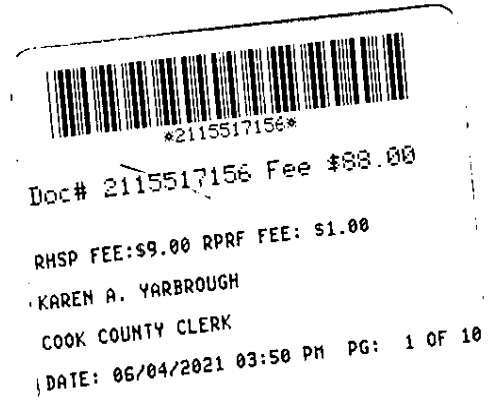


# UNOFFICIAL COPY

This document prepared by  
and after recording return to:

Holland & Knight LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, IL 60606  
Attn: Grant McCorkhill



## SUBORDINATION AGREEMENT

**THIS SUBORDINATION AGREEMENT** (this "Agreement") dated this 3<sup>rd</sup> day of June, 2021, is made by and among **CAREIT PAINT COMPANY, LLC**, an Illinois limited liability company ("Tenant"), **1501 WEST, LLC**, an Illinois limited liability company ("Landlord"), and **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, its successors and assigns ("Lender").

WHEREAS, pursuant to that certain Construction Loan Agreement of even date herewith (together with all renewals, amendments and modifications thereof, the "Loan Agreement") by and between Assignor and Lender, Lender has agreed to (i) make a loan to Assignor in the maximum principal amount of \$2,012,800.00 (the "First Lien Loan") and (ii) make a loan to Assignor in the maximum principal amount of \$1,610,300.00 (the "Second Lien Loan"). The First Lien Loan is evidenced by that certain Promissory Note dated as of even date herewith in the principal amount of \$2,012,800.00 from Assignor and payable to the order of Lender (together with all renewals, amendments, modifications, increases and extensions thereof, the "First Lien Note"). The Second Lien Loan is evidenced by that certain Promissory Note dated as of even date herewith in the principal amount of \$1,610,300.00 from Assignor and payable to the order of Lender (together with all renewals, amendments, modifications, increases and extensions thereof, the "Second Lien Note"). As used herein, (x) the "Loan" means (i) prior to the SBA Loan Event: the First Lien Loan and the Second Lien Loan and (ii) from and after the SBA Loan Event: the First Lien Loan and (y) the "Note" means (i) prior to the SBA Loan Event: the First Lien Note and the Second Lien Note and (ii) from and after the SBA Loan Event: the First Lien Note. The Loan is secured (i) prior to the SBA Loan Event: by that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, by Assignor for the benefit of Lender dated as of even date herewith (together with all renewals, modifications, increases and extensions thereof, the "First Lien Security Instrument"), which grants Lender a first priority security interest in the real property described on Exhibit A attached hereto and made a part hereof, and all buildings, structures and improvements now or hereafter constructed thereon (collectively, the "Property"), that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, by Assignor for the benefit of Lender dated as of even date herewith (together

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with all renewals, modifications, increases and extensions thereof, the "Second Lien Security Instrument"), which grants Lender a second priority security interest in the Property and (ii) from and after the SBA Loan Event: the First Lien Security Instrument, collectively, as set forth in (i) and (ii) above, the "Security Instrument";

WHEREAS, Tenant is the tenant under a Lease from Landlord (or Landlord's predecessor in ownership of the Property) dated May 27, 2021 (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the Landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of Landlord under the Lease at the time in question.

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

1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the property covered by the Lease, and any Lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Security Instrument and the rights of Lender thereunder, and all right, title and interest of Lender in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Lender which cover or affect all or any portion of the Property (collectively, the "Loan Documents"), including the Loan. This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Lender. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that all 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 portion of the Property, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards pursuant to the Loan Documents.

2. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of, the Lease without the prior written consent of Lender, unless such amendment is permitted pursuant to the Loan Documents. Tenant shall not prepay any rents or other sums due under the Lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Lender will rely upon this instrument in connection with the Loan as secured, in part, by the Security Instrument.

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(b) From and after the date hereof, in the event of a default by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of time, the giving of notice, or both, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Lender; and (ii) until Tenant has given Lender a period of thirty (30) days after the expiration of Landlord's applicable cure period to cure such default, or such longer period of time as may be necessary to cure or remedy such default, during which period of time Lender shall be permitted to cure or remedy such default; provided, however, that Lender shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Tenant shall not, as to Lender, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Lender.

(c) In the event that Lender notifies Tenant of a default under the Security Instrument or any of the other Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Security Instrument or other Loan Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(d) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Security Instrument and is hereby waived and released as against Lender and New Owner.

(e) Lender and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

(f) In the event that Lender or any New Owner shall acquire title to the Premises or the Property by reason of foreclosure of any Security Instrument or otherwise or if the Property is sold as a result of any action or proceeding to foreclose on any Security Instrument or transfer of ownership by deed given in lieu of foreclosure, the Lease shall, at Lender's or New Owner's sole discretion and option, be terminated.

3. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Security Instrument, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Lender of any of its rights under the Security Instrument or any of the other Loan Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Security Instrument and the other Loan Documents; (b) the provisions of the Security Instrument and the other Loan Documents remain in full force and

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effect and must and shall be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon receipt of a notice as set forth in Section 2(c) above from Lender and that Tenant is not obligated to inquire as to whether a default actually exists under the Security Instrument or any of the other Loan Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Lender in accordance with this Agreement. Landlord represents and warrants to Lender that a true and complete copy of the Lease has been delivered by Landlord to Lender.

4. Lease Status. Landlord and Tenant represent and warrant to Lender that neither Landlord nor Tenant has knowledge of any default or event which with the giving of notice or the passage of time, or both, would constitute a default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth at the end of this Agreement or as such party may from time to time designate by written notice to the other parties. Any party by notice to the others in the manner provided herein may designate additional or different addresses for subsequent notices or communications.

6. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease.

(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Security Instrument or any of the other Loan Documents.

(c) This Agreement shall bind and shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of the assigning Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.

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(e) The words “herein”, “hereof”, “hereunder” and other similar compounds of the word “here” as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

**ADDRESS OF LENDER:**

6201 Dempster Street  
MD G24361  
Morton Grove, IL 60053  
Attn: Meghan Blake

**LENDER:**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION**

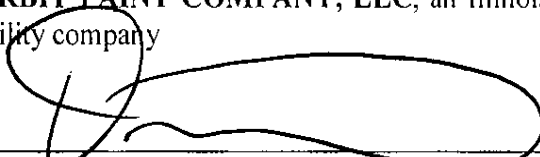
By:   
Name: Meghan Blake  
Title: Vice President

**ADDRESS OF TENANT:**

927 West Blackhawk Street  
Chicago, IL 60642  
Attn: David T. Westerman

**TENANT:**

**CARBIT PAINT COMPANY, LLC**, an Illinois limited liability company

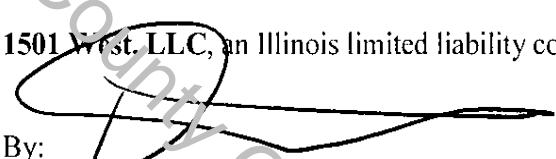
By:   
Name: David T. Westerman  
Title: Manager

**ADDRESS OF LANDLORD:**

927 West Blackhawk Street  
Chicago, IL 60642  
Attn: David T. Westerman

**LANDLORD:**

**1501 West. LLC**, an Illinois limited liability company

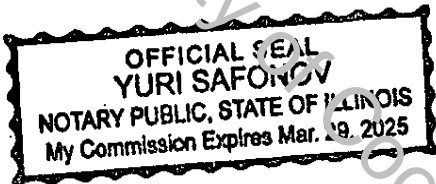
By:   
Name: David T. Westerman  
Title: Manager

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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 Meghan Blake, a Vice President of **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, 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 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 day of June, 2021.



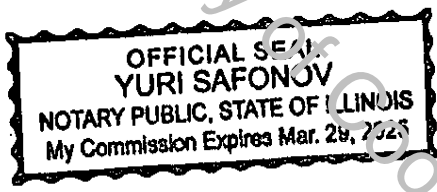
*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 03-29-2025  
\_\_\_\_\_

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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 T. Westerman, the Manager of Carbit Paint Company, LLC, an Illinois limited liability 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 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 day of June, 2021



*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 03-29-2025



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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 T. Westerman, the Manager of 1501 West, LLC, an Illinois limited liability 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 he/she signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 day of June, 2021.



*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public  
My Commission Expires 03-29-2025  
\_\_\_\_\_

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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1:

Lots 9, 10, 11 and 12, in Block 2 in William Heitman's subdivision in the Northeast 1/4 of Section 4, Township 39 North, Range 12, East of the Third Principal Meridian in Cook County, Illinois.

Parcel 2:

The West 1/2 of vacated 30th Avenue lying East of and adjoining said Lots 9 and 10 in William Heitman's subdivision in the Northeast 1/4 of Section 4, Township 39 North, Range 12, East of the Third Principal Meridian in Cook County, Illinois.

Common Address: 1501 North 31<sup>st</sup> Avenue, Melrose Park, Illinois 60160.

PIN: 15-04-207-029-0000