

DEVELOPMENT AGREEMENT

909 E. Michigan Street, Milwaukee, Wisconsin

THIS AGREEMENT (“Agreement”) is made as of the 26th day of August, 2016, by and between Milwaukee County, a Wisconsin municipal body corporate (the “County”), and The Couture LLC, a Wisconsin limited liability company, or its permitted assigns (the “Developer”), collectively the “Parties.”

RECITALS

The Developer is acquiring from the County certain property in the City of Milwaukee, Milwaukee County, Wisconsin, which is more fully described on **Exhibit A** attached hereto (the “Property”), pursuant to that certain Option Agreement recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on January 22, 2015, as Document No. 10428963, as supplemented by that certain Addendum to Option Agreement made by and between the County and the Assignor as of March 1, 2016, and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on May 4, 2016, as Document No. 10561010 (collectively, the “Option Agreement”). The Parties now desire to enter into this Agreement to set forth the terms and conditions by which the Property, when acquired by the Developer, will be developed and to establish certain additional covenants and restrictions governing the use of the Property.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein and in the Option Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Definitions.** In addition to the words and terms elsewhere defined in this Agreement, the following words and terms used herein shall have the following meanings for purposes of this Agreement:

- (a) “Building” means the improvements to be constructed by the Developer on the Property in conformity with plans and specifications approved by the County and the City of Milwaukee, when and as applicable.
- (b) “Certified Construction Costs” means Construction Costs that have already been, or will be, verified or approved by a mutually agreeable third party or drawn from a title escrow or other similarly monitored account.
- (c) “Closing” means the date of Developer’s purchase of the Property from the County.
- (d) “Commencement of Construction” means commencing below ground excavation on the Property after demolition and removal of the existing structure.

- (e) “Community Benefits Requirements” means those goals and standards set forth in Sections 3.4, 3.6, 3.7 and 3.8 of this Agreement. The Developer’s compliance therewith shall be tracked and monitored in the manner set forth in the “Community Benefits Compliance Plan” as submitted by County and signed by Developer prior to commencement of Project construction.
- (f) “Construction Costs” means any and all amounts paid or incurred by Developer in connection with the Project, including, without limitation, hard costs, soft costs, demolition costs and predevelopment costs customarily recognized in a development of this type. Construction Costs do not include any developer fees, profits, carrying costs, interest incurred by Developer, dividends or other return on investment, or any costs for which Developer has been reimbursed by another governmental agency or paid for with tax incremental district funds.
- (g) “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), fees and expenses of defense of any claim, or settlement or judgment, including without limitation, attorneys’ fees and consultants’ fees, any of which are incurred at any time, as a result of the existence of Hazardous Material upon, about, or beneath the Property or migrating to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property, including, without limitation:
 - (i) damages for personal injury or injury to property or natural resources occurring upon or off the Property, including, but not limited to, claims brought on behalf of employees of the Developer or the County;
 - (ii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other fees incurred in connection with the investigation, monitoring or remediation of such Hazardous Materials or violation of Environmental Requirements, including, but not limited to, the preparation of any studies or reports or the performance of any cleanup, remedial, removal, containment, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or otherwise expended in connection with such conditions; and
 - (iii) liability to any third person or governmental agency to indemnify such person or agency for fees expended in connection with the items referenced in subparagraph 1(g) of this Agreement.
- (h) “Environmental Requirements” means all applicable present and future laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, and similar requirements of all governmental agencies,

departments, commissions, boards, or bureaus of the United States, the State of Wisconsin and political subdivisions thereof, and all applicable judicial and administrative and regulatory decrees, judgments and orders, relating to the protection of human health, safety or the environment, including, without limitation: (i) all requirements regarding the reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Material (as defined herein) and (ii) all requirements pertaining to the protection of the health and safety of employees or the public in connection with Hazardous Material.

- (i) "Green Space" means any indoor or outdoor space that is partly or completely covered with grass, trees, shrubs, plants and/or other vegetation and/or associated elements, such as verandas, brick paths and lighting.
- (j) "Hazardous Material" means, without limitation, any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" (including toxic mold) or "substances known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any applicable federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment, or natural resources. For purposes of this sub-paragraph, such laws and regulations shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001, et seq.; A.R.S. §§ 49-201(16), 49-901(3), and 49-921(5); and the regulations adopted pursuant to such laws; and any substance or material which has been determined by a state, federal or local governmental authority with jurisdiction over the Property to be capable of posing a risk of injury to health or safety.
- (k) "Material Alterations of the Project". The Developer has submitted Concept Plans to the County, which were incorporated as Exhibit C to the Option Agreement. Developer has submitted preliminary schematic

design plans, including specifications, landscape plans (“Schematic Design Plans”). The Schematic Design Plans are generally consistent with the Concept Plans. Any of the following changes in the Schematic Design Plans are Material Alterations of the Project and shall require County Board approval:

- (i) A 20% variation in square footage of the proposed Project.
- (ii) A 10% change in square footage of Public Space.
- (iii) A material change in the quality of exterior construction materials.

Material Alterations of the Project do not include:

- (1) An alteration required by any municipality or other governmental agency or otherwise required by law.
 - (2) An alteration required due to shortages or unavailability of materials (although substitute must be of comparable quality).
 - (3) An alteration necessitated by phasing.
 - (4) An addition, reduction or alteration of planned Green Space on or about the Project. This provision does not excuse the Developer from compliance with the requirement of § 1.k(ii) above.
- (l) “Project” means the Building, driveways, parking areas, signs, walkways, loading areas, fences and walls, sewer, electrical, gas, water and other utility distribution systems, landscaping, drainage and other improvements to be initially constructed on the Property by or for the Developer in conformity with the approved plans and specifications.
 - (m) “Public Space” means those spaces which are open and accessible to the public for their use and enjoyment, including, but not limited to, public transportation concourses, visitor walkways, public common areas, public parking, pedestrian visitor plazas, publicly accessible plazas and natural indoor/outdoor spaces and public access stairs to walkways whether dedicated, created by easement, license or otherwise.

2. Evidence of Adequate Financing. Before Commencement of Construction, Developer shall provide to the County’s Economic Development Director (“ED Director”) and the County Comptroller evidence that Developer has adequate financing to complete the Project.

3. Development of the Project.

- 3.1 (a) Zoning. Prior to the closing of the permanent loan for the construction of the Project, Developer shall obtain appropriate zoning approval by the City of Milwaukee for the Project. Thereafter, in the event

Developer seeks a material change in such zoning, Developer shall provide notice to County at the time it applies for such material change.

- (b) Construction. The Developer shall, at its own cost and expense, cause the Project to be constructed on the Property in a good and workmanlike manner and in compliance with all then applicable building codes and zoning ordinances, and the Community Benefits Requirements. Construction of the Project on the Property shall be completed in conformity with the Schematic Design Plans. (c) Modification of Plans. The Schematic Design Plans may be modified from time to time, either prior to or during the course of construction, with the advance written consent of the ED Director, as long as the modification is not a Material Alteration of the Project, as defined herein. ED Director approval shall not be unreasonably withheld, conditioned or delayed. The ED Director shall respond to a request for modification of the Schematic Design Plans which is not a Material Alteration of the Project within twenty (20) days of receipt. If there is no response from the ED Director within the twenty (20) day period, a request for a modification which is not a Material Alteration of the Project shall be deemed approved. To the extent any modification is a Material Alteration of the Project, as defined herein, County Board approval is required. The County Board will use best efforts to timely respond to such a request for modification of the Schematic Design Plans.(d) Schedule for Construction and Bonding.
- (i) Demolition. Developer will commence demolition of the existing structure on the Property so as to permit the timely Commencement of Construction as provided herein.
- (ii) Commencement of Construction. Developer must initiate Commencement of Construction on the Property within eighteen (18) months of Closing. The date of Commencement of Construction is the "Project Commencement Date." If Developer does not timely initiate Commencement of Construction, County shall have the right to compel Developer to re-convey the Property to County, on ten (10) days written notice of the eighteen (18) month anniversary of the Closing, in exchange for payment to Developer of 85% of the purchase price.
- (iii) Bridge Demolition. Developer has agreed to pay the costs of demolition, except for permit fees, of the pedestrian bridge traversing Michigan Avenue which currently connects the existing structure on the Property to the O'Donnell Park parking structure to the North (the "Parking Structure"). The demolition of such pedestrian bridge shall be performed by J.H. Findorff and Son Inc. and/or its subcontractors ("Findorff"), pursuant to an agreement between Findorff and Developer (the "Demolition Agreement"), and shall provide for the demolition and removal of that portion of

the pedestrian bridge which is situated between (i) the North expansion joint where the pedestrian bridge is affixed to the Parking Structure and (ii) the South expansion joint where the pedestrian bridge is affixed to the existing structure on the Property (such portion being hereinafter referred to as, the "Pedestrian Bridge"). County shall submit the required permit application for the demolition of the Pedestrian Bridge, as prepared by Findorff (the "Permit"), within 14 days of its receipt from Findorff and shall pay any fees required by the City of Milwaukee for issuance of the Permit. Upon issuance of the Permit, County shall transfer to Developer ownership of the Pedestrian Bridge, along with all rights under the Permit. Additionally, the County shall enter into a license or right of entry permit which will allow Developer and/or Findorff to access East Michigan Street and the Parking Structure for purposes of performing the demolition of the Pedestrian Bridge, including disconnecting the Pedestrian Bridge from the Parking Structure itself. The County shall be responsible for all costs and expenses associated with securing the portion of the Parking Structure where the Pedestrian Bridge had been affixed prior to demolition, and shall further be responsible to secure such area before, during and after demolition (including, without limitation, closing parking access near the street-level demolition site and restricting pedestrian access within the Parking Structure to facilitate demolition).

(iv) RT Line Development. Developer has agreed to include the following infrastructure components in the Building for use in a Rapid Transit operation ("RT") to be run by the County (collectively, the "Baseline RT Deliverables"):

(1) Baseline RT Lane Assembly

- Structural suspended concrete slab, capable of supporting code minimum required 40 PSF live load for standard parking
- Waterproof membrane and drainage system
- High-density insulation board
- 6" thick roadway grade concrete pavement and curbs having standard height/depth.
- Bi-level plaza drains, spacing and capacity designed for standard parking deck drainage
- 12-foot wide lane

(2) Baseline RT Loading / Sidewalk / Island Assembly:

- Structural suspended concrete slab, capable of supporting code minimum required 40 PSF live load for standard parking
- Waterproof membrane and drainage system
- High-density insulation board
- Compacted granular base
- Pedestrian grade concrete sidewalk
- Bi-level plaza drains, spacing and capacity designed for standard pedestrian walkway drainage
- Right-in/Right-out turn radius of 35'-40' (no left turns in or out)

In the event County requires any improvements over and above the Baseline RT Deliverables for its RT operations (including, without limitation, any increased structural loads, specialized drainage over standard parking deck drainage, and/or health and safety equipment), then (i) County shall notify Developer of such requirements within 30 days of this Agreement, and (ii) County shall be responsible for the cost of all such improvements over the Baseline RT Deliverables.

- (v) Completion of Construction. Developer, having commenced construction, must substantially complete construction of the Project on the Property within forty-two (42) months from the Commencement of Construction. The date of the completion of construction is the "Project Completion Date." If Developer does not timely complete construction, County shall have the right to compel Developer to reconvey the Property to County, on ten (10) days written notice of the forty-two (42) month anniversary from the Commencement of Construction, in exchange for payment to Developer of 85% of the purchase price, plus the sum of Developer's Certified Construction Costs expended.
- (vi) Bonding. Notwithstanding the provisions of Section 3.1(d)(iv) above, if before initiating Commencement of Construction on the Property, Developer has posted a 100% completion bond in favor of County as well as others deemed necessary by Developer, issued by a company or companies reasonably satisfactory to the ED Director and Milwaukee County Comptroller, guaranteeing substantial

completion of the construction of the Project on the Property within forty-two (42) months from the Commencement of Construction, County cannot exercise its right to require reconveyance of the Property.

- (vii) Certificates. The Commencement of Construction and the Project Completion Date shall be confirmed by the Developer's Project architect by delivering certificates to the County attesting to: (1) the Commencement of Construction, and (2) the substantial completion of the entire Project. In the event that the Developer ceases construction of the Project on the Property for sixty (60) consecutive days, other than as a result of a Force Majeure event, such event shall be deemed a "Construction Stoppage."

3.2 Condition of Property; Construction of Infrastructure. At Closing, as contemplated by the Option Agreement, the County shall deliver possession of the Property to the Developer in substantially the condition as existed on the date the Developer exercised its Option under the Option Agreement but otherwise "AS-IS" (as to physical condition) except as otherwise stated herein or in the Option Agreement. The County shall not be responsible for performing any grading or compaction work with respect to the Property. The Developer is solely responsible for and must make adequate allowance for all excavation and disposal costs necessary for the Project. The Developer shall be solely responsible for all property development costs, including, but not limited to, extension of water and sewer laterals to the Property and the replacement of sidewalks and curb cuts. Developer hereby releases and disclaims any claim, damage, loss, injury or obligation whatsoever of the County in any way relating to, arising out of, the physical condition of the Property, any matters described in this Section 3.2, and/or any material, substance, or contaminant located in, under, upon, migrating to or from the Property as of the Closing, regardless of the source, such disclaimer and release shall be deemed to include any action at law or equity, whether arising out of contract or tort law.

3.3 General Requirements. The Developer agrees that during construction it shall use reasonable efforts to (a) cause its contractors working on the Project to remove all waste products and rubbish from the Property and the infrastructure areas related to their work in a manner and time consistent with industry standards, and if any such waste products and rubbish are left on site, it shall be responsible for removing the same, and (b) use reasonable efforts to keep the Property and areas of access thereto in a neat and presentable state.

3.4 Labor Standards. The construction of the Project on the Property shall be subject to the following labor standards: (a) overtime at prevailing overtime rates for work on Saturday, Sunday and legal holidays and for more than 40 hours per week or 8 hours in any calendar day, (b) minimum hourly base wage rates and minimum hourly fringe benefits. For all construction labor performed by or on behalf of Developer on the Property, Developer shall pay Prevailing Wages, as published by the Wisconsin Department of Work Force Development (DWD), or a separate prevailing wage determination received by Developer through DWD. These labor standards shall be included in each contract and subcontract in connection with development of the Project. As part of its Community Benefits Compliance Plan, the Developer shall maintain records of compliance and require each contractor and subcontractor to maintain

and submit to the County certified payrolls for verification purposes. Any changes to the Prevailing Wage requirement shall require County Board approval.

3.5 Nondiscrimination and Affirmative Action. In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment based on race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Developer will include the provisions of the foregoing nondiscriminatory clause in its employment notices. The Developer shall cause its contractors and subcontractors and any assignee to comply with this Section 3.5 with respect to construction of the Project.

3.6 DBE Participation Goals. The Developer's goal for Disadvantaged Business Enterprise (DBE) participation is at least 25% of the architectural and engineering services component and 25% of hard construction costs of the Project budget, all based on County DBE capacity. The Community Benefits Compliance Plan shall set forth the terms and conditions governing achievement and reporting of the goal associated with this Section 3.6. Developer shall meet with the Community Benefits Development Partners (CBDP) department prior to closing and shall consult the CBDP website for County certified DBE contractors. Any change in the DBE goals shall require County Board approval.

3.7 Workforce Goals: Residential Hiring. The Developer's goal for Milwaukee County Resident hiring is 40% of the construction labor costs (labor hours) of the Project budget. The Community Benefits Compliance Plan shall set forth the terms and conditions governing achievement and reporting of the goal associated with this Section 3.7. Any change to the residential hiring goal shall require County Board approval.

3.8 Workforce Goals: Apprenticeship and Training Opportunities. The Developer's goal for hiring person participating in job training or apprenticeship programs is 10% of the construction labor costs (labor hours) of the Project budget. The Community Benefits Compliance plan shall set for the terms and conditions governing achievement and reporting of the goal associated with this Section 3.8. Any change to the job training or apprenticeship goal shall require County Board approval.

3.9 Compliance Deposit. The Developer shall submit a Compliance Deposit prior to the Commencement of Construction in the amount of Fifty Thousand Dollars (\$50,000.00) ("Deposit") to insure compliance with subparagraphs 3.4, 3.6, and 3.7 above. The Deposit shall not be applied against the purchase price, but shall be held by County to insure such compliance. The Deposit shall be repaid to the Developer, without interest, upon completion of the Project, provided there has been full compliance as required by this subparagraph. The Deposit, or so much as determined by the ED Director, may be retained by the County if Developer fails to fully comply with the requirements of this subparagraph. In the event of any dispute between the Developer and ED Director, the dispute shall be referred to, and fully and finally resolved by, the County Director of Administrative Services.

3.10 Public Transportation. All public transportation elements included in the Schematic Design (such as the Baseline RT Deliverables, Bublr BikeShare kiosks and City of Milwaukee Streetcar boarding areas) shall at all times be provided without monetary charge to the County, unless otherwise specifically agreed by the County. The County's RT operations in or on the Project shall at all times be conducted using low-noise, low-emission vehicles of higher quality than the County buses in use in 2016.

3.11 Lease. The Parties will work in good faith to enter into a mutually agreeable 40-year lease ("Lease"), and extensions, for the County's use of the public transportation elements and outdoor pedestrian walkway in the Building.

3.12 Easement. Contemporaneous with Developer's acquisition of the Property, the Developer will grant County an easement for public access and uses in the Building and in any repaired or substitute building which is constructed by Grantor.

3.13 Public Space. All areas identified in the Schematic Design Plans as Public Space shall at all times be provided without monetary charge to the County, unless otherwise specifically agreed by the County.

3.14 Radio Tower. Without monetary charge to the County, the Developer shall grant to the County a mutually agreeable easement to allow a radio tower to be installed and maintained by the County on the Property with a height and in a location reasonably approved by Developer, provided the County provides indemnification to the Developer and its affiliates for the operations of the tower.

3.15 Tax Exemption. The conveyance will be subject to a deed restriction requiring that the Property shall contain no more than a certain percentage of overall square footage as being exempt for property-tax purposes. Such a restriction will be a permanent covenant that runs with the land, which can only be released by resolution passed by the County Board and approved by the County Executive. The Parties anticipate that the non-public portions of the Property will be fully assessable and taxable for real estate taxation purposes, under an appropriate agreement between the Developer and the City of Milwaukee, as is customarily done in City of Milwaukee Tax Increment Districts.

4. Defaults and Remedies.

4.1 Events of Default by the Developer. Any one or more of the following events are hereby defined as, declared to be, and constitute an "Event of Default" by the Developer for purposes of this Agreement: (a) a Construction Stoppage (as defined in Section 3.1 hereof) by the Developer, subject to extension for Force Majeure Delays; (b) the Developer's failure to initiate Commencement of Construction of the Project as required herein, or the Developer's failure to achieve substantial completion of the Project as required herein, subject to extension for Force Majeure Delays, or (c) the failure of the Developer to perform any other term, condition or covenant to be performed or observed by the Developer pursuant to this Agreement, subject to extension for Force Majeure Delays. In the event that an Event of Default by the Developer shall occur, the County shall send written notice to the Developer (the "Default Notice") specifying the nature of the default in detail, and the Developer shall have 30 days after receipt of the Default

Notice to cure such Event of Default. In the event that the Developer does not cure such Event of Default within such 30-day period (or such other reasonable time as necessary if such default cannot be cured within 30 days and the Developer, upon receipt of such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), the County may pursue any available remedy against the Developer, either at law or in equity, including, without limitation, the right to pursue specific performance, or injunctive relief and collect actual damages for the Developer's breach or failure to perform (including reasonable attorneys' fees and court costs).

The Developer agrees that damages may not be an adequate remedy at law and that the County shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Agreement. Venue for such action shall be Milwaukee County Circuit Court.

4.2 Events of Default by the County. If the County shall fail to perform any other term, condition or covenant to be performed or observed pursuant to this Agreement by the County for more than 30 days after receipt by the County of written notice from the Developer specifying in detail the nature of such failure (or such other reasonable time as is necessary if such default cannot be cured within 30 days and the County, upon receipt of such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), then the Developer may pursue any available remedy against the County at law or in equity including, without limitation, the right to pursue specific performance or injunctive relief and collect actual damages for the County's breach or failure to perform (including reasonable attorneys' fees and court costs).

The County agrees that damages may not be an adequate remedy at law and that the Developer shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Agreement. Venue for such action shall be Milwaukee County Circuit Court.

4.3 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other party.

4.4 Costs and Attorneys' Fees. In the event any legal or equitable action or proceeding shall be instituted to enforce any provision or agreement contained herein, the party prevailing in such action shall be entitled to recover from the losing party all of its costs including court costs and the value of its reasonable attorneys' fees. The prevailing party shall be such party that substantially obtains the relief sought in the applicable litigation.

5. General Provisions.

5.1 Conveyance of the Property. Prior to substantial completion of construction of the Project, the Developer shall not, except as permitted by this Agreement, convey any interest in the Property without the prior written approval of the County, which approval shall

not be unreasonably withheld or delayed. This prohibition shall not be deemed to prohibit or restrict Developer from conveying interests in condominium units or leasing to tenants for occupancy, granting any other right to occupy and use any portion or portions of a Building, or assigning the Option Agreement or this Agreement to an affiliate of Developer, all of which are permitted. As used in this Section 5.1, "affiliate" means any corporation, limited liability company, limited liability partnership or other entity in which Richard J. Barrett has an ownership interest and managerial authority. Nothing herein shall be deemed to prohibit, restrict or otherwise limit the Developer from selling, leasing or otherwise transferring the Property or interest therein after substantial completion of construction of the Project on such Property.

Notwithstanding anything to the contrary contained in this Agreement, the Developer reserves the right, at its sole discretion at any time during the term of this Agreement, to join and associate with other individuals or entities in joint ventures, partnerships or otherwise for the purpose of developing the Project subject, however, to the following conditions:

- (b) The Developer shall promptly notify the County in writing of the identity of any such additional parties;
- (c) The Developer shall remain fully responsible to the County as provided in this Agreement, and shall not be released from its obligations hereunder
- (d) Richard J. Barrett shall remain the Developer's manager or managing member; and
- (e) Such additional parties shall be deemed approved unless rejected in writing by the County within twenty (20) days after written notice thereof to the County by the Developer. In connection with the County's determination hereunder, the County shall take into consideration only the reputation of any such additional parties, and the County shall not withhold approval unreasonably. Any notice from the County disapproving such additional parties shall specify the reasons therefore.

Notwithstanding any other provision of this Agreement, nothing herein shall limit, restrict or prohibit the Developer from entering into any agreements or granting any interests in connection with any financing for the Project, including, but not limited to, granting any mortgage, deed of trust, sale and lease-back or any other form of conveyance or any form of equity or income participation (including, but not limited to, a partnership or joint venture) required by a lender for the purpose of securing a loan to be used for financing the acquisition of the Property, the construction of the Project thereon and any other expenditures necessary and appropriate to develop the Property. The words "mortgage" and "deed of trust" as used herein includes all other appropriate modes of financing real estate acquisition, construction and land development.

5.2 Liens. Until the Project is substantially completed in compliance with the requirements contained herein, the Developer shall take all commercially reasonable steps to prohibit any construction liens to be filed against the Property or the Project thereon.

5.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither the Developer nor the County shall be considered in breach or default of its obligations with respect to the construction of the Project (including the Project Commencement Date, Construction Stoppage or the Project Completion Date) or the construction of any items of the infrastructure, as the case may be, in the event that a delay in the performance of such obligations is due to either (i) any causes which were beyond the affected party's reasonable control, such as adverse weather conditions, strikes, acts of God, acts of a public enemy, acts of any governmental authorities (including the County in the case of the Developer), fire, flood, epidemics, remediation of underground contamination, embargoes or shortages of material from all reasonable sources, or (ii) litigation involving the title to the Property ("Title Litigation"), including but not limited to litigation involving the public trust doctrine, regardless who files such Title Litigation ("Force Majeure Delay"). A Force Majeure Delay shall not include any economic hardship or delay due to the condition of the economy or real estate market. In the event of a Force Majeure Delay, the time for performance of the affected obligation shall be extended for the period of the Force Majeure Delay; provided, however, the delayed party shall, within 15 business days after the occurrence of the event causing the Force Majeure Delay, deliver written notice to the other party of the cause thereof. Failure to deliver written notice of such delay (with appropriate back-up documentation) shall constitute a waiver of the delayed party's right to claim an extension of its time period because of the Force Majeure Delay. In the case of any Title Litigation, such Force Majeure Delay shall be deemed to continue to exist until such Title Litigation is fully resolved through all applicable appeals.

5.4 Notices. All notices and demands by either party to the other shall be given in writing and personally delivered or sent by United States certified mail, postage prepaid, and addressed:

To the County: Economic Development Director
Dept. of Administrative Services
633 W. Wisconsin Avenue, 9th Floor
Milwaukee, WI 53203

With a copy to: Colleen Foley
Acting Milwaukee County Corporation Counsel
901 North 9th Street, Room 303
Milwaukee, WI 53233

Alan H. Marcuvitz, Esq.
von Briesen & Roper, s.c.
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

To the Developer: The Couture LLC
Attn: Richard J. Barrett, Manager
260 East Highland Avenue, Suite 401
Milwaukee, WI 53202

With copies to: Adam J. Tutaj, Esq.
Meissner Tierney Fisher & Nichols S.C.
111 E. Kilbourn Avenue, 19th Floor
Milwaukee, WI 53202-6622

Either party may, upon prior notice to the other, specify a different address for the giving of notice. Notices shall be deemed given upon receipt or refusal to accept delivery.

5.5 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.
- (d) The laws of the State of Wisconsin shall govern this Agreement.
- (e) Since both Parties to this Agreement have had adequate opportunity to review and negotiate its terms, in no event shall this Agreement be construed against the drafter.

5.6 Waivers. Waiver by the County or the Developer of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any future breach of the same or any other term, covenant or condition of this Agreement.

5.7 Severability. Any provision of this Agreement which shall prove to be invalid, unenforceable or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect, provided that the invalidity, unenforceability or illegality does not render the general purposes of this Agreement incapable of being effected.

5.8 Entire Agreement and Amendments. This Agreement, including the exhibits attached hereto and all documents referenced herein, contains all the covenants and agreements between the County and the Developer relating in any manner to development of the Project and other matters set forth in this Agreement. No prior oral agreements or understandings pertaining thereto shall be valid or of any force or effect, and the covenants and agreements of this Agreement shall not be altered, modified or amended except in writing signed by the County and the Developer. The County and the Developer reserve the right to modify and amend this Agreement without the joinder or approval of any other party, except as otherwise provided in this

Agreement. In the event there is an assertion of a conflict between this Agreement the Option Agreement, this Agreement controls.

5.9 Certificate of Compliance. Upon receipt by the County of (i) a certification from the Project's architect that the Project is substantially complete, and (ii) certificates of occupancy from the City of Milwaukee for the residential component of the Project and (iii) all documentation as required by the Community Benefits Compliance Plan, the County shall deliver to the Developer, as soon as practicable, a recordable Certificate of Completion indicating that all of the Developer's obligations under this Agreement have been satisfied, except for any continuing obligations of this Agreement, and release the remainder of the Deposit, if any, to the Developer.

5.10 Authority. The Developer hereby acknowledges and agrees that it is a validly formed and existing limited liability company organized under the laws of the State of Wisconsin. Developer has the requisite power and authority, statutory and otherwise, to enter into and perform this Agreement pursuant to its terms and conditions without any further notice or consent from any person or entity. Upon request by the County, Developer shall deliver copies of a limited liability company resolution or incumbency certificate demonstrating that it has the power and authority to enter into this Agreement.

5.11 Successors. Except as otherwise expressly provided herein, all of the covenants, agreements, terms and conditions of this Agreement shall run with the Property and inure to the benefit of and be binding upon the County and the Developer and their respective successors and assigns and any party obtaining any interest in the Property after the date hereof, including, without limitation, any condominium unit owner, occupants and/or tenants of the Property. Notwithstanding anything to the contrary contained herein, the right of enforcement of the terms, conditions or covenants of this Agreement to be performed or observed by the Developer is solely vested in the County or any successor entity to the County.

5.12 Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors and assigns and the Developer or its successors and assigns. In entering into this Agreement, and in acting in compliance herewith, the Developer is at all times acting and performing as an independent contractor duly authorized to perform acts required of it hereunder. This Agreement does not create the relationship of principal, agent, partnership, joint venture or any other association between the County and the Developer, the sole relationship between the County and the Developer being that of a seller and purchaser of land, with certain obligations, covenants and responsibilities described herein.

5.13 Records and Audits. Once a year, upon commercially reasonable notice by the County, the Developer shall allow the County, the Milwaukee County Department of Audit, or any other party the County may name, when and as they demand, to audit, examine and make copies of, excerpts or transcripts from any records or other information directly relating to matters under this Development Agreement, excluding those subject to attorney-client privilege. The Developer shall maintain and make available to the County the above-described audit information for no less than three years after conclusion of the obligations and responsibilities of the Developer described herein and required by this Agreement. To the extent permitted by law, County shall

use its 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 hereunder, and shall cause their respective agents and independent contractors having access to such information to do the same. The County is 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 the County receives a public records request for confidential information provided pursuant to this Agreement, the Wisconsin Public Records Law will be considered in conjunction with its decision as to whether or not to release such materials. County agrees to provide notice to Developer in the event that it receives such a request, or in the event of the initiation of legal action to compel the release of such records. Such notice shall be given as soon as practicable so that Developer may attempt to obtain a protective order or other appropriate remedy or arrangement to prevent such disclosure with respect thereto (a "Protective Order"). In the event that a Protective Order cannot be obtained, County shall furnish only that portion of such confidential information which is legally required to be disclosed.

5.14 Environmental Indemnification.

- (a) County's conveyance of the Property to the Developer is "AS-IS", and County makes no warranty or representation as to soil, subsoil, Hazardous Material and other environmental conditions of the Property. Developer acknowledges that it has had the opportunity to investigate the environmental conditions of the Property, and that it has exercised that opportunity to its satisfaction.
- (b) From and after its purchase of the Property, Developer, for itself and its successors and assigns, releases County from, and shall indemnify, hold harmless, and defend County from and against any and all liabilities, claims, penalties, forfeitures, and suits, and all reasonable costs and expenses, including the costs of defense, settlement, and reasonable attorney's fees and/or any other Environmental Damages related to, or arising out of, soil, subsoil and environmental conditions arising out of, or in any way connected with the presence of any Hazardous Material on, in, or under the Property, including but not limited to, liability arising out of or in any way connected with the investigation, monitoring or cleanup under any federal, state or local law or regulation or ordinance Environmental Requirements of any Hazardous Material on, in or under the Property, and including but not limited to the transportation, storage and disposal of such Hazardous Materials.
- (c) From and after its purchase of the Property, Developer shall be solely responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Property or surrounding areas by the Developer, its employees, contractors, agents or guests, and Hazardous Materials whose presence pre-exists the inception of Developer's possession, located in and on the Property,

regardless of whether they are discovered or disturbed as a result of Developer's construction activities on, at or near the Property. Developer shall indemnify, defend and hold County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) related to, or arising out of, such Developer's obligations, or failure to perform such obligations described above, and any claim, action or damages asserted against the County by any party or governmental agency related to, or arising out of an Environmental Regulation or Hazardous Material at, in, under, or migrating to or from the Property.

- (d) Notwithstanding anything to the contrary herein, the Developer shall be released from its obligations under this Section 5.14 if the Developer does not purchase the Property.

5.15 Subordination. Notwithstanding any provision in this Agreement, the County agrees that this Agreement and all of the terms, covenants and provisions hereof and all rights, title, interests, and remedies of the County 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 the U.S. Department of Housing and Urban Development ("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"). In the event that Developer proposes 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 County 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 County hereunder (and the instruments referenced herein) in the event of foreclosure, if the County is not then in default, so long as the County observes and performs all of the obligations, provisions, covenants, and conditions required of the County hereunder (and the instruments referenced herein).

5.16 Further Assurance. Each of the Parties hereto hereby 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 hereto to carry out the provisions or purposes of this Agreement.

5.17 Recording. After execution, a Memorandum of this Agreement shall be prepared by County and recorded with the Register of Deeds.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

DEVELOPMENT AGREEMENT
MILWAUKEE COUNTY
EXECUTION PAGE

MILWAUKEE COUNTY

By: Chris Abele
Chris Abele, County Executive

By: Joseph Czarnetzki
Joseph Czarnetzki, County Clerk

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

Personally came before me this 29th day of August 20 16, Chris Abele, County Executive of Milwaukee County, to me known to be the person who executed the foregoing instrument on behalf of Milwaukee County and acknowledged the same.

**SHERRI JORDAN
Notary Public
State of Wisconsin**

Sherr Jordan
Notary Public, State of Wisconsin
My commission: 4/18/20

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

Personally came before me this 29th day of August 20 16, Joseph Czarnetzki, County Clerk of Milwaukee County, to me known to be the person who executed the foregoing instrument on behalf of Milwaukee County and acknowledged the same.

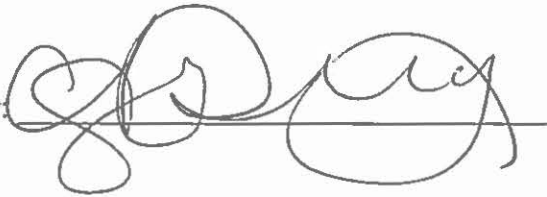
**SHERRI JORDAN
Notary Public
State of Wisconsin**

Sherr Jordan
Notary Public, State of Wisconsin
My commission: 4/18/20

Approved for Execution by Corporation Counsel

By: _____

Reviewed by Risk Management

By: _____

DEVELOPMENT AGREEMENT
THE COUTURE LLC
EXECUTION PAGE

THE COUTURE LLC

By: Richard J. Barrett
Richard J. Barrett, Manager

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this 29th day of August 2017, Richard J. Barrett, Manager of The Couture LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said entity and acknowledged the same.

Jan Szczepanski
Notary Public, State of Wisconsin
My commission: 11-21-2017

IAN SZCZEPANSKI
PUBLIC, STATE OF WISCONSIN

EXHIBIT A

PARCEL A:

That part of Lots 1, 2, 3, 4 and Lot 9, Block 99 all in the plat of the division of 13.30 acres off the East end of Lot 3 and 17.10 acres off the East end of Lot 4 in the NE 1/4 and SE 1/4 of the SW 1/4 of Section 28 and Lands in the SW 1/4 of Section 28, Township 7 North, Range 22 East, located in the City of Milwaukee, Milwaukee County, Wisconsin and more particularly described as follows:

Commencing at the South corner of said Section 28; thence N01'02'02"W along the West line of the Southeast fractional 1/4 of Section 28, 2327.41 feet, said point being S01'02'02"E 309.45 feet from the center of said Section 28; thence S37'30'43"E 6.08 feet; thence S77'45'59"E 76.99 feet; thence S74'43'04"E 70.09 feet; thence Southerly along the arc of a curve, whose center lies to the Northwest, whose radius is 1469.39 feet, whose chord bears S19'37'20"W 84.58 feet, a distance of 84.59 feet; thence N81'47'09"W 62.75 feet; thence N77'45'59"W 61.46 feet; thence S63'41'32"W 84.08 feet; thence S21'19'19"W 79.72 feet to a point of curvature; thence Southerly along the arc of a curve, whose center lies to the East, whose radius is 328.00 feet, whose chord bears S14'25'47"W 78.72 feet, a distance of 78.91 feet to a point of tangency; thence S07'32'15"W 8.10 feet; thence S84'23'18"W 177.16 feet to the point of beginning; thence continuing S84'23'18"W 283.73 feet; thence N09'17'29"E 223.51 feet; thence N06'23'11"W 143.00 feet; thence N84'24'26"E 1.31 feet; thence S70'51'45"E 116.90 feet; thence S77'45'59"E 187.76 feet to a point of curvature; thence Southeasterly along a arc of a curve, whose center lies to the South, whose radius is 58.00 feet, whose chord bears S27'33'13.5"E 89.14 feet, a distance of 101.66 feet to a point of tangency; thence S22'39'32"W 192.82 feet to the point of beginning.

Part of Tax Key No: 392-1678-121-3