

Document Number

Amended and Restated  
Transportation & Public Access Easement and  
Maintenance & Operation Agreement  
(Couture Project)

DOC # 11109270

RECORDED

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ISRAEL RAMON

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Milwaukee County, WI

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**AMENDED AND RESTATED  
TRANSPORTATION & PUBLIC ACCESS EASEMENT  
AND MAINTENANCE & OPERATION AGREEMENT**

**Couture Project**

**Recording Area**

**Name and Return Address**

Mary L. Schanning,  
Dept. of City Development  
809 N. Broadway  
Milwaukee, WI 53202

**Tax Key No.**

**Part of 396-0511-000**

This document was drafted by:

Atty. Mary L. Schanning  
Dept. of City Development  
809 N. Broadway  
Milwaukee, WI 53202

CO-8404

1050-2012-1849

**AMENDED AND RESTATED  
TRANSPORTATION & PUBLIC ACCESS EASEMENT  
AND MAINTENANCE & OPERATION AGREEMENT**

THIS AMENDED AND RESTATED TRANSPORTATION & PUBLIC ACCESS EASEMENT AND MAINTENANCE & OPERATION AGREEMENT (“**Restated Easement**”) is made as of April 30, 2021, by and between The Couture LLC, a Wisconsin limited liability company (“**Couture**”) and Transit Hub MKE LLC, a Wisconsin limited liability company (“**Hub MKE**”) (Couture and Hub MKE being hereinafter collectively defined as “**DEVELOPERS**”) and the CITY OF MILWAUKEE, a Wisconsin municipal corporation (“**CITY**”) (collectively referred to herein as the “parties” and individually as “party”).

**RECITALS**

A. **DEVELOPERS** are the owners of certain property located at 909 East Michigan Street in the City of Milwaukee, State of Wisconsin more particularly described on **EXHIBIT A** attached hereto (the “**Property**”).

B. **CITY**, the Redevelopment Authority of the City of Milwaukee and Couture are parties to an Amended and Restated Cooperation, Contribution and Redevelopment Agreement dated April 30, 2021 (the “**Development Agreement**”) related to the redevelopment of the Property.

C. **CITY** and Couture entered into a Transportation & Public Access Easement and Maintenance & Operation Agreement dated April 28, 2017 and recorded against the Property in the Office for the Register of Deeds for Milwaukee County, Wisconsin on August 7, 2019 as Document Number 10895602 (the “**Initial Public Easement**”) encumbering the Property. This Restated Easement terminates, supersedes and replaces the Initial Public Easement.

D. In accordance with the Tax Increment Law, found at 66.1105 of the Wisconsin Statutes, by passage of Common Council Resolution Files No. 141263, on January 21, 2015; No. 170169 on May 31, 2017 and No. 201062 on December 15, 2020, **CITY** approved and amended the Project Plan for **CITY**’s Tax Incremental District No. 82 (East Michigan Street) (“**TID 82**”) in order to provide for the funding for certain TID 82 project costs, including, among other things, the Grant to be used for certain expenses related to the Project as described in the Development Agreement.

E. In accordance with Section 3.3.C. of the Development Agreement, the payment of the Grant is contingent upon Couture signing and remaining in compliance with all Project Documents including the Initial Public Easement which constitutes the Easement & Maintenance Agreement required under the Development Agreement.

F. Couture acquired the Property from Milwaukee County (“**County**”) and, in addition to various other agreements, entered into a Public Access and Use Easement Agreement dated August 26, 2016, and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin (“**Register’s Office**”) on August 30, 2016, as Document Number 10597894 (the

“**County Easement**”), giving County (on behalf of the public) a perpetual, non-exclusive public access and use easement over, across and upon the Easement Area (as defined herein).

G. Since the execution of the Initial Public Easement and the County Easement, Couture transferred interests in the Property to Couture Parking LLC, a Wisconsin limited liability company (“**Couture Parking**”), and Hub MKE, and subjected the Property to a condominium form of ownership pursuant to Chapter 703 of the Wisconsin Statutes, a Declaration of Condominium of The Couture Lakefront, A Condominium recorded in the Register’s Office on April 6, 2021 as Document No. 11099452 (the “**Declaration**”), and a Condominium Plat recorded in the Register’s Office on April 6, 2021 as Document No. 11099453 (“**Plat**”). The Declaration and Plat created The Couture Lakefront, A Condominium (“**Condominium**”) which is subject to an Operating Agreement and Bylaws (“**Bylaws**”) (Declaration, Bylaws and Plat being hereinafter collectively defined as the “**Condominium Documents**”). DEVELOPERS granted easements in the Declaration in, over, upon and across portions of the Condominium (the “**Declaration Easements**”).

H. The Condominium consists of Unit 1, Unit 2 and Unit 3. Unit 1 is owned by Couture, Unit 2 is owned by Couture Parking and Unit 3 is owned by Hub MKE. The Transportation Concourse (as defined in the Development Agreement) has been divided among Unit 1 and Unit 3. The Declaration and Bylaws contemplate that upon completion of certain improvements, Hub MKE will convey Unit 3 to the CITY such that the CITY will own a portion of the Transportation Concourse for public transportation. Thus, many of the provisions relating to the maintenance and operation of Unit 3 are now contained in the Declaration and Bylaws. This Restated Easement updates and conforms the provisions of the Initial Public Easement to the Condominium Documents.

I. Hub MKE entered into a lease agreement with County dated April 30, 2021, a memorandum of which is recorded in the Register’s Office on April 30, 2021 as Document No. 11109269 (the “**County Lease**”) under which County will lease portions of the Transportation Concourse from Hub MKE for public transportation purposes. The County has terminated the County Easement as a result of the County Lease. Upon the transfer by Hub MKE of its ownership interests in Unit 3 to the CITY, Hub MKE’s interests in the County Lease will be assigned to, and assumed by, the CITY.

J. CITY has been selected to receive the TIGER Grant to be administered by the FTA for the construction of the Milwaukee Streetcar Lakefront Line extension, which is part of the Streetcar Amenities.

K. As a condition of the TIGER Grant, CITY must demonstrate satisfactory continuing control of the Easement Area, as defined below, to the FTA in accord with 49 U.S.C. 5307 and 49 C.F.R. 624.9, generally defined as the legal assurance that the Easement Area will remain available to be used for transit purposes throughout its useful life or until disposition, which control shall be non-exclusive and subject to the terms and conditions set forth herein.

L. Any capitalized terms not otherwise defined in this Agreement shall be defined as they are in the Condominium Documents, and as defined in the Development Agreement if not otherwise defined in the Condominium Documents.

## EASEMENT

NOW, THEREFORE, in consideration of the above recitals which, along with the attached exhibits, are incorporated herein and for other good and valuable consideration, DEVELOPERS and CITY agree as follows:

1. Definitions. The following capitalized terms used in this Restated Easement shall have the following meanings:

- a. **“Common Areas”** means, collectively, the U-1 Walkway and Concourse (as that term is defined in the Condominium Documents), the U-1 Bridge (as that term is defined in the Condominium Documents), and those areas identified on **EXHIBIT B**, attached hereto, as the Public Elevator Lobby [01-11], [02-01], [03-01], Restroom [01-22], and Elevator 5. Upon completion of construction of the Condominium, DEVELOPERS shall prepare an “as-built” survey and/or an actual legal description of the Common Areas. The parties shall immediately thereafter amend this Restated Easement in a recordable form to refer to such “as-built” survey and/or legal description and thereafter all references herein to the “Common Areas” shall be as so amended. Couture shall bear the costs of preparation of the as-built legal descriptions and recording costs for the amendment to this Restated Easement.
- b. **“County”** has the meaning described in Recital F, above.
- c. **“County Easement”** has the meaning described in Recital F, above.
- d. **“County Lease”** has the meaning described in Recital I, above.
- e. **“County RT Lane”** means that the RT Lane as defined in the Declaration and Plat.
- f. **“Development Agreement”** has the meaning described in Recital B, above.
- g. **“Easement Area”** means collectively the Common Areas, as defined above, and the U-1 Greenspace and Retail Connection as identified in the Plat. Upon completion of construction of the Condominium, DEVELOPERS shall prepare an “as-built” survey and/or an actual legal description of the Easement Area. The parties shall immediately thereafter amend this Restated Easement in a recordable form to refer to such “as-built” survey and/or legal description and thereafter all references herein to the “Easement Area” (or any component thereof) shall be as so amended. Couture shall bear the costs of preparation of

the as-built legal description and recording costs for the amendment to this Restated Easement.

- h. “FTA” means the Federal Transit Administration acting under the jurisdiction of the United States Department of Transportation.
- i. “Property” has the meaning described in Recital A, above.
- j. “Streetcar Amenities” means the “Streetcar Amenities” as defined in the Declaration.
- k. “Streetcar Lane” means the “Streetcar Lane” as defined in the Declaration and Plat.
- l. “Transit Plans” means the “Transit Plans” as defined in the Development Agreement.

2. Easements. Couture hereby grants to CITY a perpetual and nonexclusive easement in, over, upon and across the Easement Area for public access purposes as described in Section 2.b of this Restated Easement and subject to the limitations set forth in this Restated Easement (the “Public Access Easement”). Hub MKE hereby grants CITY a perpetual and nonexclusive easement in, over, upon and across all of Unit 3 for public access purposes as described in Section 2.b. of this Restated Easement and subject to the limitations set forth in this Restated Easement (the “Unit 3 Public Access Rights”). Hub MKE also hereby grants CITY a perpetual and nonexclusive easement in, over, upon and across all of Unit 3 for the installation and maintenance of the Streetcar Amenities (the “Public Transportation Easement”). The Public Transportation Easement shall be as described in Section 2.a. of this Restated Easement and subject to the limitations set forth in this Restated Easement. The parties acknowledge that title to Unit 3 will eventually be transferred to CITY in accordance with the provisions of the Development Agreement. At such time the Unit 3 Public Access Rights and the Public Transportation Easement will terminate due to merger of title. Notwithstanding any other provision of this Restated Easement, no parties’ use of Unit 3 shall unreasonably interfere with the use of Unit 3 by County pursuant to the County Lease or by any of the DEVELOPERS or CITY and their respective tenants, invitees, employees, licensees, customers, successors and assigns pursuant to the Condominium Documents and the Development Agreement. Nothing in this Restated Easement shall have any impact on any of the Declaration Easements.

a. Public Transportation.

- i. Limitation on Location. CITY’s use of Unit 3 for public transportation uses shall be limited to the Streetcar Lane, Streetcar Loading Platform (as defined in the Declaration and Plat) and any areas necessary for the Streetcar Facilities (as defined in the Declaration and Plat).
- ii. Use. CITY’s use of the Streetcar Lane and Streetcar Loading Platform for public transportation purposes shall include, but is not limited to, the right

to construct, install, maintain, repair, use, operate and replace the Streetcar Amenities. CITY's construction and installation of the Streetcar Amenities shall be substantially similar to the Transit Plans. The Transit Plans may be updated and revised upon mutual written consent of DEVELOPERS and the DPW Commissioner.

- iii. Construction. CITY's construction of the Streetcar Amenities shall be coordinated with DEVELOPERS' construction of the Project (as defined in the Development Agreement) in accordance with the terms of the Development Agreement.
- iv. Bike Share. Hub MKE also hereby grants to CITY a revocable license to construct, install, maintain, repair, use, operate and replace a bike share station ("**Bike Station**") within Unit 3, but not within the Transit Lane, subject to the provisions of this Restated Easement.
- v. Design. Notwithstanding DEVELOPERS' review of the Transit Plans as necessary to update and amend them pursuant to subsection (ii) above, CITY shall be solely responsible for the design and engineering of the Streetcar Amenities and for ensuring the safety of the public when using the Streetcar Amenities and crossing through the Streetcar Lane. CITY shall construct the Streetcar Amenities, at its cost, in accordance with the Transit Plans, this Restated Easement, the Development Agreement and all applicable federal, state and local laws, statutes, ordinances, codes, regulations and requirements now or hereinafter in effect.

b. Public Access.

- i. Hours. With regard to the Public Access Easement and the Unit 3 Public Access Rights, except for such times as all or any part of the Easement Area or Unit 3 must be closed for maintenance or repair, during initial construction of the Project and Streetcar Amenities or to avoid the acquisition of adverse or prescriptive rights, as provided herein, DEVELOPERS, as applicable, shall keep the Easement Area, except for the U-1 Greenspace and Retail Connection, and Unit 3 open to the general public on a 24-hours a day, seven-days a week, 365-days a year basis for pedestrian purposes and for public access to the Streetcar Amenities. Couture shall keep the U-1 Greenspace and Retail Connection open to the general public during hours when Milwaukee County Parks are typically open to the public.
- ii. Closing of the Easement Area. The Easement Area may be closed as needed for maintenance and repair with prior notice to CITY in writing at least five business days prior to such closure unless such closure is due to an emergency or unforeseen repairs requiring immediate attention for public safety or security reasons, in which case CITY shall be notified as soon as

reasonably possible. Notwithstanding any provision of this Restated Easement to the contrary, Couture shall also have the right to close off some or all of the Easement Area to public access in order to prevent the acquisition of any adverse or prescriptive rights with prior notice to CITY in writing at least 10 business days prior to such closure; *provided, however*, that such closure shall not occur more than once a year and not more than 24 hours at a time.

- iii. Use. Use of the Easement Area and the Unit 3 Public Access Rights by the general public shall be in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations provided, however, that public use shall be limited to normal and customary pedestrian uses appropriate for a public way of the size and scope of the Easement Area and Unit 3 and otherwise in accordance with the terms of this Restated Easement and provided further that the public access and rights granted herein shall exclude any commercial activities or operations by members of the public not expressly permitted by Couture. The only permitted use of the Unit 3 Public Access Rights is for public access to the Streetcar Amenities and the Easement Area.
- iv. Prohibited Uses. The right of CITY and the public to use the Easement Area shall not extend to uses inconsistent with, or which would work an unreasonable interference with or disruption of, the use and operation of Unit 1 by Couture, such as loitering, vendor or commercial activities or other types of uses that may constitute a public or private nuisance. The right of CITY and the public to use the Temporary Public Access Rights shall not extend to uses inconsistent with, or which would work an unreasonable interference with or disruption of, the use and operation of Unit 3 by Hub MKE, such as loitering, vendor or commercial activities or other types of uses that may constitute a public or private nuisance.
- v. Common Areas. The only rights of the public to the Common Areas are for (i) ingress and egress to and from the U-1 Greenspace and Retail Connection and the other portions of the Condominium open to the public, and (ii) use of public restrooms.
- vi. Rules and Regulations by Couture. Couture shall have the right, to establish, modify and enforce reasonable rules and regulations governing the use of and/or access to the Easement Area by the public; *provided however*, that Couture's rules and regulations shall be posted and shall not impose an unreasonable restriction on CITY's and the public's rights hereunder. Any such rules and regulations shall be in addition to, and not in lieu of, any municipal ordinance which may also apply to the Easement Area. Further, Couture may, at all times, exclude any vendor, or other commercial activity, from use of the Easement Area. Hub MKE shall have the right, to establish, modify and enforce reasonable rules and regulations governing the use of

and/or access Unit 3 by the public under the Unit 3 Public Access Rights; *provided however*, that Hub MKE's rules and regulations shall be posted and shall not impose an unreasonable restriction on CITY's and the public's rights hereunder. Any such rules and regulations shall be in addition to, and not in lieu of, any municipal ordinance which may also apply to Unit 3. Further, Hub MKE may, at all times, exclude any vendor, or other commercial activity, from use of the Easement Area.

- vii. Rules and Regulations by CITY. In addition to any municipal ordinance and with Couture's prior written consent, City shall have the right to establish, modify and enforce reasonable rules and regulations governing the use of and/or access to the Easement Area by the public; *provided however*, that CITY's rules and regulations shall be posted and shall not impose an unreasonable restriction on the use and operation of Unit 1 by Couture. In addition to any municipal ordinance and with Hub MKE's and County's prior written consent, City shall have the right to establish, modify and enforce reasonable rules and regulations governing the use of and/or access to Unit 3 by the public under the Unit 3 Public Access Rights and the Public Transportation Easement; *provided however*, that CITY's rules and regulations shall be posted and shall not impose an unreasonable restriction on the use and operation of Unit 3 by Hub MKE.

3. Maintenance and Operation. The Easement Area and Streetcar Amenities shall be kept in good repair and working order. With regard to maintenance and operation of the Streetcar Amenities within Unit 3, the CITY's obligations shall be as set forth in the Bylaws. With regard to maintenance and operation of the Easement Area, Couture and CITY shall have the responsibilities as described below.

- a. Couture, at its expense, shall be responsible for the following items:
  - i. Security at levels determined to be adequate in Couture's sole discretion above and beyond the police patrols provided by CITY pursuant to subsection b, below.
  - ii. Any costs of installation, maintenance, repair, replacement, operation and capital expenditures relating to any general lighting and the elevator within the Easement Area, including without limitation, all utility costs related to same. Any lights and the elevator shall remain operational on a 24-hour, seven days a week basis except when maintenance, repairs or replacement requires them to be out of operation.
  - iii. Any costs of installation, maintenance, repair, replacement, operation and capital expenditures relating to any restrooms within the Easement Area.
  - iv. Trash removal, cleaning and janitorial services for the Easement Area.
  - v. Decorative and aesthetic improvements within the Easement Area including, but not limited to, painting, lighting, decorative plantings and landscaping.



- vi. Installation, maintenance, repair and replacement of all signage within the Easement Area related to parking, advertisements and way-finding in Couture's sole discretion, but not signage related to the Streetcar Amenities.
- vii. Snow and ice removal on all pedestrian and public walkways within the Easement Area.
- viii. Compliance with requirements of the Americans with Disabilities Act as it relates to the Easement Area.
- ix. Couture's own liability insurance coverage for the Easement Area.

b. CITY, at its expense, shall be responsible for the following items:

- i. Patrol of the Easement Area by the Milwaukee Police Department in the same manner that the Milwaukee Police Department polices other public pedestrian and park areas within the City of Milwaukee, as determined by the sole discretion of the Chief of Police, and enforcement within the Easement Area of all applicable statutes and ordinances.

c. Any work done by CITY related to construction, installation, repair, maintenance, replacement of any improvements (including capital improvements) within Unit 3 pursuant to the Public Transportation Easement shall be performed in compliance with the following:

- i. All work shall be done in coordination with the DEVELOPERS as to commencement and completion of such work so as to result in the least amount of interruption or interference with any of the DEVELOPERS' and the public's use of the Easement Area.
- ii. The CITY shall be responsible for supervision and direction of any staff, contractors or subcontractors completing such work for such party so that the work is performed using the skill, care and safety precautions of reasonable contractors in the same industry.
- iii. All work completed by the CITY under this Section 3 shall be consistent with the Transit Plans, the Development Agreement and the terms of this Restated Easement and in compliance with all applicable laws, ordinances, rules and regulations.

4. Scope of Easement. Neither CITY nor the public shall have any easement or access rights with respect to any part of the Condominium, except as expressly delimited by the terms of this Restated Easement. By way of illustration, and not limitation, CITY and the public shall not have any easement or access rights with respect to all or any portion of the Condominium below Level 1, the U-1 Tower (except the Common Areas), the U-2 Parking Garage or the U-1 Retail Building as all of those areas are described in the Condominium Documents, all of which are the exclusive domain of either Couture or Couture Parking. Couture and/or Couture Parking may

make some or all portions of the Condominium within their exclusive domain available to the public, but any such rights will not have been granted under this Restated Easement.

5. Non-Interference with Other Rights. Except as otherwise provided in this Restated Easement, City shall not make any improvements or place any obstructions in the Easement Area.

6. Alterations. Couture shall not make any material structural alterations or modifications to the Easement Area inconsistent with the rights of CITY and the public to use the Easement Area as provided in this Restated Easement without the prior written consent of CITY, which consent shall not be unreasonably withheld, conditioned or delayed. CITY shall not make any modifications to the Easement Area without the prior written consent of Couture. Notwithstanding the foregoing, or anything else contained herein:

- a. Couture may, from time to time and with prior written notice to CITY, vary the configuration and/or relocate the U-1 Greenspace and Retail Connection portion of the Easement Area throughout the Property, including, without limitation, moving some or all of such space indoors; *provided, however*, that in all events, the total amount of Natural Spaces (as that term is defined in the Development Agreement) shall not be less than 30,000 square feet. In the event of such alteration, Couture shall provide as-built legal descriptions of the new U-1 Greenspace and Retail Connection and the parties shall immediately thereafter amend this Restated Easement in a recordable form to refer to such "as-built" legal description as being U-1 Greenspace and Retail Connection portion of the Easement Area. Couture shall bear the costs of any such alterations and preparation of the as-built legal descriptions and recording costs for the amendment to this Restated Easement.
- b. In the event Unit 1 or Unit 3 is partially or totally destroyed or demolished, the easement rights granted herein shall nevertheless continue for the benefit of the CITY and public, but may be modified and relocated into a replacement Easement Area of approximately equivalent sizes, shapes and locations, as approved by CITY, in any repaired or substitute building or structure which is constructed by Couture on the Property.
- c. It is possible that all or portions of the Condominium (including, without limitation, the Easement Area) may be put into a subcondominium form of ownership by the adoption and recording of a declaration of subcondominium under Chapter 703 of the Wisconsin Statutes. Some or all of the Easement Area may be designated as being within one or more subcondominium units and/or common elements of a subcondominium association, but the parties' rights with respect to such Easement Area shall continue with respect to such unit(s) and/or common elements post-declaration. Upon request by Couture, CITY shall provide written consent to the recording of the aforementioned declaration of subcondominium, *provided that* such declaration of condominium does not infringe upon the rights of CITY or the public granted under this Restated Easement. Additionally, the parties agree to make any and all amendments

hereto that are necessary to reflect the appropriate designation and ownership of the Easement Area under any declaration of subcondominium, or that are reasonably required in order to conform this Restated Easement to the requirements of Chapter 703 of the Wisconsin Statutes.

7. Insurance.

- a. Couture's Obligations. Couture's obligations to insuring the Easement Area are set forth in the Declaration and Bylaws. If, at any time after the execution of this Restated Easement, the Easement Area, or any portion thereof, should be damaged or destroyed by any casualty (including war, terrorism or bioterrorism) Couture's repair and restoration obligations shall be as set forth in the Declaration and Bylaws.
- b. CITY's Obligations. CITY is a municipal body corporate that self-funds for general liability under Wis. Stat. §§ 893.80 and 895.46(1). CITY is also permissibly self-insured under Wis. Stat. § 102.28(2)(b) for workers' compensation. The protection is applicable to officers, employees and agents while acting within the scope of their employment or agency. Retentions and other costs of risk, including contractual obligations, are financed under appropriation and fund accounting principles applicable to government operations. Nothing in this Restated Easement shall be construed as a waiver by CITY of any rights to immunity, limitation of liability or any other protection that the CITY may have by law.

8. Environmental Requirements.

- a. For purposes of this subsection, these capitalized terms are defined as follows:
  - i. "Environmental Laws" means the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, the Comprehensive Environmental Response Compensation and Liability Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Emergency Planning and Community Right-to-Know Act, the Oil Pollution Act of 1990, the Wisconsin Spill Statute and/or all amendments thereto and regulations, rules, orders and directives issued thereunder, as well as all other federal, state, local or foreign acts, statutes, laws, orders, directives or regulations governing or otherwise relating to control or management of Hazardous Materials and the protection of the public health, safety and welfare or the environment, or otherwise empowering any act or action by the United States Environmental Protection Agency, the Occupational Safety and Health Administration, the Wisconsin Department of Natural Resources and/or any other governmental agency.

ii. "Hazardous Materials" means contaminants, pollutants, bio-hazardous materials, hazardous substances, oil, molds, radioactive or toxic substances, wastes (including hazardous and medical wastes) and similar terms, as defined in or regulated by any of the Environmental Laws or other statutory or common law.

b. Both parties shall comply with all Environmental Laws and obtain all applicable licenses, permits, approvals, authorizations, exemptions, certificates and registrations, and make all applicable filings, required of each party under any of the Environmental Laws in connection with each party's occupancy or use of the Easement Area for the purposes described herein. All such licenses, permits, approvals, authorizations, exemptions, certificates and registrations and filings shall be made available to the other party for inspection and copying upon reasonable notice and during business hours. Neither party shall cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Property in violation of any of the Environmental Laws.

9. Default and Remedies. Either party shall be in breach of this Restated Easement if it fails to perform any of the covenants, obligations or conditions set forth herein to be performed by it (for purposes of this Section, the "**Defaulting Party**") and such default continues for twenty (20) days after written notice of such default is given to the Defaulting Party. In the event of such breach, the other party may, upon written notice to the Defaulting Party: (i) file a lawsuit against the Defaulting Party seeking any damages against the Defaulting Party resulting from the Defaulting Party's breach; (ii) file a lawsuit against the Defaulting Party seeking specific performance of the Agreement and/or enjoining the Defaulting Party's breach; or (iii) cure the Defaulting Party's breach, in which event the Defaulting Party shall reimburse the other party for the reasonable cost thereof within ten (10) business days of the Defaulting Party receiving an invoice from the other party for the costs of such cure. Neither party is under any obligation to cure the other's breach. The Defaulting Party must reimburse the other party for all reasonable costs and expenses incurred in enforcing the provisions of this Restated Easement, including reasonable attorneys' fees and court costs. All rights and remedies herein shall be cumulative and none shall exclude any other right or remedy allowed by law.

10. Assignment.

- a. CITY shall not assign this Restated Easement as to the Easement Area without the written consent of Couture. However, CITY may assign some or all of its rights, liabilities and obligations under the Public Transportation Easement to a public transit entity, commission or board created by CITY for the operation of CITY's Streetcar Amenities by providing DEVELOPERS with written notice within 30 days of such assignment.
- b. Couture may assign its rights, liabilities and obligations under this Restated Easement without the consent of CITY to any and all successor owners of all

or any part of Unit 1. Couture shall provide CITY with written notice within 30 days of such assignment.

11. Term. This Restated Easement shall become effective on the date hereof and shall remain in effect permanently until both parties mutually agree in a written recordable document to terminate the Agreement. Upon termination, CITY shall, at its sole cost and within 180 days of the signing of such termination document, remove all Streetcar Amenities from the Property and repair any damage to the Property from such removal. The obligations in this Section shall survive the termination of this Restated Easement.

12. Run with the Land. This Restated Easement is a permanent easement which shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns. This Restated Easement shall survive the termination of the Development Agreement. In the event the Easement Area is partially or totally destroyed, or demolished, the easement will nevertheless continue for the benefit of the CITY and public in replacement easement areas of approximately equivalent sizes and purposes in any repaired or substitute building which is constructed by the then current owner.

13. Notices. All notices to be given by one party to the other under this Restated Easement shall be in writing and given either by personal delivery or certified mail, postage prepaid, to the addresses set forth in this paragraph. A notice shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Any party may change its address for purposes of receiving notice by delivering written notice thereof in accordance with the requirements of this paragraph.

To COUTURE:

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

With a copy to:

Attorney Adam J. Tutaj  
Meissner Tierney Fisher & Nichols SC  
111 East Kilbourn Avenue, 19th Floor  
Milwaukee, WI 53202

To HUB MKE:

Transit Hub MKE LLC  
260 East Highland Avenue, Suite 401  
Milwaukee, WI 53202  
Attn: Rick Barrett

With a copy to:

Attorney Adam J. Tutaj  
Meissner Tierney Fisher & Nichols SC  
111 East Kilbourn Avenue, 19th Floor  
Milwaukee, WI 53202

To CITY:

Commissioner of Public Works  
841 N. Broadway, 5<sup>th</sup> Floor  
Milwaukee, WI 53202

With copies to:

Commissioner of City Development  
809 North Broadway  
Milwaukee, WI 53202

and

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

14. Force Majeure. Neither party shall be liable or in default hereunder for any delay or failure to perform under this Restated Easement to the extent that such delay or failure was attributable to flood, hurricane, tornado, earthquake, storm or other acts of God; war, acts of a public enemy, insurrection, riot, vandalism or other civil or military action; terrorism; accident, fire, explosion or other casualty; nationalization; violence; seizure, embargos or other government actions or restrictions; stock outs; failure of transportation, supply or utilities; strike or other work interruption or any other cause beyond the reasonable control of such party.

15. Further Assurance. Each of the parties agrees to execute and deliver such documents and to take such other actions at any time and from time to time hereafter as may be reasonably requested by the other party to carry out the provisions or purposes of this Restated Easement.

16. Severability. In the event that any provision of this Restated Easement is later determined to be illegal, invalid or unenforceable for any reason, such provision shall be deemed severed from this Restated Easement and such severance shall not affect the legality, validity or enforceability of the other provisions hereof.

17. Amendment. Except as otherwise provided herein, this Restated Easement may be amended only by a written instrument executed by both parties.

18. Counterparts. This Restated Easement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

19. Headings. The headings of the sections or paragraphs of this Restated Easement are for convenience only and shall in no way affect the construction of, or effect of, any of the terms, covenants, or conditions hereof. In interpreting this Restated Easement, whenever the context so permits, (i) the singular shall include the plural and the plural shall include the singular and (ii) any gender shall include all genders. Reference to any federal or state statute shall be deemed to refer to all rules and regulations promulgated thereunder unless the context otherwise requires and shall be deemed to incorporate amendments thereto except to the extent that taking such amendments into account would defeat the purposes of this Restated Easement. The word “including” shall mean “including, without limitation,” and any exhibit, schedule or other document referred to herein is incorporated in this Restated Easement and made a part hereof. This Restated Easement was drafted jointly by all of the parties, and no rule of construction or other presumption shall arise by reason of authorship of any of the provisions hereof.

20. Governing Law. This Restated Easement will be governed and construed in accordance with the laws of the State of Wisconsin.

21. No Joint Venture. No provision hereof shall be deemed to constitute the parties as partners of one another or joint ventures of one another or in any way obligate any party for the performance of any obligation of the other party.

22. Estoppel Certificates. At any time and from time to time upon not less than twenty (20) days' prior request of CITY, CITY's DPW Commissioner shall execute, acknowledge and deliver to Couture or Hub MKE a statement in writing certifying (a) that this Restated Easement is unmodified and in full force and effect (or if there have been modifications, specifying the same), (b) that, so far as CITY knows, Couture or Hub MKE (as applicable) is not in default under any provisions of this Restated Easement (or if CITY knows of any such default, specifying the same) and (c) such other matters as Couture or Hub MKE or their respective mortgagees may reasonably require. Any such statement may be relied upon by any person proposing to acquire Couture or Hub MKE's interest in this Restated Easement or any prospective mortgagee of, or assignee of any mortgage upon, such interest.

23. Authority. Each individual executing this Restated Easement on behalf of CITY or any DEVELOPER thereby warrants and represents that he or she is authorized to so execute this Restated Easement and this Restated Easement thereby constitutes a valid and binding obligation enforceable in accordance with its terms. Whenever in this Restated Easement the consent or approval of CITY is required or the discretion of CITY may be exercised, the DPW Commissioner shall have the authority to provide such a consent or approval or to exercise such discretion.

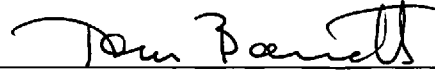
24. HUD Requirements. The parties acknowledge that the Streetcar Amenities will be funded in part by the TIGER Grant awarded to CITY by the FTA and the Project will be funded in part by programs administered by the U.S. Department of Housing and Urban Development (“HUD”). Notwithstanding any provision in this Restated Easement, CITY agrees that this

Restated Easement and all of the terms, covenants and provisions hereof and all rights, title, interests, and remedies of the CITY and the public hereunder (and the instruments referenced herein) may, in the event that DEVELOPERS finance portions of the Easement Area by or through any program administered by HUD or any subdivision thereof, including the Federal Housing Administration (any such person or entity being hereinafter referred to as a “**HUD Insured Lender**”), be subject and subordinate in all respects to the right, title, interest and remedies of any such HUD Insured Lender. In the event that DEVELOPERS propose to encumber the Project 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 the CITY and general public 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 the general public pursuant to the terms of this Restated Easement (and the instruments referenced herein) in the event of foreclosure, if the CITY is not then in default, so long as the CITY observes and performs all of the obligations, provisions, covenants, and conditions required of the CITY hereunder (and the instruments referenced herein).

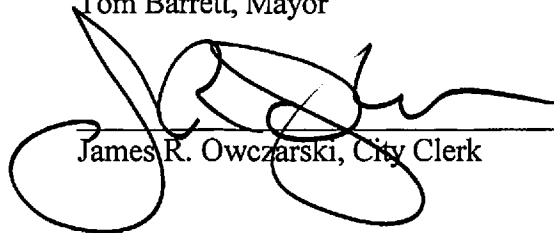
Dated this 30th day of April, 2021.



**CITY OF MILWAUKEE**



Tom Barrett, Mayor



James R. Owczarski, City Clerk

COUNTERSIGNED:

for   
Aycha Sawa, Comptroller

**CITY ATTORNEY APPROVAL/AUTHENTICATION**

Tearman Spencer, 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).



Tearman Spencer, City Attorney  
State Bar No. 1030676

**The Couture LLC**

By: *[Signature]*  
Richard J. Barrett, Manager

**Transit Hub MKE LLC**

By: *[Signature]*  
Richard J. Barrett, Manager

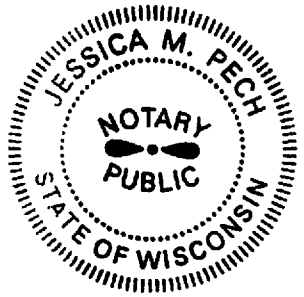
**ACKNOWLEDGEMENT**

STATE OF WISCONSIN    )  
  ) SS.  
MILWAUKEE COUNTY    )

This instrument was acknowledged before me on April 28, 2021 by the above-named Richard J. Barrett as Manager of The Couture LLC and Transit Hub MKE LLC.

*[Signature]*  
Notary Public, State of Wisconsin  
*Jessica M. Pech*

My commission expires: 7-23-24  
[Seal]



**AUTHENTICATION**

Signature of Richard J. Barrett authenticated on \_\_\_\_\_, 2021.

\* \_\_\_\_\_  
Title: Member of State Bar of Wisconsin

## **EXHIBIT A**

### **Legal Description of the Property**

#### **PARCEL A:**

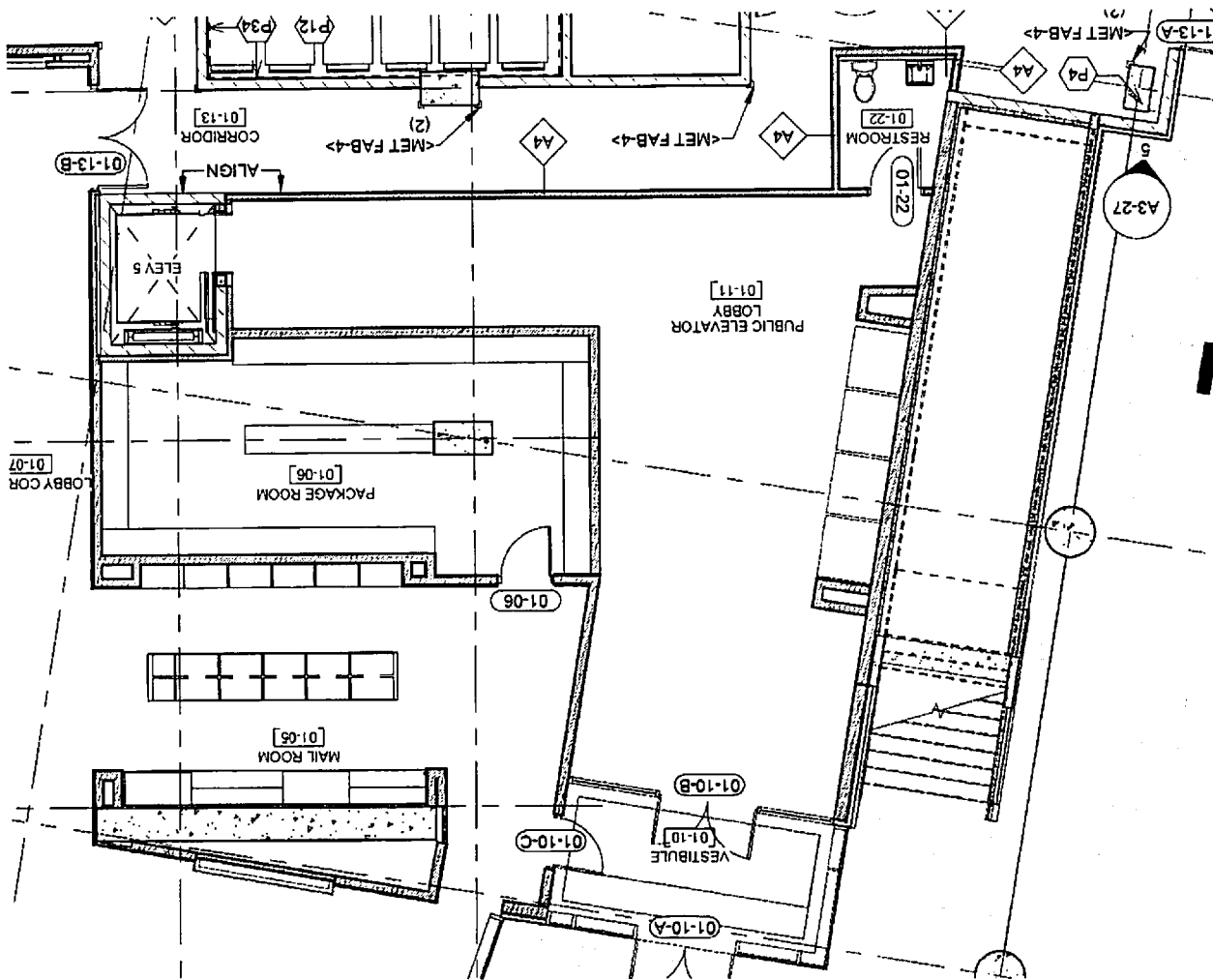
Units One (1) and Three (3), together with said units' undivided appurtenant interest in the common elements, and the use of the limited common elements appurtenant to said unit, all in THE COUTURE LAKEFRONT, A CONDOMINIUM, being a condominium created and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and by Declaration of Condominium of The Couture Lakefront, a Condominium, and recorded April 6, 2021 as Document No. 11099452 (the "Declaration"); and Condominium Plat recorded April 6, 2021, as Document No. 11099453, said condominium being located in the City of Milwaukee, Municipal Grantor of Milwaukee, State of Wisconsin on the real estate described in and made subject to said Declaration and incorporated herein by this reference thereto.

Tax Key No. 396-0511-000 (pt)

Address: 909 E. Michigan Street, Milwaukee, WI

#### **PARCEL B:**

Easements benefitting the above-described Units as set forth in Sections 14.7 and 14.9 of the Declaration and/or otherwise under Article XIV of the Declaration



Depiction of Common Areas

**EXHIBIT B**

