

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Bank of America, N.A.  
Doc Retention Center  
Gateway Village-900 Building  
NC1-026-06-06  
900 W Trade St  
Charlotte, NC 28255

---

THIS SPACE ABOVE FOR RECORDER'S USE

AMENDED AND RESTATED CONSENT TO ENCUMBRANCE OF LEASEHOLD ESTATE

THIS AMENDED AND RESTATED CONSENT TO ENCUMBRANCE OF LEASEHOLD ESTATE ("Consent"), dated as of **June 1, 2023**, is made by the City of Salinas, a California charter city and municipal corporation of the State of California ("Landlord"), and Seatec Underground Utilities, Inc., a California corporation ("Tenant"), in favor of Bank of America, N.A. ("Beneficiary").

This Consent is made with reference to the following facts:

A. Landlord is the current holder of the lessor's interest and Tenant is the current holder of the lessee's interest under that certain ground lease described in Exhibit "A" attached hereto and incorporated herein by this reference ("Lease"). A copy of the Lease has concurrently herewith been delivered to the Beneficiary. The Lease covers the real property ("Property") described in Exhibit "B" attached hereto and made a part hereof.

B. Tenant received a loan from Beneficiary in the original principal amount of \$786,000.00 ("Loan"). As of April 18, 2023, the principal amount outstanding under the Loan is \$599,903.01. The Loan is secured by, among other things, a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Original Deed of Trust") executed by Tenant for the benefit of Beneficiary and dated as of April 4, 2017 and recorded in the Official Records of Monterey County, California on April 6, 2017, as Instrument No. 2017018440, and is evidenced and otherwise governed by that certain Loan Agreement described in the Deed of Trust (together with the Amendment (defined below), the "Loan Agreement"), the Deed of Trust, and any other documents required or delivered in connection with the foregoing ("Loan Documents").

In connection with the Loan, Landlord and Tenant previously executed that certain Consent to Encumbrance of Leasehold Estate dated as of April 4, 2017, and recorded in the Official Records of Monterey County, California on April 6, 2017, as Instrument No. 2017018439 (the "Original Consent"). The Lease has been amended to, among other things, increase the Demised Premises (as defined in the Lease) by adding approximately 0.244 acres of land. Landlord and Tenant desire to amend and restate the Original Consent in its entirety.

Tenant and Beneficiary are concurrently herewith entering into: (1) an Amendment No. 1 and Waiver to Loan Agreement (the "Amendment"); and (2) a Modification of the Deed of Trust (the "Modification") to, among other things, revise the legal description contained in Exhibit "A" attached thereto. The Modification will be recorded in the Official Records of Monterey County concurrently with this Consent. The Original Deed of Trust and the Modification shall hereinafter be collectively referred to as the "Deed of Trust."

C. A condition of the Loan is Landlord's agreement to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree in favor of Beneficiary as follows:

1. Consent to Encumbrance of Leasehold Estate. Landlord hereby consents to the Deed of Trust and the hypothecation thereunder of the leasehold estate and all other present and future rights of Tenant in, to, and under the Lease and the Property.

2. Transfer of Leasehold Interest. Subject to the review and prior approval of the Landlord, the transfer of Tenant's leasehold estate in the Property may occur pursuant to (a) a foreclosure sale held pursuant to the Deed of Trust, or (b) deed in lieu of foreclosure. In the event that Beneficiary (whether as purchaser at a foreclosure sale held pursuant to the Deed of Trust or by deed in lieu of foreclosure) acquires any leasehold estate in the Property, and Beneficiary thereafter desires to transfer its title to such leasehold estate, Landlord shall have the right of prior review and approval of transfer to the transferee, provided that the transferee expressly assumes all obligations of the lessee under the Lease. Beneficiary shall automatically be released from any liability for the obligations of the lessee under the Lease upon the transfer of title to the leasehold estate.

3. No Subordination of Leasehold Interest. Unless Beneficiary otherwise consents in writing, the leasehold estate under the Lease shall not be subordinated to any future mortgage or deed of trust encumbering the fee interest in the Property after the recordation of this Consent. All future lienholders are hereby put on notice of the foregoing.

4. Representations and Warranties. Tenant represents, warrants, and certifies to Beneficiary that: (a) a true and correct copy of the Lease, and any and all supplements and amendments thereto and modifications thereof, have been delivered to Beneficiary; (b) the Lease is genuine, valid, and enforceable in accordance with its terms, is in full force and effect as of the date hereof, and has not been supplemented, modified, amended, or terminated; (c) Tenant has not given or received notice of the occurrence of a default under the Lease, and to the best of Tenant's knowledge, there are no defaults, breaches, defenses, claims or offsets thereunder or to the enforcement thereof; (d) rent owing under the Lease, which is due as of the date of the execution hereof, has been paid in full, and to the best of Tenant's knowledge, Tenant is in compliance with all other obligations of the lessee under the Lease; (e) the term of the Lease expires on September 27, 2046; (f) there are no agreements between Landlord and Tenant affecting the Property other than the Lease; (g) neither Landlord's fee interest nor Tenant's leasehold interest in the Property is subject to any deed of trust, mortgage, or other lien (other than the Deed of Trust); and (h) all buildings and other improvements required to have been constructed under the Lease have been fully completed in accordance with the terms thereof. Tenant further represents, warrants, and certifies to Beneficiary that: (a) Tenant has not assigned, transferred or hypothecated its interest under the Lease (except by the Deed of Trust); and (b) there are no subleases, licenses, or other agreements (except the Lease) which create rights of occupancy with respect to the Property, which have not been disclosed to Beneficiary in writing. Landlord represents, warrants, and certifies to Beneficiary that the individual executing this Consent on behalf of Landlord has the necessary authority to enter into this Consent and that no other documentation is needed to evidence such authority.

5. Destruction. In the event of destruction of any improvements on the Property, Tenant shall reconstruct the same and neither Landlord nor Tenant shall terminate the Lease so long as the Deed of Trust is outstanding if and for so long as Tenant or Beneficiary pursues such reconstruction with reasonable diligence.

6. Loan Documents; Insurance Proceeds; Condemnation Awards. Landlord has reviewed the Loan Agreement and the Deed of Trust, and Landlord approves the Loan Agreement and the Deed of Trust, and the transactions contemplated therein, and agrees that (a) Tenant (and Beneficiary should it become owner of the Tenant's interest under the Lease) may sublease the

improvements located on the Property to sub-tenants to be used for any lawful purposes during the term of the Lease and any renewals and extensions thereof; and (b) the provisions of the Deed of Trust with respect to insurance proceeds and condemnation awards shall be controlling notwithstanding the provisions of the Lease, and Beneficiary may apply such payments or awards received by Beneficiary as it sees fit, subject only to the provisions of the Deed of Trust. Landlord also consents to the assignment to Beneficiary of all of Tenant's rights and interests in all present and future subleases of the Property and any improvements thereon and all rentals to become due thereunder as security for the Loan.

7. Performance of Obligations Under the Lease. Tenant agrees to perform all obligations of the lessee under the Lease without notice or demand from Beneficiary. Any default by Tenant under the Lease shall automatically be a default under the Deed of Trust and shall entitle Beneficiary to institute foreclosure proceedings thereunder, and Beneficiary may enter into possession of the Property and take whatever steps it deems necessary to correct the default under the Lease. Any expenses incurred by Beneficiary in connection with the enforcement of its rights hereunder or in curing any default under the Lease, including, without limitation, reasonable attorneys' fees and attendant expenses, shall be due and payable by Tenant to Beneficiary immediately and without demand, shall bear interest at the default rate of interest as set forth in the Loan Agreement and shall be secured by the Deed of Trust. Beneficiary shall not have any liability for the performance of any of the obligations of the lessee under the Lease until Beneficiary has acquired the leasehold interest in the Property, and then only in accordance with the terms of the Lease.

8. Beneficiary's Expenses. If Beneficiary acquires any leasehold estate in the Property (whether as purchaser upon the foreclosure of the Deed of Trust, by deed in lieu of foreclosure, or under any provision of the Lease), all expenses incurred by Beneficiary in connection therewith, including, without limitation, all rental payments and other sums then due under the Lease, reasonable attorneys' fees, and attendant expenses, shall be due and payable by Tenant to Beneficiary immediately and without demand, and shall bear interest at the Default Rate.

9. Consent to Prior Assignments. Landlord consents to any and all prior assignments of the lessee's interest under the Lease by or through which such interest has been transferred to Tenant.

10. Acquisition of Fee Title and Other Interests by Tenant. The parties hereto intend and agree that in the event Tenant acquires fee title to the Property, or any other interest in the Property not currently held by Tenant, the Deed of Trust shall automatically encumber such interests in the Property in a first lien position (except to the extent such interest is already encumbered by a lien in favor of Beneficiary, in which case the Deed of Trust shall be in a second lien position), if and when acquired by Tenant, without the necessity of any further documents or action. Notwithstanding the foregoing, Tenant, as a condition to acquiring any such interest, shall execute such documents and take such actions as may be requested by Beneficiary to evidence that the lien of the Deed of Trust encumbers such interest in the Property.

11. Waiver re Bankruptcy. Unless Beneficiary otherwise consents in writing, Landlord and Tenant each hereby waives, and agrees not to assert or otherwise take the benefit of, Section 365(d)4, or any other applicable provisions, of the United States Bankruptcy Code (11 U.S.C. § 101 et seq.), which may cause the termination of the Lease, or otherwise render it unenforceable in accordance with its terms, whether automatically by operation of law, or otherwise.

12. New Lease.

(a) In the event the Lease is terminated by reasons of bankruptcy, assignment for benefit of creditors, insolvency or other event beyond the ability of Tenant or Lender to cure or remedy, or if the Lease otherwise terminates for any reason, Landlord shall upon written request of Beneficiary or its designee enter into a new lease ("New Lease") with Beneficiary or its designee. The New Lease shall be effective as of the effective date of such termination for the remainder of the term of the Lease, including any options to extend the terms

thereof, provided Beneficiary or its designee shall have paid or caused to be paid to Landlord all rents and other sums owing by Tenant under the Lease as of the date of execution of the New Lease.

(b) New Lease Priority. The New Lease made pursuant to this Section and any renewal lease entered into with Beneficiary or its designee pursuant thereto shall be prior to any mortgage or other lien, charge or encumbrance on Landlord's fee interest in the Property (other than the lien of any deed of trust executed by Landlord in favor of Beneficiary to secure the Loan), and the lessee under such New Lease shall have the same right, title and interest in and to the leasehold estate as Tenant had under the Lease.

(c) Liability of New Lessee. The lessee under the New Lease shall be liable to perform the obligations imposed on the lessee by the New Lease, provided however, if said lessee is Beneficiary or its designee, it shall have no further liability under the New Lease from and after the date it transfers and assigns its interest in the New Lease. Beneficiary or its designee or assignee (and any of their successors or assigns) shall not be obligated to perform or observe non-monetary covenants under the New Lease (if any) which pertain to the financial condition, ownership or management of Tenant or which otherwise are capable of being performed or observed only by Tenant.

13. Notices to Beneficiary; Cure Rights. Should Tenant default under the Lease, Landlord shall send a copy of any default notice to Beneficiary at the address specified below. Beneficiary may, but is not obligated to, cure the default, so long as Beneficiary acts within thirty (30) days of its receipt of the default notice from Landlord. Should the default be of a nature which requires more than thirty (30) days to cure, then so long as Beneficiary commences such cure within such thirty (30) day period, and diligently pursues such cure to completion, the default shall be deemed cured. Landlord shall not terminate the Lease because of any default or breach under the Lease on the part of Tenant, if, within thirty (30) days of Beneficiary's receipt of a default notice from Landlord, Beneficiary causes the trustee under the Deed of Trust to commence and pursue to completion proceedings to foreclosure under the Deed of Trust.

14. Notice Procedure. Any notices required herein shall be personally delivered or mailed, postage prepaid, certified mail, return receipt requested, with a copy via regular mail, addressed as follows:

If to Beneficiary: Bank of America, N.A.  
Doc Retention Center  
Gateway Village-900 Building  
NC1-026-06-06  
900 W Trade St  
Charlotte, NC 28255

If to Landlord: Salinas Municipal Airport,  
c/o Airport Manager  
30 Mortensen Avenue  
Salinas California 93905

If to Tenant: Seatec Underground Utilities, Inc.  
467 Airport Blvd  
Salinas, CA 93905

or to such other address as may be designated by the parties in the manner provided above for giving notice. Notices shall be deemed given upon personal delivery or upon receipt or refusal to accept receipt, as evidenced by the return receipt.

15. Consent to Encumbrance of Right of First Refusal. Landlord consents to the encumbrance under the Deed of Trust of any right of first refusal to purchase in the Lease ("Right of First Refusal"), and agrees that Beneficiary may exercise the Right of First Refusal at the same time specified in and in accordance with the of the Lease, either in the name of Tenant or in its own name (or the name of a nominee of Beneficiary), as more fully set forth in the Deed of Trust.

16. Estoppel Statements. Landlord agrees to deliver to Beneficiary within fifteen (15) days after written request by Beneficiary, an estoppel certificate from Landlord setting forth (a) the name of the tenant under the Lease, (b) that the Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (c) the basic rent payable under the Lease, (d) the date to which all rental charges have been paid by Tenant under the Lease, and (e) whether there are any alleged defaults of Tenant under the Lease and, if there are, a description of the nature of such defaults in reasonable detail.

17. Miscellaneous. The parties hereto acknowledge that this Consent is a material inducement to Beneficiary to make the Loan to Tenant, and that Beneficiary would not be willing to extend credit (or to continue to extend credit) upon the security of Tenant's leasehold estate in the absence hereof. Beneficiary is an intended beneficiary of this Consent and the leasehold mortgagee protection provisions of the Lease, and may enforce in its favor all provisions hereof and thereof. This Consent shall inure to the benefit of and be binding upon the successors and assigns of Landlord, Tenant, and Beneficiary. All rights of Beneficiary hereunder may be assigned by Beneficiary without notice to the parties hereto and shall inure to the benefit of Beneficiary's successors and assigns. This Consent may not be supplemented, modified, amended or terminated without Beneficiary's prior written consent. In the event of a conflict between the Lease and this Consent, the provisions of this Consent shall control. Notice of acceptance hereof by Beneficiary is hereby waived. This Consent may be executed and recorded in counterparts.

"Landlord"

City of Salinas,  
a California charter city and municipal corporation  
of the State of California

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

"Tenant"

Seatec Underground Utilities, Inc.,  
a California corporation

By: \_\_\_\_\_  
Michael Bikle, CEO

EXHIBIT "A"

DESCRIPTION OF LEASE

That certain Lease dated September 20, 2016, between the City of Salinas, a California charter city and municipal corporation of the State of California, as lessor, and Seatec Underground Utilities, Inc., a California corporation, as lessee, a memorandum of which was recorded on September 28, 2016 as Instrument No. 2016056441 in the Official Records of Monterey County, California, as amended by that certain First Amendment to Ground Lease dated August 27, 2019, and that certain Second Amendment to Ground Lease dated September 1, 2021, a memorandum of which was recorded on April 5, 2023, as Instrument No. 2023010018 in the Official Records of Monterey County, California.

DRAFT

EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL I:**

That certain real property lying within the City of Salinas, County of Monterey, State of California, and being a portion of that certain 155.14 acre tract of land acquired by Salinas, a municipal corporation, from Ada May Bardin by Resolution No. 1126 (N.C.S.) dated September 23, 1940 and recorded in Volume 684 of Deeds at Page 403 therein, Official Records of Monterey County, California, and being more particularly described as follows:

Beginning at the true point of beginning of that certain 1.0616 acre parcel designated as Parcel A as leased to A. Teeters by Salinas, a municipal corporation, by lease indenture as recorded in Reel 1048 at Page 202, Monterey County Records; thence from said point of beginning, South 6 ° 06' 00" West, 116.00 feet along the westerly line of said Parcel A, to the corner common to said Parcel A and Parcel B of said lease said point being the True Point of Beginning; thence leaving the boundary of said Parcel A and running the following courses:

- (1) South 32 ° 35' 42" West, 184.36 feet to an angle point; thence
- (2) North 83 ° 54' 00" West, 406.55 feet to the southerly line of Airport Boulevard, a city street 84 feet wide; thence
- (3) North 57 ° 47' 00" East, 266.12 feet along said southerly line of Airport Boulevard, to the southerly corner of that certain 0.711 acre parcel designated as Parcel 1 as leased to Wells Fargo by Salinas, a municipal corporation, by lease indenture as recorded in Reel 659 at Page 294, Monterey County Records; thence easterly along a fence line
- (4) South 63 ° 48' 30" East, 62.33 feet to an angle point in said fence line; thence
- (5) South 73 ° 00' 42" East, 21.93 feet to an angle point in said fence line; thence
- (6) South 83 ° 21' 50" East, 116.80 feet to an angle point in said fence line; thence
- (7) North 86 ° 02' 18" East, 27.51 feet to an angle point in said fence line; thence
- (8) North 79 ° 01' 16" East, 30.21 feet to an angle point in said fence line; thence
- (9) North 70 ° 34' 29" East, 30.10 feet to the True Point of Beginning.

**PARCEL II:**

Being a portion of that certain 155.14 acre tract of land recorded in Volume 684, of Deeds, at Page 403, Official Records of Monterey County, more particularly described as follows:

Beginning at the most southerly corner of that certain 1.174 acre parcel designated as Lot D as leased to Gomes Farm Air Services, Inc., by Salinas, a Municipal Corporation by Lease Agreement as recorded in Reel 3149, at Page 1007, Official Records of Monterey County, from which the most easterly corner of

said Lot D along a fence line bears N. 32 ° 35' 42" E., 184.36 feet distant; thence from said Point of Beginning

(1) S. 32 ° 35' 42" W., 22.35 feet to an angle point; thence

(2) N. 83 ° 54' 00" W., 184.26 feet to an angle point; thence

(3) S. 6 ° 06' 00" W., 30.00 feet to an angle point; thence

(4) N. 83 ° 54' 00" W., 117.30 feet to an angle point; thence

(5) N. 32 ° 13' 00" W., 63.73 feet to a point on the southerly boundary of said Lot D; thence running along said southerly boundary

(6) S. 83 ° 54' 00" E., 351.04 feet to the Point of Beginning.

Street Address of Property: 467 Airport Blvd, Salinas, California 93905

Parcel / PIN Number: 003-863-036 (portion)

DRAFT



NOTARY ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_ personally  
(Name and Title of Officer (e.g., "Jane Doe, Notary Public"))  
appeared \_\_\_\_\_, who proved to me on the basis of  
Name(s) of Signer(s)

satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

NOTARY ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_ personally  
(Name and Title of Officer (e.g., "Jane Doe, Notary Public"))  
appeared \_\_\_\_\_, who proved to me on the basis of  
Name(s) of Signer(s)

satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)