

# UNOFFICIAL COPY

Doc#: 2332506160 Fee: \$107.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 11/21/2023 11:09 AM Pg: 1 of 12

CCH12305212LD DG 4 of 4  
**This document was prepared by,  
and after recording, return to:**

**MUCH SHELIST, P.C.**  
191 North Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Scott M. Lapins

Permanent Tax Index Number[s]:

14-31-333-023-0000

Property Address:

1616-1624 N. Milwaukee Ave.  
Chicago, Illinois 60647

*This space reserved for Recorders use only.*

## **SUBORDINATION AND ATTORNMENT AGREEMENT**

This **SUBORDINATION AND ATTORNMENT AGREEMENT** dated as of November 20, 2023 (the "**Agreement**"), is executed by and among **1616-1624 NORTH MILWAUKEE VENTURES, LLC**, a Delaware limited liability company (the "**Landlord**"), **1600 N. MILWAUKEE VENTURES, LLC**, a Delaware limited liability company (the "**Tenant**"), and **GREAT SOUTHERN BANK**, a Missouri chartered trust company (the "**Lender**").

### **RECITALS:**

A. The Lender is the mortgagee under that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of November 20, 2023 (the "**Mortgage**"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount of Fourteen Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$14,750,000.00).

B. The Tenant has entered into that certain lease agreement dated October 31, 2023 with the Landlord (the "**Lease Agreement**"), the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "**Lease**"), pursuant to which the Tenant has leased certain premises (the "**Leased Premises**") consisting of approximately 2,026 rentable square feet of space in the building ("**Building**") on the parcel of land (the "**Land**"; the Land and Building being collectively referred to herein as the "**Real Estate**") legally described on **Exhibit A** attached hereto and made a part hereof.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

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## AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.

2. The Tenant has executed and delivered to the Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. If Lender or any future holder of the Security Instrument commences an action or proceeding to foreclose the Mortgage, or in the event Lender or any future holder of the Mortgage comes into possession or acquires title to the Leased Premises as a result of the foreclosure of the Mortgage or by deed in lieu of foreclosure or as a result of any other means, Tenant agrees that Lender, at its option and in its sole discretion, may terminate the Lease and dispossess Tenant from the Leased Premises by delivering written notice of such termination to Tenant (the "Notice of Termination"). In the event Lender exercises its option to terminate the Lease and dispossess Tenant from the Leased Premises, the Lease and Tenant's right to possession of the Leased Premises shall terminate at 12:01 a.m. on the fifteenth (15<sup>th</sup>) day after the Notice of Termination is delivered to Tenant by Lender.

4. If Tenant fails to voluntarily surrender possession of the Leased Premises to Lender upon termination of the Lease by Lender in accordance with Section 3 above, Tenant agrees to pay to Lender all reasonable costs and expenses, including but not limited to reasonable attorneys' and paralegal fees incurred by Lender in any action commenced by Lender to dispossess Tenant or to obtain possession of the Leased Premises from Tenant, including without limitation joining Tenant in a foreclosure action thereby terminating Tenant's right, title, and interest in and to the Leased Premises. Tenant shall be liable to Lender for any damage caused to the Leased Premises by Tenant.

5. The Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.

6. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt by the Tenant of a notice from the Lender of the occurrence of a default by the Landlord under such assignment and a demand by the

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Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Landlord hereby agrees that any rents, fees or other amounts paid by the Tenant to or as directed by the Lender pursuant to this section shall be deemed to have been duly and validly paid by the Tenant under the Lease, and any such amounts shall be credited against the Tenant's obligations under the Lease as if the same were paid directly to the Landlord. The Landlord further agrees that the Tenant shall have no obligation to determine whether the Landlord is in default under such assignment, and the Tenant may rely on such notice and direction from the Lender without any duty to investigate. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender.

7. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

8. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the

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extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including the Landlord);

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);

(iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(v) bound by any amendment or modification of the Lease made without the Lender's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

9. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To the Lender

**GREAT SOUTHERN BANK**  
 2 North Riverside Plaza  
 Suite 1820  
 Chicago, Illinois 60606  
 Attention: Rick Percifield

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With a copy to: **MUCH *SHEL*IST, P.C.**  
 191 North Wacker Drive  
 Suite 1800  
 Chicago, Illinois 60606  
 Attention: Scott M. Lapins

To the Landlord: **1616-1624 NORTH MILWAUKEE VENTURES, LLC**  
 540 West Madison Street  
 Suite 2500  
 Chicago, Illinois 60661  
 Attention: David B. Nelson

With a copy to: **TAFT STETTINIUS & HOLLISTER LLP**  
 111 E. Wacker Dr., Suite 2600  
 Chicago, Illinois 60601  
 Attention: Michael S. Roberts  
 Email: [mroberts@taftlaw.com](mailto:mroberts@taftlaw.com)

To the Tenant: **1600 N. Milwaukee Ventures, LLC**  
 540 West Madison  
 Suite 2500  
 Chicago, Illinois 60661  
 Attention: David B. Nelson

With a copy to: **TAFT STETTINIUS & HOLLISTER LLP**  
 111 E. Wacker Dr., Suite 2600  
 Chicago, Illinois 60601  
 Attention: Michael S. Roberts  
 Email: [mroberts@taftlaw.com](mailto:mroberts@taftlaw.com)

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

10. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein and that any default by the Tenant hereunder shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against the Tenant and to join the Tenant in a foreclosure action thereby terminating the Tenant's right, title and interest in and to the Leased Premises.

11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are

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entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

12. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[Signature page to follow]

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination and Attornment Agreement the day and year first above written.

**LANDLORD:**

**1616-1624 NORTH MILWAUKEE VENTURES, LLC.** a Delaware limited liability company


By: Convexity Management LLC,  
a Delaware limited liability company  
Its: Manager

By:   
Name: David B. Nelson  
Title: Vice President

**TENANT:**

**1600 N MILWAUKEE VENTURES, LLC.**  
a Delaware limited liability company

By: Convexity Management LLC,  
a Delaware limited liability company  
Its: Manager

By:   
Name: David B. Nelson  
Title: Vice President

**LENDER:**

**GREAT SOUTHERN BANK.** a Missouri chartered trust company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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(Signature Page to Subordination and Attornment Agreement)

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination and Attornment Agreement the day and year first above written.

**LANDLORD:**

**1616-1624 NORTH MILWAUKEE VENTURES, LLC**, a Delaware limited liability company

By: Convexity Management LLC,  
a Delaware limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

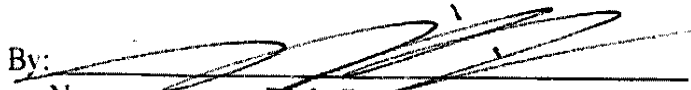
**1600 N. MILWAUKEE VENTURES, LLC**, a Delaware limited liability company

By: Convexity Management LLC,  
a Delaware limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**GREAT SOUTHERN BANK**, a Missouri chartered trust company

By:   
Name: Rick Percifield  
Title: Senior Vice President

(Signature Page to Subordination and Attornment Agreement)

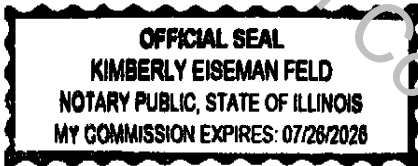


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STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that David B. Nelson, the Vice President of **CONVEXITY MANAGEMENT LLC**, a Delaware limited liability company, the Manager of **1616-1624 NORTH MILWAUKEE VENTURES, LLC**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16<sup>th</sup> day of November, 2023.



Kimberly Eisehan Feld  
 Notary Public

My Commission Expires: July 28, 2026

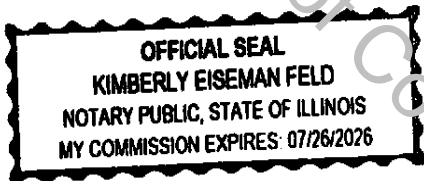
(Notary Page to Subordination and Attornment Agreement)

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STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that David B. Nelson, the Vice President of **CONVEXITY MANAGEMENT LLC**, a Delaware limited liability company, the Manager of **1600 NORTH MILWAUKEE VENTURES, LLC** who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said [corporation / limited partnership / limited liability company]. for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of November, 2023.



Kimberly Eisean Feld  
Notary Public

My Commission Expires: July 26, 2026

(Notary Page to Subordination and Attornment Agreement)

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STATE OF ILLINOIS IL )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Rich Percifield, the Senior Vice President of GREAT SOUTHERN BANK, a Missouri chartered trust company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Rich Percifield, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16th day of November, 2023.

Rachel McIntyre  
Notary Public  
My Commission Expires: 1-26-2025



(Notary Page to Subordination and Attornment Agreement)

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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

LOT 7 IN HEIRS OF OMAR H ALLEN'S SUBDIVISON OF LOTS 5 AND 6 IN ASSESSOR'S  
DIVISION OF UNSUBDIVIDED LANDS IN THE SOUTH ½ OF THE SOUTHWEST ¼ OF  
SECITON 31, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL ME-  
RIDIAN RECORDED FEBRUARY 5, 1902, AS DOCUMENT 3203798 IN COOK COUNTY,  
ILLINOIS           CONTAINING           8,041.39           SF           (0.18           ACRES).

### PROPERTY ADDRESS OF REAL ESTATE:

1616 N. Milwaukee Avenue  
Chicago, Illinois 60647

### PERMANENT TAX IDENTIFICATION NUMBER:

14-31-333-023-0000