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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/03/2018 03:58 PM PG: 1 OF 11

## PREPARED BY AND WHEN RECORDED MAIL TO:

Horwood Marcus & Berk Chartered  
500 West Madison Street  
Suite 3700  
Chicago, Illinois 60661  
Attn: Kristin L. Dunlap, Esq.

## SUBORDINATION AND INTERCREDITOR AGREEMENT

This **SUBORDINATION AND INTERCREDITOR AGREEMENT** ("Agreement") is made and entered into as of May 7, 2018, by and among **STEVE SIEGEL** ("Subordinated Lender"), to and in favor of **JOINT EQUITY PARTNERS LLC**, an Illinois limited liability company ("Joint Equity Partners"), and **NSQUARED LENDER LLC**, an Illinois limited liability company, its successors and assigns ("NSquared").

### RECITALS

A. Subordinated Lender has or claims to have certain obligations or indebtedness due and owing to Subordinated Lender (collectively, the "Subordinated Debt") secured by a security interest in thirty-five percent (35%) of the membership interests in Platform I 600 Waukegan Road, LLC, an Illinois limited liability company ("Collateral Loan Borrower"), and evidenced by: (i) that certain UCC Financing Statement filed with the Cook County Recorder of Deeds as Document No. 1733429061, listing Collateral Loan Borrower, as debtor, and Subordinated Lender, as secured party; and (ii) that certain UCC Financing Statement filed with the Cook County Recorder of Deeds as Document No. 1733429062, listing Collateral Loan Borrower, as debtor, and Subordinated Lender, as secured party (collectively, the "UCC Financing Statements"; and together with all documents other documents executed and delivered in connection with the Subordinated Debt, the "Subordinated Loan Documents"), which UCC Financing Statements encumber certain real property commonly known as 600 N. Waukegan Road, Northbrook, Illinois 60062, as further described on Exhibit A attached hereto and made a part hereof (the "Property").

B. Alliant Credit Union, an Illinois state chartered credit union ("Alliant"), previously made a loan (the "Senior Loan") to Collateral Loan Borrower pursuant to that certain Promissory Note dated as of June 26, 2014, in the original principal amount of Two Million Three Hundred Seventy Three Thousand and No/100 Dollars (\$2,373,000.00) by Collateral Loan Borrower in favor of Alliant (the "Senior Note"), which is further evidenced and secured by: (i)

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that certain Mortgage dated as of June 26, 2014, from Collateral Loan Borrower in favor of Alliant, recorded with the Cook County Recorder of Deeds on August 5, 2014, as Document Number 1421722042 (the "Senior Mortgage") on the Property; and (ii) certain other loan documents executed and delivered by Collateral Loan Borrower to Alliant in connection therewith (collectively with the Senior Note and the Senior Mortgage, the "Senior Loan Documents").

C. Pursuant to that certain Loan Sale Agreement dated March 14, 2018 by and between Alliant and Tresu, Limited Liability Company, a New York limited liability company ("Tresu"), as assigned by Tresu to Joint Equity Partners (the "Purchase Agreement"), Alliant has sold and assigned all of its rights, title and interest in and to the Senior Note and the Senior Loan Documents to Joint Equity Partners.

D. Joint Equity Partners has received a loan (the "Loan") from NSquared for the purpose of financing a portion of the acquisition costs of the Senior Note and the Senior Loan Documents and in connection therewith Joint Equity Partners has executed and delivered to NSquared that certain Term Note dated as of May 7, 2018, in the original principal amount of One Million Six Hundred Forty Thousand and No/100 Dollars (\$1,640,000.00) (the "Note"), which is further evidenced and secured by: (i) that certain Collateral Assignment of Loan Documents and Security Agreement dated as of May 7, 2018, pursuant to which Joint Equity Partners has collaterally assigned all of its rights, title and interest in and to the Senior Loan Documents to NSquared; and (ii) and certain other loan documents executed and delivered by Joint Equity Partners to NSquared in connection therewith (collectively, the "Loan Documents").

E. As a condition to NSquared's making the Loan to Joint Equity Partners, NSquared has required that Subordinated Lender execute and deliver this Agreement and agree to the terms and conditions hereof.

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

1. Recitals and Capitalized Terms. The foregoing recitals are made a part of this Agreement. Capitalized Terms used and not defined herein shall have the meanings set forth for such terms in the Note.

2. Consent; Subordination.

a. Subordinated Lender covenants and agrees that all obligations of the Collateral Loan Borrower in connection with the Subordinated Debt and all rights of Subordinated Lender to enforce the Subordinated Loan Documents are and shall be subordinate in right of payment to the prior payment in full of all obligations of the Collateral Loan Borrower pursuant to the Senior Note and the Senior Loan Documents (collectively, the "Senior Debt") until the Senior Debt shall be paid in full. The priority of the Subordinated Debt, the Subordinated Loan Documents and all other present and future security interests of Subordinated Lender with respect to the Property (and any other property of Collateral Loan Borrower) shall be subordinated to the Senior Mortgage and all

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present and future security interests in the Property (and any other property of Collateral Loan Borrower) pursuant to the Senior Loan Documents.

b. Until the Senior Debt has been paid in full, (i) all Senior Debt shall be paid in full before any payment or distribution of any kind or character, whether in cash, property, or securities, however arising or evidenced, is made to Subordinated Lender, and (ii) Subordinated Lender shall not directly or indirectly take, set off, or accept any payment for all or any portion of the amounts owing to Subordinated Lender. All such payments or distributions that, but for the subordination provisions of this Agreement, would otherwise be payable or deliverable to Subordinated Lender shall instead be paid and delivered to Joint Equity Partners or the then-current holder of the Senior Note ("Senior Lender") until the Senior Debt is paid in full.

c. Until the Loan has been paid in full, Subordinated Lender shall not affirmatively exercise any remedies with regard to the Property and Subordinated Lender agrees that, as between Subordinated Lender and Senior Lender, and notwithstanding the taking of possession of, or other exercise of rights in respect of the Property or the priorities that ordinarily would result under applicable law for the order of granting or perfecting of any security interests in the Property, Senior Lender shall have a first and prior security interest in, upon and to the Property to secure the Senior Debt. Subordinated Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to Senior Lender with respect to the Property.

d. In the event of any dissolution, winding up, or liquidation of Collateral Loan Borrower, any receivership, insolvency, reorganization, or bankruptcy proceedings of Collateral Loan Borrower, any assignment by Collateral Loan Borrower for the benefit of its creditors, any payment or distribution of all or substantially all of the assets or securities of Collateral Loan Borrower of any kind or character, whether in cash, property, or securities, or any proceeding initiated by or against Collateral Loan Borrower for any relief under any federal or state bankruptcy, reorganization, or insolvency law, or any other federal or state law relating to the relief of debtors, readjustment of indebtedness, reorganization, composition, or extension of indebtedness, (i) all Senior Debt shall be paid in full before any payment or distribution of any kind or character, whether in cash, property, or securities, however arising or evidenced, is made to Subordinated Lender, and (ii) Subordinated Lender shall not directly or indirectly take, set off, accept, or demand any payment for or institute any legal action or proceedings for the collection of all or any portion of the amounts owing to Subordinated Lender. All such payments or distributions that, but for the subordination provisions of this Agreement, would otherwise be payable or deliverable to Subordinated Lender, shall instead be paid and delivered to Senior Lender until the Senior Debt is paid in full.

3. Representations and Warranties of Subordinated Lender. Subordinated Lender represents to Senior Lender as follows:

a. Liens of Subordinated Lender. Except as expressly set forth in the UCC Financing Statements, Subordinated Lender has no lien, security interest, or other charge or encumbrance in or on the Property or any other property of Collateral Loan Borrower, whether real, personal, or mixed, as security for the Subordinated Debt.

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b. Authority and Validity. This Agreement has been duly executed and delivered by Subordinated Lender and is the valid and binding obligation of Subordinated Lender, enforceable against Subordinated Lender in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting Subordinated Lenders' rights generally and by principles of equity.

4. Covenants of Subordinated Lender. Subordinated Lender covenants and agrees that prior to the payment in full of the Senior Debt, Subordinated Lender shall not:

a. sell, transfer, assign, pledge, encumber, or otherwise dispose of any of the Subordinated Debt unless that sale, assignment, pledge, encumbrance, or disposition is expressly made subject to this Agreement;

b. permit the terms of any of the Subordinated Loan Documents to be changed in a manner that will have a material adverse effect on any rights or interests of Senior Lender under this Agreement; or

c. accept additional collateral security for the payment of any Subordinated Debt or any other obligation of Collateral Loan Borrower to Subordinated Lender, or obtain a lien, security interest, or other charge or encumbrance of any nature whatsoever against the Property or any other property of Collateral Loan Borrower, whether now owned or later acquired.

5. Rights of Senior Lender Not to be Impaired. No right to enforce the subordination as provided in this Agreement shall at any time in any way be prejudiced or impaired by any act by Joint Equity Partners or NSquared so long as such act is done in good faith and in accordance with reasonable commercial prudence or by any noncompliance by Subordinate Lender with the terms, provisions, and covenants of this Agreement, regardless of any actual or imputed knowledge of such noncompliance of Senior Lender. The provisions of this Agreement are for the benefit of and shall be enforceable directly by either of Joint Equity Partners or NSquared.

6. Authority of Senior Lender to Effect Subordination. Senior Lender is irrevocably authorized and empowered (in its own name or in the name of Subordinated Lender or otherwise), but shall have no obligation, to demand, sue for, collect, and receive every payment due on the Senior Debt and to file claims and proofs of claim and to take any other action it may deem necessary or advisable for the exercise or enforcement of any of its rights or interests in respect of the Senior Debt.

7. Cooperation of Subordinated Lender. Subordinated Lender shall duly and promptly take any action Senior Lender may reasonably request to: (i) collect the Senior Debt for the account of Senior Lender; and (ii) collect and receive any and all payments or distributions that may be payable or deliverable upon or with respect to the Senior Debt.

8. Invalidity of Senior Debt. All rights and interests of Senior Lender under this Agreement and all agreements and obligations of Subordinated Lender under this Agreement shall remain in full force and effect irrespective of: (i) any change in the time, manner, or place of payment or in any other term of the Senior Debt, or any other amendments or waivers of or any consents to or departures from the terms of any of the Senior Loan Documents; (ii) any exchange, release, or non-perfection of the Senior Mortgage or any other interest of Senior

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Lender in any collateral, or any release, amendment, or waiver of or consent to departure from any guaranty, for all or any of the Senior Debt; or (iii) any other circumstance that might otherwise constitute a defense available to Collateral Loan Borrower or Subordinated Lender or a discharge of Collateral Loan Borrower.

9. Effect of Bankruptcy of Collateral Loan Borrower. The provisions of this Agreement shall continue to be effective (or be reinstated, as the case may be) if at any time any payment of any of the Senior Debt is rescinded or must otherwise be returned by Senior Lender upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all as though the payment had not been made.

10. Trust. Any amounts received by Subordinated Lender or its agents for performance of any actions prohibited by the terms of this Agreement, including any amounts received in connection with any cancellation, modification, or amendment of the Subordinated Note or any of the Subordinated Loan Documents prohibited by the terms of this Agreement and any amounts received by Subordinated Lender with respect to the Property shall be held by Subordinated Lender as trustee for Senior Lender and all such amounts shall be accounted for to Senior Lender and shall not be commingled with other funds of the Subordinated Lender. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Senior Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith. By way of example and not of limitation, a notice of the foregoing may be given by an instrument recorded with the Recorder of Deeds of the county in which the Property is located stating that Subordinated Lender has received or will receive such amounts in trust for Lender.

11. Inspection of Books and Records. Subordinated Lender shall keep and maintain proper and accurate books, records and accounts reflecting all items of income and expense incurred by Subordinated Lender in connection with the Subordinated Loan Documents. Subordinated Lender shall allow NSquared and any of its representatives, at any time during normal business hours, access to the records and books of account, including, without limitation, any supporting or related vouchers or papers in connection with the Subordinated Loan Documents, such access to include the right to make abstracts or copies thereof upon three (3) business days prior notice.

12. Expenses. Subordinated Lender shall pay promptly to or as directed by NSquared, after a request therefor by NSquared, all expenses, charges, costs and fees incurred by NSquared relating to this Agreement, including, without limitation, all recording and filing fees and charges, legal fees and expenses of counsel for NSquared, and any such amounts paid by Lender and not paid or reimbursed by Subordinated Lender within ten (10) days after NSquared's demand therefor shall be due and payable upon demand.

13. Continuing Agreement. The provisions of this Agreement constitute a continuing agreement and shall: (i) remain in full force and effect until the Senior Debt shall have been paid in full; (ii) be binding on Subordinated Lender and its successors and assigns; and (iii) inure to the benefit of and be enforceable by NSquared and its successors, transferees, and assigns. Without limiting the generality of the foregoing, NSquared may assign or otherwise transfer or grant any participation in any of its rights or obligations under the Loan Documents to any other person or entity, and that other person or entity shall then become vested with all the rights in of NSquared granted in this Agreement or otherwise.

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14. Amendment. This Agreement shall not be altered or amended without the prior written approval of all of the parties to it.

15. Partial Invalidity. If a court of competent jurisdiction determines that any term, covenant, condition or provision of this Agreement, or its application to any circumstance, at any time or to any extent, is invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

17. Successors. This Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, successors in office or interest and assigns.

18. Captions. The captions used in this Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.

19. Notices. Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Subordinated Lender:

Steven Siegel  
4957 Oakton Street  
Skokie, Illinois 60077

With a copy to:

Glenn Kanter  
Brown, Udell, Pomerantz & Delrahim, Ltd.  
225 West Illinois, Suite 300  
Chicago, Illinois 60654

If to Joint Equity Partners:

Joint Equity Partners LLC  
4957 Oakton Street  
Skokie, Illinois 60077  
Attn: Steven Siegel

With a copy to:

Glenn Kanter  
Brown, Udell, Pomerantz & Delrahim, Ltd.  
225 West Illinois, Suite 300

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Chicago, Illinois 60654

If to NSquared:

NSquared Lender LLC  
Attn: Nicholas Roussos  
910 W. Van Buren, Suite 705  
Chicago, Illinois 60607

with a copy to:

Kristin L. Dunlap  
Horwood Marcus & Berk Chartered  
500 W. Madison, Suite 3700  
Chicago, Illinois 60661

Such addresses may be changed by notice to the other party given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

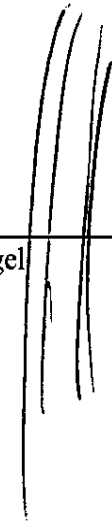
20. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

[Signature Page Follows]

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

\_\_\_\_\_  
 Steve Siegel



STATE OF ILLINOIS }  
 } SS.  
 COUNTY OF COOK }

I, Ryan Hawkinson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that STEVE SIEGEL is personally known to me to be the same person whose names is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that such person signed and delivered the said instrument as such person's 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 October, 2018.

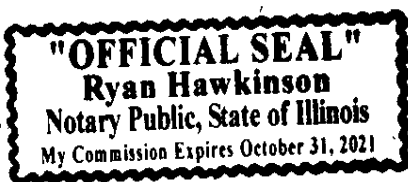
\_\_\_\_\_  
 NOTARY PUBLIC



My Commission Expires:

10-31-2021  
 [SEAL]

[Signature Pages Continue]





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

**JOINT EQUITY PARTNERS LLC,**  
an Illinois limited liability company

By: Fountainhead Capital Corporation  
its Manager

By: \_\_\_\_\_  
Name: STEVE SIEGEL  
Title: V.P.

STATE OF ILLINOIS }  
                                  } SS.  
COUNTY OF COOK }

I, Ryan Hawkinson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Steve Siegel, the Director of Fountainhead Capital Corporation, an Illinois corporation, the Manager of Joint Equity Partners LLC, an Illinois limited liability company, is personally known to me to be the same person whose names is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that such person signed and delivered the said instrument as such person's 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 October, 2018.

Ryan Hawkinson  
NOTARY PUBLIC

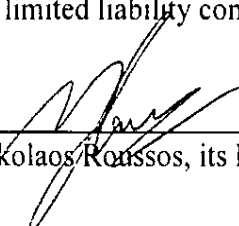
My Commission Expires:  
10-31-2021  
[SEAL]



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

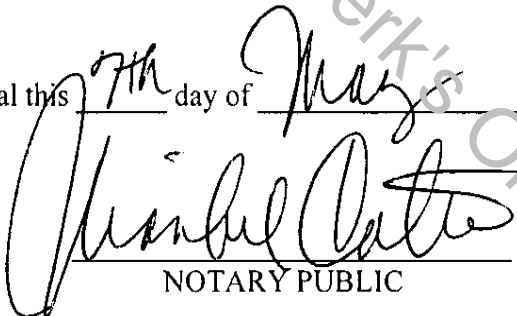
**NSQUARED LENDER LLC,**  
an Illinois limited liability company

By:   
Nikolaos Roussos, its Manager

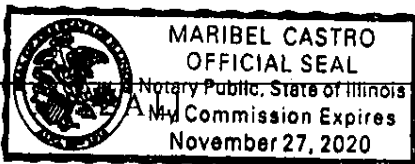
STATE OF ILLINOIS        }  
  } SS.  
COUNTY OF COOK        }

I, MARIBEL CASTRO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Nikolaos Roussos, the Manager of NSQUARED LENDER LLC,, an Illinois limited liability company, is personally known to me to be the same person whose names is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that such person signed and delivered the said instrument as such person's 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 7th day of May, 2018.

  
NOTARY PUBLIC

My Commission Expires:



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## EXHIBIT A

### LEGAL DESCRIPTION

UNITS 101-102; 103-104; 105-106; 107-108; 109-110-111-112-113-114-115-116-117; 118; 119; 120; 121; 122; 123-124; 125; 126; 127; 129; 131; 132; 134; 3; A-B; C AND D IN THE 600 WAUKEGAN ROAD CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

PART THE NORTH 380.10 FEET (EXCEPT THE NORTH 10 ACRES) OF THAT PART OF THE SOUTH EAST 1/4 OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY AND WEST OF THE CENTER LINE OF WAUKEGAN ROAD IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED AS EXHIBIT "B" THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0800703018, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

TAX I.D. NUMBER: 04-04-400-018-1001

TAX I.D. NUMBER: 04-04-400-018-1002

TAX I.D. NUMBER: 04-04-400-018-1003

TAX I.D. NUMBER: 04-04-400-018-1004

TAX I.D. NUMBER: 04-04-400-018-1005

TAX I.D. NUMBER: 04-04-400-018-1006

TAX I.D. NUMBER: 04-04-400-018-1007

TAX I.D. NUMBER: 04-04-400-018-1008

TAX I.D. NUMBER: 04-04-400-018-1009

TAX I.D. NUMBER: 04-04-400-018-1010

TAX I.D. NUMBER: 04-04-400-018-1011

TAX I.D. NUMBER: 04-04-400-018-1012

TAX I.D. NUMBER: 04-04-400-018-1013

TAX I.D. NUMBER: 04-04-400-018-1014

TAX I.D. NUMBER: 04-04-400-018-1016

TAX I.D. NUMBER: 04-04-400-018-1018

TAX I.D. NUMBER: 04-04-400-018-1019

TAX I.D. NUMBER: 04-04-400-018-1021

TAX I.D. NUMBER: 04-04-400-018-1024

TAX I.D. NUMBER: 04-04-400-018-1026

TAX I.D. NUMBER: 04-04-400-018-1027

TAX I.D. NUMBER: 04-04-400-018-1028