility” means that the designated party is responsible for the design of the element in question, and the costs associated with such design.

[2] “Design Approval” means that the designated party has the right to approve the designs prepared by the designated responsible party in order to confirm that they are consistent with all other elements of the Final Plans and the Development Agreement. In the event of a discrepancy, the City and Developer shall work in good faith to resolve such discrepancy as soon as possible. Such approval rights shall not render the designated party a co-designer or otherwise diminish the obligations of the party designated as having Design Responsibility.

[3] “Construction Responsibility” means that the designated party is responsible for the construction of the element in question, and the costs associated with such construction.

[4] “Construction Approval” means that the designated party has the right to inspect and confirm that construction of the element in question is being conducted in accordance with the Final Plans and the Development Agreement. In the event of a discrepancy, the City and Developer shall work in good faith to resolve such discrepancy as soon as possible. Such rights shall not diminish the obligations of the party designated as having Construction Responsibility. Additionally, the exercise of such rights shall be subject to such other terms and conditions as are customarily imposed by the General Contractor in charge of the site.

[5] These features relate only to the City’s Streetcar. Similar features for the County’s BRT shall be addressed in a separate lease agreement with Milwaukee County.

[6] Limited portions of concourse payment to be constructed by City as defined in plans.

EXHIBIT L

Insurance Requirements

DEVELOPER agrees, prior to commencement of construction work on the Project, to procure and maintain, or cause its contractors, subcontractors and suppliers to procure and maintain, worker's compensation insurance, employer's liability insurance, business automobile liability insurance, and commercial general liability (CGL) insurance, and to cause its architects, engineers and design/build contractors or subcontractors to procure and maintain these same insurances together with professional liability insurance. Each CGL policy shall include coverage for liability arising from premises, onsite storage of tools and equipment, operations, independent contractors, products-completed operations, personal injury, and advertising injury, contractual liability, and broad form property damage. Certificates of insurance shall be provided to CITY within 30 days prior to commencement of construction of the Project. All policies shall state that CITY shall be afforded a 30 day written notice of cancellation, non-renewal or material change by any insurers providing the coverage required by CITY for the duration of the construction of the Project. These policies shall be written by insurers lawfully authorized to do business in the State of Wisconsin and reasonably acceptable to CITY, and must have a current A.M. Best rating of A-VIII or better, with at least the following limits of liability:

1. Worker's Compensation at statutory rates
2. Employer's Liability Insurance – including bodily injury by accident and by disease,
\$1,000,000 per occurrence
\$1,000,000 aggregate
3. Business Automobile Liability Insurance – including rented, leased and owned vehicles
\$1,000,000 per occurrence
\$2,000,000 aggregate
\$10,000 medical expense (per person)
4. Commercial General Liability Insurance
\$2,000,000 per occurrence
\$2,000,000 general aggregate
\$2,000,000 products/completed operations aggregate
\$1,000,000 personal & advertising injury limit
\$5,000 medical expense (per person)
5. Professional Liability Insurance (architects/engineers/design-build contractors or subcontractors only)– project-specific coverage, including prior acts coverage sufficient to cover all services performed for the PROJECT with a two year tail coverage following final payment to insured for this PROJECT services.
\$3,000,000 per claim
\$3,000,000 aggregate

6. Excess/Umbrella Insurance – form following CGL and Business Automobile Liability Insurance
\$ 5,000,000 per occurrence/aggregate

CITY and RACM shall be named as additional insureds for the Commercial General Liability Insurance coverage. DEVELOPER shall assemble and furnish to CITY Certificates of Insurance evidencing coverage as provided above from insurers licensed in the State of Wisconsin and reasonably acceptable to CITY. DEVELOPER shall provide updated Certificates of Insurance annually through completion of the Project and during products/completed operations, and the tail coverage periods.

EXHIBIT M

Sewer Easement

EXHIBIT N

Sewer Project Human Resources Agreement

EXHIBIT O

Unit 3 Warranty Deed