

Tax Parcel Nos.:
FRSTW-F6-19-D-AM,
FRSTW-F6-20-C-R-AM,
FRSTW-F6-21-C-AM,
FRSTW-F6-22-D-R-AM,
FRSTW-F6-23-D-AM,
FRSTW-F6-24-C-R-AM,
FRSTW-F6-25-C-AM, and
FRSTW-F6-26-D-R-AM

WHEN RECORDED RETURN TO:
Private Capital Group, Inc.
160 West Canyon Crest Rd.
Alpine, Utah 84004

01084806 B: 2446 P: 0140

Page 1 of 10

Mary Ann Trussell, Summit County Utah Recorder
01/11/2018 08:03:05 AM Fee \$35.00

By Charger Title
Electronically Recorded

Recorder's Use Only

SUBORDINATION AND INTERCREDITOR AGREEMENT

This SUBORDINATION AND INTERCREDITOR AGREEMENT (this "**Agreement**") is made and entered into as of January 5, 2018 by and among FROSTWOOD 6 LLC ("**Frostwood**"), a Utah limited liability company and CLEAR CREEK DEVELOPMENT, LLC ("**CCD**"), a Utah limited liability company (collectively referred to herein as "**Borrower**"), the individuals/entities listed on the attached Schedule "**A**," and their successors, assigns, transferees and designees, whether by foreclosure, assignment or otherwise, now or at any time in the future (collectively, "**Senior Lender**"), with REEF-REEF LLC, a Utah limited liability company, as administrative agent for Senior Lender ("**REEF**"), and SURETY LAND DEVELOPMENT LLC, a Utah limited liability company ("**Subordinated Lender**"). Borrower, Lender, REEF, Second Lender, PCG and Subordinated Lender are referred to collectively herein as the "**Parties**."

WITNESSETH:

WHEREAS, Subordinated Lender has a lien (the "**Subordinated Lender Lien**") against certain real property described in the attached Schedule "**C**" (the "**Property**"). All amounts owed Subordinated Lender by Borrower in connection with or related to the Subordinated Lender Lien or any other evidence of indebtedness evidencing the amounts owed by Borrower or its principals or affiliates pursuant to the Subordinated Lender Lien or any other agreement between Borrower, its principals or affiliates and Subordinated Lender are referred to herein as the "**Subordinated Lender Debt**;"

WHEREAS, contemporaneously herewith, Senior Lender has agreed to make a loan in the amount of \$2,014,000.00 (the "**Loan**") to Borrower, payable with interest and upon the terms and conditions described in that certain Loan Agreement dated January 5, 2018 (the "**Senior Lender Loan**"), which Senior Lender Loan is secured by the liens and security interests of a Deed of Trust recorded as Entry 01084725 Book 2445, Page 1045 of the Summit County Recorder's Office, and the Senior Lender Security Agreement (defined below), both of even date herewith (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, and further evidenced, secured or governed by other instruments and documents executed in connection with the Loan, collectively referred to herein as the "**Senior Lender Lien Instrument**"), and evidenced by certain Secured Promissory Notes, dated January 5, 2018 (the "**Senior Lender Promissory Note**") in the aggregate original principal amount of \$2,014,000.00. All amounts owed by Borrower under or in connection with the Senior Lender's Promissory Note or the Senior Lender Lien Instrument are referred to collectively herein as the "**Senior Lender Debt**;"

WHEREAS, the individuals/entities listed on the attached Schedule "B," and their successors, assigns, transferees and designees, whether by foreclosure, assignment or otherwise, now or at any time in the future (collectively, "Second Lender"), with Private Capital Group, Inc., a Utah corporation, as administrative agent for Second Lender ("PCG"), have a lien (the "Second Lien") against certain real property described in the attached Schedule "C" (the "Property"). All amounts owed Second Lender by Borrower in connection with or related to the Subordinated Lender Lien or any other evidence of indebtedness evidencing the amounts owed by Borrower or its principals or affiliates pursuant to the Second Lien or any other agreement between Borrower, its principals or affiliates and Second Lender are referred to herein as the "Second Debt" secured by that certain Deed of Trust recorded as Entry 01084803 Book 2440, Page 099 of the Summit County Recorder's Office (the "Second Lien Instrument").

WHEREAS, Borrower has executed an All-Assets Security Agreement, dated January 5, 2018 (the "Senior Lender Security Agreement"), and the Senior Lender Lien Instrument, which is also a security agreement, and the Senior Lender Security Agreement create a security interest in favor of Senior Lender in certain personal property and other collateral, including, without limitation, personal property, intangible rights, contractual rights and other assets, all of which are referred to herein as the "Collateral;"

WHEREAS, it is a condition precedent to the willingness of Senior Lender to make the Senior Lender Loan that the Senior Lender Lien Instrument and the Second Lien Instrument shall unconditionally be and remain at all times a lien or charge upon the Property, and that the Senior Lender Lien Instrument shall at all times be prior and superior to the lien or charge of the Subordinated Lender Lien, and that the interests of Senior Lender in the Collateral (the "Senior Lender Lien") shall unconditionally remain at all times a senior lien or charge upon the Collateral, and that the agreements and instruments creating the Senior Lender Lien shall at all times be prior and superior to the lien or charge of any similar or analogous instruments, if any, creating interests in favor of Subordinated Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Senior Lender make the Senior Lender Loan to Borrower; and Subordinated Lender agrees that the Senior Lender Lien Instrument and the Second Lien Instrument shall constitute a lien or charge upon the Property which is unconditionally prior and superior at all time and in all ways and in all respects to the lien or charge of the Subordinated Lender Lien, and that the lien of the Senior Lender Security Agreement shall always be unconditionally prior and superior to the lien or charge of any instrument or security agreement in favor of Subordinated Lender that grants a security interest in the Collateral to Subordinated Lender. Furthermore, Second Lien shall also be subordinate to Senior Lender Lien.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the Parties hereto and for other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, and in order to induce Senior Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

1. The Second Lien will be and remain at all times subordinate to the Senior Lender Lien.
2. That the Senior Lender Lien Instrument, the Senior Lender Security Agreement, and the Second Lien Instrument and any renewals, modifications, substitutions, replacements or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property, prior and superior to the lien or charge of the Subordinated Lender Lien.
3. That Senior Lender would not make its loan above described without all of the Parties entering into this Agreement.
4. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Subordinated Lender Lien to the lien or charge of the Senior Lender Lien Instrument, the Second Lien Instrument, and/or of any other document between Subordinated Lender and Borrower affecting the Property and/or the Collateral, and the Senior Lender Lien Instrument, the Second Lien Instrument and the provisions of this Agreement shall supersede and cancel those provisions, if any, contained in the Subordinated Lender Lien or any similar document entered into by Borrower and Subordinated Lender, which provide for the subordination of the lien or charge thereof to any other deed or deeds of trust or mortgage or mortgages or security interest or collateral assignment. If required by Senior Lender, Subordi-

nated Lender shall take such actions as are required to subordinate any security interests in the Collateral to the Senior Lender Lien and the Second Lien.

5. Subordinated Lender declares, agrees and acknowledges that:

- a. It consents to and approves (i) the Senior Lender Promissory Note, the Senior Lender Lien Instrument, and the Senior Lender Security Agreement, (ii) the Second Lien Instrument, and (iii) all other agreements, including, but not limited to, any other loan, security or escrow agreements, between Borrower and Senior Lender for the disbursement or repayment of the proceeds of the Senior Lender Loan, and to any future amendments of any of the foregoing;
- b. Senior Lender, in making disbursements pursuant to any agreement relating to the Senior Lender Debt, is and shall be under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom Senior Lender disburses such proceeds and any application or use of such proceeds shall not defeat the subordination herein made in whole or in part; and
- c. Subordinated Lender intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Subordinated Lender Lien in favor of the lien or charge of the Senior Lender Lien Instrument, the Senior Lender Security Agreement, and the Second Lien Instrument, and Subordinated Lender understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Senior Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into, which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

6. In dealing in all ways with the Property and/or Collateral, should Senior Lender ever foreclose, realize upon, attach, seek the appointment of a receiver for Borrower, exercise any power of sale or exercise any other common law or statutory remedy, at law or equity, concerning or with respect to, relating to or affecting in any way the Property or the Collateral or the Senior Lender Lien Instrument or the Senior Lender Security Agreement, Subordinated Lender will be entitled to attend judicial proceedings and private or public sales, etc. relating to the Property or the Collateral, but Subordinated Lender agrees, in all respects affecting or relating to the Property or the Collateral or any right arising under the Subordinated Lender Lien or any other document to which Subordinated Lender is a party that affects the Property or the Collateral or both, that Subordinated Lender will forebear from exercising any and all remedies that it may have against the Property or the Collateral or both for so long as any amounts are owed Senior Lender under the Senior Lender Promissory Note or the Senior Lender Deed of Trust or any documents relating thereto, and that Senior Lender in such circumstances shall be the sole party, as between Subordinated Lender and Senior Lender, who is entitled to seek remedies and/or relief relating to the Property or the Collateral or both. Subordinated Lender further agrees that it shall not exercise its rights or remedies under the Subordinated Lender Lien for so long as any amounts are owed Senior Lender under the Senior Lender Promissory Note, the Senior Lender Lien Instrument, or the Senior Lender Security Agreement or any documents relating thereto.

7. With respect to the Property:

- a. Unless and until all Senior Lender Debt amounts owed Senior Lender by Borrower and all Second Debt amounts owed Second Lender by Borrower have been paid in full, and/or if any Event of Default exists at any time under the Senior Lender Promissory Note, the Senior Lender Lien Instrument, the Senior Lender Security Agreement, or the Second Lien Instrument:
 - i. Borrower shall not, directly or indirectly, make any payment of principal or interest on account of, or transfer any collateral for any part of, the Subordinated Lender Debt, without Senior Lender's prior written consent;

account number and the amount deposited in such account) to Senior Lender. Senior Lender shall have all of the rights of the owner of such account to withdraw such funds and apply them towards payment to Senior Lender of all amounts owed it under any agreement relating directly or indirectly to the Senior Lender Debt.

- g. Subordinated Lender represents and warrants that it is the lawful owner of the Subordinated Lender Debt and that no part thereof or interest therein has been assigned to or subordinated or subjected to any other security interest in favor of anyone other than Senior Lender as provided herein. Subordinated Lender agrees not assign, transfer, grant a security interest or negotiate any instrument relating to the Subordinated Lender Debt or any portion of the Subordinated Lender Debt unless and until the Senior Lender Debt has been paid in full and until the Senior Lender Lien Instrument and the Senior Lender Security Agreement have been reconveyed and released. Until all of the Senior Lender Debt has been paid in full, Borrower shall not issue any instrument, security or other writing other than the Subordinated Lender Lien executed by Borrower for the benefit of Subordinated Lender as described above evidencing any of the Subordinated Lender Debt except at the request of and in the manner requested by Senior Lender.
- h. Senior Lender is hereby authorized to obtain specific performance of this Agreement, whether or not Borrower or Subordinated Lender shall have complied with the provisions hereof applicable to it, at any time when Borrower or Subordinated Lender shall have failed to comply with any provision hereof applicable to it. Subordinated Lender and Borrower each hereby irrevocably waive any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance hereof in any action brought therefor by Senior Lender.
- i. Borrower and Subordinated Lender shall execute and deliver to Senior Lender such further instruments and shall take such further action as Senior Lender may at any time or times reasonably request in order to carry out the provisions of this Agreement.
- j. The rights granted to Senior Lender hereunder are solely for the protection of Senior Lender and nothing herein contained shall impose on Senior Lender any duties with respect to any property of Borrower or Subordinated Lender. Senior Lender shall have no duty to preserve rights against prior parties in any property of any kind received hereunder.
- k. Subordinated Lender is not and shall not be a third party deed of trust to, nor shall it be entitled to rely upon, the negotiations, loan documents or any other agreements, discussions or transactions between Senior Lender and Borrower related to the Senior Lender Loan or the prospects of making, funding or closing the Senior Lender Loan.
- l. In the event of any dispute among the Parties for any reason concerning the rights, duties or obligations of any Party under this Agreement, the prevailing party shall have the right to collect from the other parties its reasonable costs, necessary disbursements, and attorneys' fees incurred in enforcing this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement on the dates set forth below (signature pages follow).

BORROWER:
FROSTWOOD 6 LLC,
a Utah limited liability company

CLEAR CREEK DEVELOPMENT, LLC,
a Utah limited liability company

Signature: _____
By Kent Hoggan, its Manager
5911 Fashion Blvd. #200
Salt Lake City, UT 84107

Signature: _____
By Kent Hoggan, its Manager
5911 Fashion Blvd. #200
Salt Lake City, UT 84107

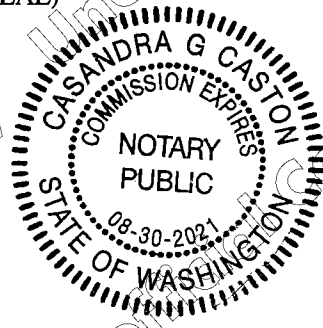
STATE OF Washington
COUNTY OF Spokane

On the 3 day of January in the year 2018 before me, the undersigned, personally appeared Kent Hoggan, Manager of Frostwood 6 LLC and Clear Creek Development, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his respective capacity, and that by his signatures on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Washington, County of Spokane.

Notary Public

My commission expires: 8-30-2021

(SEAL)



SUBORDINATED LENDER:
SURETY LAND DEVELOPMENT LLC,
a Utah limited liability company

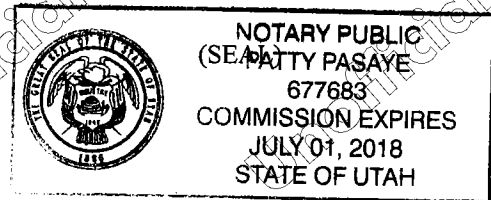
Signature: *Joel David Metcalf*
By Joel David Metcalf, its Manager
7880 S. 1300 W.
West Jordan, UT 84088

STATE OF Utah
COUNTY OF Salt Lake

On the 3rd day of January in the year 2018 before me, the undersigned, personally appeared Joel David Metcalf, Manager of Surety Land Development LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Utah County of Salt Lake.

Patty Pasaye
Notary Public

My commission expires: 7/1/18



SENIOR LENDER:

Senior Lender, by and through their agent,
REEF-PCG LLC
a Utah limited liability company

Signature: _____

By Jared L. Luceo, its Manager
160 W. Canyon Crest Rd.
Alpine, UT 84004

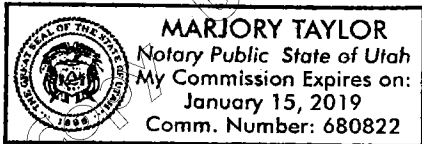
STATE OF UTAH }
COUNTY OF UTAH }

On the 3rd day of JANUARY in the year 2018 before me, the undersigned, personally appeared Jared Luceo, Manager of REEF-PCG LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of UTAH, County of UTAH.

Notary Public

My commission expires: 1/15/19

(SEAL)



SCHEDULE "A"
LIST OF LENDERS

Entity Name	Principal Amount	Percentage Interest
Genesis Property Source, LLC, a Utah limited liability company	\$10,000.00	0.496524330%
Sunwest Trust as Custodian for Lela Russo IRA 201611647	\$12,400.00	0.615690169%
Sunwest Trust as Custodian for Andrew Avellino IRA 201106977	\$15,000.00	0.744786495%
Sunwest Trust as Custodian for Larry D Jackson IRA 201309365	\$19,000.00	0.943396226%
Sunwest Trust as Custodian for Douglas Schoeninger IRA 201208202	\$20,000.00	0.993048659%
American IRA LLC FBO Lon Gerald Peper IRA 22-0166810	\$25,000.00	1.241310824%
Equity Trust Company Custodian FBO Daniel Sanchez IRA Z117093	\$25,000.00	1.241310824%
John P. Hurwitz and Courtney A. Hurwitz 2014 Family Trust, dated May 14, 2014, Co-Trustees John P. Hurwitz and Courtney A. Hurwitz	\$25,000.00	1.241310824%
Steven Garvey Forbes	\$25,000.00	1.241310824%
Sunwest Trust as Custodian for James Fenhouse IRA 201309054	\$25,000.00	1.241310824%
Thomas B. Moore	\$25,000.00	1.241310824%
IRA Services Trust Company, Custodian FBO Kurt J. Tengberg IRA450212	\$30,000.00	1.489572989%
Sunwest Trust as Custodian for Lela Russo IRA 201611648	\$38,300.00	1.901688183%
Robert Lee Lathen and Rebecca Ann Lathen Revocable Trust dated June 13, 2012, Robert Lee Lathen and Rebecca Ann Lathen Co-Trustees	\$40,000.00	1.986097319%
Sunwest Trust as Custodian for Melvin Marks IRA 201208420	\$40,000.00	1.986097319%
Sunwest Trust as Custodian for William Autry IRA 201410378	\$40,000.00	1.986097319%
Sunwest Trust as Custodian for LaWanda Drakeford Bridges IRA 201208104	\$48,700.00	2.418073486%
Charles LaPorte	\$50,000.00	2.482621648%
Cynthia A. Bates and Brian K. Bates, Trustees of the CAT Trust dated October 20, 2010	\$50,000.00	2.482621648%
Gerald Lee Skousen and Michelle Ann Skousen, as Trustees of the Gerald and Michelle Skousen 2017 Living Trust dated July 18, 2017	\$50,000.00	2.482621648%
McCammon Equities, L.C., a Utah limited liability company	\$50,000.00	2.482621648%
Millennium Trust Co., LLC Custodian FBO Robert S Irish 90J749011	\$50,000.00	2.482621648%
Sandco, LLC, a Utah limited liability company	\$50,000.00	2.482621648%
Sunwest Trust as Custodian for Keith Schuster IRA 201712835	\$50,000.00	2.482621648%
Sunwest Trust as Custodian for Winifred Eke IRA 201611682	\$50,000.00	2.482621648%
The Kristin Spencer Kendell Revocable Trust dated July 29, 2010, Kristin Spencer Kendell Trustee	\$50,000.00	2.482621648%
Sunwest Trust as Custodian for Miguel Villalona IRA 201611663	\$56,500.00	2.805362463%
Jeffrey Glenn Williams	\$120,000.00	5.958291956%
Sunwest Trust as Custodian for David Wilcynski IRA 201611911	\$124,100.00	6.161866931%
PCG Select Series I LLC, a Delaware limited liability company	\$400,000.00	19.860973188%
PCG Select Series II, LLC a Delaware limited liability company	\$400,000.00	19.860973188%

SCHEDULE "B"
DESCRIPTION OF THE PROPERTY

The land referred to in this Commitment is situated in the County of SUMMIT, State of Utah, and described as follows:

UNITS 19-D, 20-C-R, 21-C, 22-D-R, 23-D, 24-C-R, 25-C, 26-D-R, FROSTWOOD PARCEL F6 TOWNHOMES-AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE SUMMIT COUNTY RECORDER. TOGETHER WITH THE PERTINENT EASEMENT OVER AND RIGHTS OF USE AND ENJOYMENT OF SAID PROJECT'S COMMON AREAS AS ESTABLISHED IN THE DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS.

The following is shown for information purposes only:

Tax Serial Number is:

FRSTW-F6-19-D-AM, FRSTW-F6-20-C-R-AM, FRSTW-F6-21-C-AM, FRSTW-F6-22-D-R-AM, FRSTW-F6-23-D-AM, FRSTW-F6-24-C-R-AM, FRSTW-F6-25-C-AM, FRSTW-F6-26-D-R-AM

The address of said property is:

**4331 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 19-D)
4337 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 20-C-R)
4343 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 21-C)
4347 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 22-D-R)
4351 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 23-D)
4357 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 24-C-R)
4363 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 25-C)
4371 FROST HAVEN ROAD, PARK CITY UTAH 84098 (UNIT 26-D-R)**