

## OWNER'S REPRESENTATION AGREEMENT

THIS AGREEMENT is dated as of \_\_\_\_\_, 2024 (the "Effective Date") by and between Kinship MKE, Inc. ("OWNER") and Travaux, Inc. ("OWNER'S REP").

OWNER and OWNER'S REP acknowledge the following:

OWNER is proceeding with the acquisition of 421 E. Locust Street in Milwaukee, Wisconsin (the "Land") and the design, construction and renovation of an approximately 22,000 square foot building located on the Land (the "Project"). The "Architect" for the Project will be HGA Architects and Engineers. The "Construction Manager" for the Project has yet to be determined as of the date of this Agreement. Upon determination of the Construction Manager, the parties shall promptly execute an amendment to this Agreement.

OWNER and OWNER'S REP agree as follows:

1. OWNER hereby engages OWNER'S REP and OWNER'S REP hereby accepts the engagement from OWNER to act as its owner's representative in connection with the Project and, in connection therewith, to provide the owner's representation services outlined in OWNER'S REP's April 16, 2024 proposal (the "Proposal") attached hereto as Exhibit A and the following owner's representation services ("Services"). To the extent that the following Services differ from the Proposal, this Agreement will control. OWNER'S REP will:
  - (a) Assist OWNER in Project coordination, management and schedules during all three Phases of the Project, including the Pre-Construction and Bidding Phase, Construction Administration Phase, and Closeout and Commissioning Services Phase (collectively, the "Phases").
    1. Pre-Construction and Bidding Phase. During the "Pre-Construction and Bidding Phase" OWNER'S REP will assist OWNER in: (i) providing a schematic budget based on architect drawings for approval by OWNER; (ii) refining the project design, scope, budget and schedule; (iii) drafting and reviewing bidding forms and instructions; (iv) establishing and negotiating either a lump sum cost or guaranteed maximum price ("GMP or "Guaranteed Maximum Price") as directed by OWNER, by obtaining bids from at least three (3) general contractors of proper skill and expertise for the Project; (v) controlling project costs; (vi) developing an effective system for procurement of materials, equipment, fixtures, and furniture; and any other applicable Services described in Section 1(b)-(v) herein.
    2. Construction Administration Phase. During the "Construction Administration Phase" OWNER'S REP will assist OWNER in: (i) managing the construction process to minimize disruptions; (ii) controlling project costs; (iii) maintaining construction logs and all other relevant construction documents; (iv) analyzing cost estimates and budgets; (v) reviewing various construction documents, processes, and requests; (vi) negotiating change order requests; and any other applicable Services described in Section 1(b)-(v) herein.

3. Closeout and Commissioning Services Phase. During the “Closeout and Commissioning Services Phase” OWNER’s REP will assist OWNER in: (i) ceasing all operations and ensuring all punch list items are properly addressed; (ii) verifying warranties and equipment training; scheduling delivery of all final materials, equipment, fixtures, and furniture; (iii) planning for occupancy; and any other applicable Services described in Section 1(b)-(v) herein.
- (b) Assist OWNER in all due diligence activities necessary to determine the feasibility of the Project, including reviewing the following: (i) title insurance and conveyance documents; (ii) environmental studies and investigations; (iii) surveys; (iv) wetland status and determinations, if any; (v) traffic studies, improvement plans, and access documents; and (vi) concept plan(s).
  - (c) Assist OWNER in obtaining local and state building approvals and permits for the Project, including coordinating necessary meetings with municipalities and other governing authorities as well as acting as OWNER’s representative in such meetings and negotiations with: (i) Alderperson Coggs; (ii) the Office of the Mayor – City of Milwaukee; (iii) the Department of City Development; (iv) Milwaukee Common Council; or (v) any other relevant entities, individuals, and/or government bodies.
  - (d) Assist OWNER in neighborhood engagement for the Project, including residents at Holton Terrace (located at 2825 N Holton St, Milwaukee, WI 53212), the Resident Advisory Board for the Housing Authority of the City of Milwaukee (“HACM”), and any other neighbors and citizens relevant to the Project.
  - (e) Assist in determining the Project’s overall budget, which will include hard and soft costs, and contingencies for the Project’s design, construction, operation, and maintenance. Assist in reviewing estimates of construction costs and negotiating the Guaranteed Maximum Price, or lump sum cost as directed by OWNER, with Construction Manager.
  - (f) Monitor the costs of the Project and provide monthly cost reports for review by OWNER.
  - (g) Assist in administering procedures for construction of the Project, including payment procedures, change order procedures, construction contracting format, schedule development and organizational and decision-making hierarchy, and the relationship of each Project participant.
  - (h) Provide OWNER with communications and monthly status reports regarding the progress of the Project, including the performance of Architect’s and Construction Manager’s services with respect to the overall Project schedule. Advise OWNER of the existence of any known potential construction issues requiring action and discuss with OWNER a course of action to address said issues.

- (i) Review with Architect and Construction Manager their preparation of a value engineering/constructability analysis and review and comment on any value engineering and/or redesign recommended by Architect and/or Construction Manager.
- (j) Assist in developing a Project schedule, including reviewing the Architect's and Construction Manager's proposed schedules, further refining the scheduling for development, design, construction, start-up and anticipated operation and management of the Project.
- (k) Review with OWNER, Architect and Construction Manager plans and specifications for general conformance with program and budget.
- (l) Assist OWNER in the review and pre-qualification of construction bidders.
- (m) Review the Construction Manager's procedures for bidding procurement packages, including confirming the issuance of addenda, the collation of bids as they are received, verification of scope, and documentation to the owner of recommended awards for team members, consultants and vendors. Review all bids with OWNER.
- (n) Assist OWNER in reviewing and negotiating the agreement and general conditions with the Construction Manager for the Project.
- (o) Assist in review, negotiation and approval of change orders by Construction Manager and its subcontractors, consultants or vendors or changes in the scope of Architect's services.
- (p) Hold and administer weekly (or as otherwise scheduled in accordance with the contract documents as approved by OWNER) job meetings and issue meeting minutes.
- (q) Monitor Construction Manager's substantial and final completion procedures and assist OWNER in the review of punch lists for Construction Manager's work, and identify and incorporate any other items of non-conforming or incomplete work not listed.
- (r) Assist OWNER in pursuing full resolution and completion of outstanding punch list work items with Construction Manager.
- (s) Assist OWNER in maximizing any savings that may be cost-effectively obtained in procurement of materials due to the tax-exempt status of the ownership entity.
- (t) Review and comment on applications for payment, certificate of substantial completion and certificate of final completion.
- (u) Review and comment on the Construction Manager's program for start-up, testing and balancing of mechanical and electrical systems and report to OWNER confirming turnover completion.

- (v) Generally perform the duties expected of an owner's representative for projects of similar scope and size as the Project.
2. OWNER'S REP shall perform these Services consistent with the skill and care ordinarily provided by owner's reps practicing in the same or similar locality under the same or similar circumstances. OWNER'S REP shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.
  3. Concurrently with OWNER'S acquisition of the Land, OWNER shall pay OWNER'S REP a one-time fee for the Pre-Construction and Bidding Phase of One Hundred Twenty-Five Thousand and 00/100 U.S. Dollars (\$125,000.00) the Project ("Pre-Construction Fee").
  4. OWNER shall pay OWNER'S REP a fee for the Construction Administration Phase and Closeout and Commissioning Services Phase in an amount equal to One and One-Half Percent (1.5%) of the total hard and soft costs of the Project ("Construction Fee" and, together with the Pre-Construction Fee, the "Total Fee"). For purposes of calculating the Construction Fee, the total hard and soft costs of the Project shall not exceed Twelve Million and 00/100 Dollars (\$12,000,000.00). For avoidance of doubt, the Construction Fee shall not exceed One Hundred Eighty Thousand and 00/100 U.S. Dollars (\$180,000.00). The Construction Fee shall be paid to OWNER'S REP in multiple installments during the course of the Project based on the completion of certain milestones in the amounts and schedule to be attached hereto as Exhibit B and incorporated herein. OWNER'S REP shall submit to OWNER for OWNER'S review and approval the proposed Exhibit B within thirty (30) days before commencement of the Construction Administration Phase.
  5. OWNER shall reimburse OWNER'S REP for its actual out-of-pocket costs and expenses ("Reimbursable Expenses"). Reimbursable Expenses shall include expenses, transportation (based on current Internal Revenue Service expense rates for mileage), long distance telephone costs, if any, postage, express delivery and facsimile costs and other miscellaneous out-of-pocket costs. OWNER'S REP shall provide OWNER with all documents supporting the Reimbursable Expenses.
  6. OWNER'S REP shall submit to OWNER each month an invoice for the preceding month's Reimbursable Expenses until completion of the Project, and OWNER shall pay all amounts due and owing within thirty (30) days after OWNER's receipt of the invoice. Each payment shall be paid as described in Paragraphs 3 and 4 above.
  7. OWNER acknowledges that OWNER'S REP does not have and shall not have any authority to make any binding decisions on behalf of OWNER related in any way to the Project. OWNER'S REP' role shall be limited to advising and making recommendations to OWNER in connection with the design and construction of the Project.
  8. OWNER acknowledges that the services and work product provided by consultants and contractors retained directly by OWNER (the "Consultants") are

the responsibility of such Consultants and that OWNER'S REP does not warrant or guarantee their performance. Similarly, OWNER acknowledges that OWNER'S REP does not warrant or guarantee the work product or other aspects of performance of those retained by OWNER to perform the architectural, engineering, design and/or construction of the Project. The provisions of this paragraph do not abrogate or lessen OWNER'S REP's obligation to use the standard of care with respect to the selection and oversight of Consultants and the design and construction as required herein.

9. OWNER'S REP shall continuously maintain the following insurance (the "Policies") throughout the term of this Agreement:
  - a. Comprehensive General Liability Insurance in the amount of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate for bodily injury and property damage;
  - b. Professional Liability covering negligent acts, errors, and omissions in the performance of professional services, with policy limits of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate;
  - c. Automobile Liability covering vehicles owned by OWNER'S REP and non-owned vehicles used by OWNER'S REP with policy limits of not less than \$300,000.00 per claim and \$1,500,000.00 in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage; and
  - d. All worker's compensation insurance required by Wisconsin law; and

OWNER'S REP shall provide to OWNER certificates of insurance evidencing compliance with the requirements in this Section and showing OWNER as an additional insured to the Policies.

OWNER shall, during the course of the Project, maintain or cause to be maintained Builder's Risk and all other appropriate insurance with appropriate coverage for the Project.

10. OWNER'S REP shall indemnify and hold the OWNER and the OWNER'S officers and employees harmless from and against damages, losses and judgments arising from claims by third parties for bodily injury or death, including reasonable attorneys' fees and expenses recoverable under applicable law but only to the extent they are caused by the negligent acts or omissions of the OWNER'S REP while on the Project site, its employees and its consultants. OWNER'S REP'S duty to indemnify the OWNER under this provision shall be limited to the available proceeds of insurance coverage. OWNER'S REP'S failure to perform any of its obligations under this Agreement shall be considered a default. Should OWNER'S REP fail to cure any default within ten (10) business days from receipt of OWNER'S written notice identifying such default, then OWNER, without prejudice to any other legal rights or remedies, shall have the right, but not the obligation, to terminate this Agreement, paying OWNER'S REP only the portion of the Total Fee that has been earned, but not paid for, prior to the termination.

11. The primary employee of OWNER'S REP who shall provide the Services under this Agreement is Kevin Theissen, as may be assisted by other OWNER'S REP employees who are reasonably satisfactory to OWNER. Kevin Theissen shall be the principal in charge and shall be available on an ongoing basis throughout the course of the Project. OWNER has complete authority to review and approve the selection of OWNER'S REP'S employees assigned to the Project. OWNER also has authority to require the replacement of any OWNER'S REP employee for reasons determined in the sole discretion of OWNER.
12. The primary employee of OWNER who shall communicate with OWNER'S REP under this Agreement is Vincent Noth. Mr. Noth shall be available on an ongoing basis throughout the course of the Project.
13. OWNER'S REP may become aware of or possess certain confidential information regarding OWNER and/or its affiliates. OWNER'S REP shall not copy any such confidential information without OWNER's prior written consent. OWNER'S REP shall not disclose or use confidential or other OWNER information for any purpose other than performing the Services. OWNER'S REP shall return all copies of such information when the Services have been performed. This provision shall survive the termination of this Agreement for a period of eighteen (18) months. OWNER'S REP's obligations under this Paragraph 12 shall not apply to any Confidential Information that (a) becomes publicly known or available to the public through no fault of OWNER'S REP or (b) is disclosed in writing to OWNER'S REP by a third party who has a legal right to make such disclosure. In addition, if OWNER'S REP is required by any applicable federal, state or local law to disclose any Confidential Information, OWNER'S REP shall provide prompt written notice of such requirement to OWNER prior to any such disclosure so that OWNER may, if it desires, seek legal protection for such Confidential Information. If OWNER does not seek such legal protection, OWNER'S REP may disclose such Confidential Information as required by law. Finally, OWNER'S REP may disclose Confidential Information to its attorneys and accountants provided they agree to maintain the confidentiality of such Confidential Information.
14. OWNER may become aware of or possess certain confidential information regarding OWNER'S REP and/or its affiliates. OWNER shall not copy any such confidential information without OWNER'S REP's prior written consent. OWNER shall not use confidential or other OWNER'S REP information for any purpose other than as required to fulfill its obligations under this Agreement. OWNER shall return all copies of such information when the Services have been performed. This provision shall survive the termination of this Agreement for a period of eighteen (18) months. OWNER's obligations under this Paragraph 13 shall not apply to any Confidential Information that (a) becomes publicly known or available to the public through no fault of OWNER or (b) is disclosed in writing to OWNER by a third party who has a legal right to make such disclosure. In addition, if OWNER is required by any applicable federal, state or local law to disclose any Confidential Information, OWNER shall provide prompt written notice of such requirement to OWNER'S REP prior to any such disclosure so that OWNER'S REP may, if it desires, seek legal protection for such Confidential Information. If OWNER'S REP does not seek such legal protection, OWNER may disclose such Confidential Information as required by law. Finally, OWNER may disclose Confidential

Information to its attorneys and accountants provided they agree to maintain the confidentiality of such Confidential Information.

15. Nothing contained in this Agreement or in OWNER'S REP's performance of the Services under this Agreement shall be construed as creating an employment relationship between OWNER and OWNER'S REP. Nothing contained in this Agreement shall be construed to mean that OWNER'S REP and OWNER are joint ventures or partners, it being expressly understood and agreed by the parties that OWNER'S REP, in performing Services under this Agreement, shall be deemed an independent contractor of OWNER.
16. No action or failure to act by OWNER or OWNER'S REP shall constitute a subsequent waiver of a right or duties afforded under this Agreement or constitute approval or acquiescence of a breach of this Agreement.
17. Notwithstanding any other provision of this Agreement to the contrary, in no event and under no circumstances (except with respect to criminal or fraudulent acts) shall any individual person who is as officer, director, shareholder, agent, representative or employee of OWNER or OWNER'S REP have any personal obligation or liability for the performance of any of the terms, covenants, agreements or undertakings contained in this Agreement (whether express or implied), all such personal liability being expressly waived by OWNER'S REP and OWNER.
18. If there are any disputes regarding the terms of this Agreement or the payments due hereunder, OWNER'S REP shall continue to perform any undisputed Services and OWNER shall pay any undisputed amounts for such Services. Upon any dispute, the parties shall endeavor for a period of thirty (30) days from the identification of the dispute to seek to resolve all matters pertaining to the dispute. If the parties are unable to resolve the matter within such thirty (30) day period, the parties shall endeavor to settle the dispute by mediation prior to recourse to arbitration. If the parties are unable to resolve the dispute by mediation within sixty (60) days from commencement thereof, the dispute shall be referred to arbitration, which arbitration shall be conducted by the American Arbitration Association by a single arbitrator experienced in commercial construction, or as otherwise mutually agreed to by the parties. The decision of such arbitrator shall be final and judgment may be confirmed in any court with jurisdiction. The prevailing party in any dispute arising out of or related to this Agreement as has been referred arbitration shall be entitled to recover the prevailing party's reasonable attorneys' fees, costs and expense, in addition to any other award from the non prevailing party.
19. This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II and Wis. State. Section 19.36(3) that includes records produced or collected hereunder. OWNER agrees to cooperate with OWNER'S REP if either receives a request under Wisconsin's Open Records Law for any such record.
20. Neither party may assign any of its rights, title or interest in and to this Agreement without the prior written consent of the other party.

21. This Agreement shall be subject to and governed by the laws of the State of Wisconsin.
22. This Agreement represents the entire understanding and contract of the parties and supersedes all other agreements, oral or written regarding the subject matter of this Agreement. This Agreement may be amended only in writing signed by all of the parties hereto and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

Kinship MKE, Inc.

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

Its: \_\_\_\_\_

Travaux, Inc.

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

Its: \_\_\_\_\_



**EXHIBIT A**

[OWNER'S REP Proposal – to be attached]

