

AGREEMENT TO ASSIGN A DEED OF TRUST AND THE BENEFITS AND RIGHTS RELATED THERETO

PARTIES

The Don Chapin Co., Inc. hereinafter ("CHAPIN"), California Contractor's License No. 406512; Seatec Underground Utilities, Inc. hereinafter ("SEATEC"), California Contractor's License No. 712813 and County of Monterey, a political subdivision of the State of California (hereinafter ("COUNTY")) hereby enter this AGREEMENT TO ASSIGN A DEED OF TRUST AND THE BENEFITS AND RIGHTS RELATED THERETO, hereinafter (the "Agreement"). CHAPIN, SEATEC and COUNTY may be referred to individually as a "Party," or collectively as the "Parties." CHAPIN and COUNTY also may be referred to as Assignee and Assignor, respectively.

EFFECTIVE DATE

The Agreement is effective upon the latest date corresponding to the signatures below.

RECITALS

This Agreement is made with respect to the following facts which each Party acknowledges as true and correct:

- A. United Security Bank, hereinafter ("USB"), and Monterey County Bank, hereinafter ("MCB"), hereinafter referred to collectively as "Owner/Developers", as participating banks, along with several other Banks, sought approval from the COUNTY to re-subdivide lots in previous phases of the Monterra Ranch Subdivision (Monterey County PLN 100020), which lots had been acquired by the Banks as a result of foreclosures.
- B. The COUNTY approved the resubdivision (PLN 100020) by COUNTY Board of Supervisors Resolutions numbered 11-342 and 12-038. As a condition of the COUNTY's approval to re-subdivide the lots to create Tract 1513, commonly known as "the York Highland Resubdivision" (the "Resubdivision"), a Subdivision Improvement Agreement, ("SIA") (incorporated herein by reference), was executed by the COUNTY, USB and MCB and recorded on May 31, 2012, in the Office of the Monterey County Recorder as Official document number 2012031807.
- C. The COUNTY required the SIA in compliance with the California Subdivision Map Act, and Monterey County Ordinances and Regulations, in order to guaranty the completion of the infrastructure required to support the Resubdivision project, including payment of the contractors performing the infrastructure work. The total security the COUNTY required to be pledged to it for such purpose was approximately \$15,601,684. Paragraph 2 of the SIA provides, in relevant part:

“2. Substitute Security. OWNERS shall at all times guarantee performance of this AGREEMENT by furnishing to COUNTY good and sufficient security acceptable to COUNTY and in conformity with the Subdivision Laws on forms approved by COUNTY and by maintaining said security for the purposes and in the amounts as follows:

a. **New Deeds of Trust.** New subordinated deeds of trust in favor of the County of Monterey in the form attached hereto as Exhibit D and incorporated herein by reference ("Subordinated Deeds of Trust") shall be recorded concurrently with the recordation of the final map for the RESUBDIVISION. A first deed of trust for Lots 3, 4 and 5 in the form attached hereto as Exhibit E shall also be recorded in favor of the County of Monterey concurrently with the recordation of the final map for the RESUBDIVISION. These Subordinated Deeds of Trust and first deed of trust for Lots 3, 4 and 5 shall secure the amount of 100% of the estimated cost of the Improvements to guarantee construction and installation of all the Improvements, plus 50% of the estimated costs of the Improvements to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this AGREEMENT...”

D. The COUNTY, USB and MCB agreed that the security furnished would consist of a “Faithful Performance Bond” in the form of a “deed/trust”, in the amount of “\$9,210,403.20” and a “Labor & Materials Bond” in the form of a “deed/trust”, in the amount of “\$4,605,201.60” (See, SIA p.2).

E. On May 31, 2012, a Subordinated Deed of Trust naming MCB as the Trustor and the COUNTY as the beneficiary was recorded in the Office of the Monterey County Recorder as Official document number 2012031829, encumbering MCB Lots 18, 20, 21 and 22. This Deed of Trust was intended by the County to act as a portion of the “Labor & Material Bond” referred to in Recital D above.

F. On May 31, 2012, a Subordinated Deed of Trust naming USB as the Trustor and the COUNTY as the beneficiary was recorded in the Office of the Monterey County Recorder as Official document number 2012031830, encumbering USB Lots 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19. This Deed of Trust was intended by the County to act as a portion of the “Labor & Material Bond” referred to in Recital D above.

G. On May 31, 2012, a First Deed of Trust naming MCB as Trustor and the COUNTY as beneficiary was recorded in the Office of the Monterey County Recorder as Official document number 2012031831, encumbering MCB Lots 3, 4 and 5. This Deed of Trust was intended by the County to act as a portion of the “Labor & Material Bond” referred to in Recital D above.

H. The SIA was amended and extended pursuant to requests from the Owner/Developers on two occasions prior to April 1, 2016. Amendment 1 was recorded May 29, 2014, in the Office of the Monterey County Recorder as Official document number 2014024695. Amendment 2 was recorded March 31, 2016, in the Office of the Monterey County Recorder as Official document number 2016016626.

I. Owner/Developers represented to the COUNTY in the two amendments that “OWNERS are banks subject to the regulatory authority of the FDIC, and are not proper entities to complete the subdivision improvements.”

J. Signature York Highlands, LLC, hereinafter referred to as (“SIGNATURE”) and USB executed a “RESTATED PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS, effective as of March 30, 2016, Regarding Lots 1, 2, 6 through 17 and 19 of Tract 1513 - York Highlands Resubdivision, Monterey County, California and certain related assets”, hereinafter (the USB PURCHASE AGREEMENT”).

K. SIGNATURE and MCB executed a “PURCHASE AND OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS, effective December 28, 2016, Regarding Lots 3, 4, 5, 18, 20, 21, and 22 of Tract 1513 - York Highlands Resubdivision and Lots 139, 140, 141, and 142 of Tract 1450- Monterra Ranch Phase 8, Monterey County, California, and certain related assets”, hereinafter the USB and MCB agreements are collectively referred to as (the “PURCHASE AGREEMENTS”).

L. As a condition of the USB PURCHASE AGREEMENT, SIGNATURE was required to begin the construction of the Owner/Developers’ site improvements at the Resubdivision as required by the terms of the SIA and its two amendments. USB and SIGNATURE agreed that the construction of the improvements would be divided into two phases, Phase A and Phase B.

M. SIGNATURE contracted with CHAPIN, on April 7, 2016, to construct site improvement for Phase A of the Resubdivision for a total price of \$5,750,919.00, a true copy of which contract is attached as Exhibit 1 to a Complaint filed May 29, 2018 in the Superior Court in and for the County of Monterey, Case No. 18CV001948 (Consolidated) (“Complaint”) (incorporated herein by reference).

N. SEATEC subcontracted with CHAPIN to construct portions of the site improvement work for Phase A of the Resubdivision.

O. USB and SIGNATURE executed a Construction Loan Agreement, hereinafter (“CLA”) to fund the Phase A site improvements at the Resubdivision. In part, the construction funds consisted of moneys advanced by USB and additional moneys advanced by SIGNATURE, all of which funds were supposed to pay the contractors designated by the CLA for said site improvements.

P. The CLA designated CHAPIN as the General Contractor to construct the site improvements and designated Carmel Development Company to act as the Construction Manager at a set fee per month, and to do tree removal previously provided for and paid at close of escrow upon USB's sale of lots to SIGNATURE.

Q. On April 30, 2016, by letter ("April 30 Letter"), USB advised COUNTY: "We have made a construction loan to Signature York Highlands LLC, (hereinafter Developer) for the construction of the first phase of the improvements required by that Subdivision Improvement Agreement between the County of Monterey, Monterey County Bank and United Security Bank ("USB") recorded on May 31, 2012, in the Monterey County Recorder's Office as Document No. 2012031807 (hereinafter "SIA")." USB requested, "Pursuant to section 2(c)(i) of the SIA, the undersigned lender, United Security Bank, hereby certifies that in excess of \$5,000,000 is irrevocably committed for the construction of such Improvements required by the SIA, which funds are a combination of (a) Developer cash held in a blocked account at USB and committed to disbursement for such work as it progresses, and (b) USB Construction Loan No. 81395401, which was consummated on April 12, 2016, the funds of which are also committed to disbursement for such work after disbursement of the blocked account funds." USB continued, "Therefore, pursuant to the terms of section 2(c)(i) of the SIA, we hereby request that the County release its Subordinated Deed of Trust dated May 17, 2012 on the following ten (10) lots within the York Highlands Resubdivision: Lot Nos. 1, 2, 6, 8, 9, 10, 11, 12, 13 and 14."

R. On December 7, 2016, USB revised the April 30 Letter and advised COUNTY: "As you know, the Improvements provided for In the SIA are underway, the Developer funds in the blocked account have been disbursed to pay for Improvements required by the SIA, and USB has been disbursing and continues to disburse the construction funds to pay for such ongoing work." USB then modified its previous request to release lots: Therefore, pursuant to the terms of section 2(c)(i) of the SIA, we request that the County release its Subordinated Deed of Trust dated May 17, 2012 on the following ten (10) lots within the York Highlands Resubdivision: Lot Nos. 1, 2, 6, 8, 9, 10, 11, 12, 21 and 22. This list of Lots supersedes the list of Lots in my letter of April 30, 2016." ("December 7 Letter").

S. On May 8, 2017, by reason of USB's December 7 Letter request, the COUNTY partially reconveyed to MCB Lots 21 and 22. Such partial reconveyance is recorded as Monterey County, California Official Document number 2017024403.

T. Unknown to the COUNTY until the issue of nonpayment to the contractors arose, Document number 2017024403 also reconveyed MCB Lot 20 from the subordinated Deed of Trust. At this time, COUNTY assumes that such a reconveyance was occasioned by mistake by either First American Title Company, the title company handling the recording of the reconveyance or the counsel who prepared the Partial Reconveyance on behalf of the Owner/Developers.

U. On May 8, 2017, by reason of USB's December 7 Letter request, the COUNTY partially reconveyed to USB Lots 1, 2, 6, 8, 9, 10, 11 and 12. Such partial reconveyance is recorded as Monterey County, California Official Document number 2017024404.

V. CHAPIN billed its and SEATEC's site improvement work in a total amount of \$5,781,537.53 in fifteen periodic invoices, as work progressed, all of which invoices were fully paid, except for ten percent of the total invoiced amount, \$578,153.75 ("Retention"), which was withheld by USB and SIGNATURE as retention, money retained as security to remedy any disputed work at the time the work was finished.

W. On November 20, 2017, CHAPIN invoiced SIGNATURE for \$578,153.75, the amount of the Retention withheld ("Retention Invoice").

X. On December 20, 2017, the date said Retention Invoice was due, SIGNATURE did not pay and has not paid the Retention Invoice.

Y. CHAPIN and SEATEC completed their contracted work on January 16, 2018.

Z. CHAPIN and SEATEC recorded mechanics liens in the Monterey County Recorder's Office for the amounts due them. Chapin's lien, recorded March 13, 2018, is Monterey County Official Document number 2018010495. Seatec's lien, recorded May 22, 2018 is Monterey County Official Document number 2018022569.

AA. CHAPIN filed a Complaint to foreclose its lien and for damages against SIGNATURE and USB on May 29, 2018, Monterey County, California Superior Court Case No. 18CV001948 and SEATEC filed a Complaint to foreclose its lien and for damages against SIGNATURE, CHAPIN, and USB on August 16, 2018, Monterey County, California Superior Court Case No. 18CV003121.

BB. On September 17, 2018, CHAPIN served the Clerk of the Board of Supervisors for the COUNTY, along with USB, MCB and SIGNATURE, a "NOTICE TO OWNERS, SUBDIVIDERS AND PUBLIC ENTITY OF DEFAULT AND DEMAND FOR FORECLOSURE OF IMPROVEMENT SECURITY."

CC. Amendment 3 and Extension of the SIA was recorded September 20, 2018 in the Monterey County Official Records as Document Number 2018041573, hereinafter the three amendments and extensions of the SIA are collectively referred to as (the "Amendments").

DD. Under their terms, the SIA and Amendments have now expired, without the completion of the required improvements and without payment to the contractors who performed some of the improvements.

EE. Owner/Developers have requested that the COUNTY further amend and extend the SIA by Amendment No. 4, in order to complete the improvements, sell lots and retire the purchase and construction loans made to SIGNATURE by USB and MCB.

FF. The COUNTY, on September 15, 2020, advised USB and MCB by letter from the Chair of the Board of Supervisors, as follows: "On its regular agenda on August 25, 2020, the Board of Supervisors considered the proposed Amendment No. 4 to the Subdivision Improvement Agreement for the York Highlands Resubdivision ("SIA"). During public comment, it was brought to the Board's attention that there is an outstanding mechanic's lien against properties within the York Highlands Resubdivision in favor of the Don Chapin Company, Inc., in the amount of \$1,055,148.21, which includes an unpaid balance to Seatec Underground Utilities, plus attorney's fees and interest.

As consideration for a two-year extension of the SIA, pursuant to its terms and Monterey County Code Chapter 19.13, the County of Monterey requests that the following terms be added to the proposed Amendment No. 4:

1) United Security Bank and Monterey County Bank must secure and ensure the payment of all outstanding mechanic's liens no later than October 31, 2020; failure to so perform will result in the automatic termination of the SIA on November 1, 2020;..."

GG. Chapin and Seatec, the contractors who performed work on the Resubdivision, have not been paid.

HH. COUNTY intended that the two Subordinated Deeds of Trust and the First Deed of Trust referred to in Recitals E, F, and G (above) to function in the same manner that a labor and materials bond would function, including the contractors right to secure its attorney fees, interest and costs for work performed on the Resubdivision.

II. Owner/Developers have both been benefitted by the work of the contractors and the participation of SIGNATURE as developer for them. USB has benefitted by having various properties in Phase A released from the Subordinated Deed of Trust and improved so that USB can sell them free and clear of any claim under the Subordinated Deed of Trust. MCB has benefitted by having lots 21 and 22 released to it so that it is able to sell them free and clear of the Subordinated Deed of Trust. Lot 20, not having been intended by the County to be reconveyed, should be returned to the County by MCB forthwith.

JJ. SIGNATURE the Owner/Developer under the SIA and amendments has not paid to CHAPIN its retention in the amount \$578,153.75. Pursuant to SIGNATURE's contract and the provisions of California Civil Code Section 8812(a), 8818(a) and 8818(b), SIGNATURE now owes CHAPIN \$1,116,821.83 as of December 31, 2020, which sum includes principal, attorney fees and interest. Interest accrues from the 31st of December 2020 on the retention, until CHAPIN is paid in full, at the rate of \$380.16 per day. Attorney fees and costs continue to be incurred.

KK. CHAPIN has agreed to pay SEATEC immediately upon receipt of any payment, or upon successfully foreclosing on the Deed of Trust acting as security for the infrastructure improvements and selling or otherwise disposing of the foreclosed lot or lots.

LL. Owner/Developers are in default under the SIA for the failure to pay the contractors who provided the infrastructure improvements on the Resubdivision.

MM. COUNTY has considered multiple options regarding the request to further extend the SIA and the Owner/Developers' failure to pay to the contractors for their infrastructure improvements. One option is for the COUNTY to do nothing, resulting in no benefit to Owner/Developers or the contractors. Another option is for the COUNTY to foreclose the Deed of Trust acting as the labor and material security and pay the contractors, without granting an extension to the SIA, resulting in a minimal benefit to the Owner/Developers, in that the mechanics liens would be removed from various lots in Phase A, but the project would not be completed, and COUNTY would have to complete the infrastructure improvements by foreclosing on the performance security. Another option is for the COUNTY to extend the SIA and foreclose on the deed of trust acting as the labor and material security to pay the contractors, resulting in a completed project, removed mechanics liens and paid contractors. Another option for the COUNTY is to "revert to Acreage," but that accomplishes little, with no benefit to any party.

NN. COUNTY has determined that the most prudent and reasonable course of action at this time is to simultaneously extend the SIA for the requested two-year period and assign to CHAPIN the Deed of Trust which acts as the "Labor & Materials Bond" to satisfy the liens of CHAPIN and SEATEC through this Agreement. COUNTY has also determined that it retains sufficient security, provided that MCB returns Lot 20 to it, to make this assignment. COUNTY reserves its right to require additional security as a further condition of the requested extension.

AGREEMENT

NOW, THEREFORE, the Parties to this Agreement, in consideration of mutual promises contained here and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, agree as follows:

1. COUNTY's Partial Assignment to CHAPIN of Deed of Trust Security. COUNTY hereby grants, transfers, and assigns to CHAPIN all of COUNTY's present and future right, title, interest and powers and all related substitute or replacements thereto in and to a portion security referred to in the First Deed of Trust MCB granted to County as the subdivision improvement security, which deed of trust was recorded May 31, 2012 as Monterey County, California Official Document number 2012031831 ("Deed of Trust"), a copy of which is attached as Exhibit "A". Specifically, the COUNTY is granting to CHAPIN all of COUNTY's interest in Lots 3 & 4 described in the Deed of Trust and the COUNTY retains all rights and interests in Lot 5.

COUNTY further grants, transfers, and assigns to CHAPIN all of its right, title, interest, and power to enforce and collect the above referenced Deed of Trust under the SIA and Amendments, including but not limited to, its right to attorney fees and costs to enforce the security provided in the SIA at paragraph 2. c. iii, which provides as follows: "COUNTY may retain from such security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by COUNTY in successfully enforcing the obligation secured." and paragraph 13. f. which provides as follows: "13. Default of OWNER(S)...f. In the event that OWNERS fail to perform any obligation under this Agreement, OWNERS agree to pay all costs and expenses incurred by COUNTY in securing performance of such obligations, including costs of suit and reasonable attorneys' fees." In addition to the extent necessary to protect the partial assignment of the security and the enforcement of the same, COUNTY assigns to CHAPIN its rights to indemnity and defense, as set forth in the SIA at paragraph 20. "Indemnity/Hold Harmless", thereof.

COUNTY, pursuant to Civil Code Section 2932.5, shall record a Partial Assignment of Deed of Trust in the form attached as Exhibit "B" hereto.

2. COUNTY'S Warranties and Representations. COUNTY warrants and represents with respect to the Deed of Trust that: (a) there has been no prior assignment of the Deed of Trust; (b) the Deed of Trust is a valid, enforceable agreement; (c) the COUNTY is not in default under either the Deed of Trust or the SIA and Amendments; (d) the Deed of Trust is free of any adverse liens, claims or encumbrances; and (e) all covenants, conditions, and agreements have been performed as required in the Deed of Trust, except those not due to be performed until after the date of this Assignment.

3. CHAPIN'S Acceptance of Partial Assignment and Indemnification. CHAPIN accepts the assignment of Lots 3 & 4 as described in the Deed of Trust, assumes COUNTY'S obligations and powers to enforce the Deed of Trust, and agrees to immediately defend, indemnify, and hold harmless, at CHAPIN's sole expense, the County of Monterey and its employees, officers, contractors, and agents ("the County Indemnitees") from and against any claim, action, or judicial or administrative proceeding, whatsoever, brought by MCB against the County Indemnitees, arising out of or in connection with this Agreement and/or CHAPIN's enforcement and disposition of the Deed of Trust, including but not limited to the County Indemnitee's active or passive negligence. Said indemnification and duty to hold harmless shall further include the duty for CHAPIN to pay any and all damages of any kind whatsoever awarded in any proceeding as described above this paragraph 3, including but not limited to any award of attorney's fees and interest. Counsel for the County Indemnitees in any such legal defense shall be selected by CHAPIN, subject to review and approval by COUNTY, which approval shall not be unreasonably withheld.. The COUNTY shall promptly notify the CHAPIN of any such claim, action, or proceeding and the COUNTY shall cooperate fully in the defense thereof. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as permitted by the law of the State of California. This provision shall survive any administrative or judicial order, decree writ, mandate, determination, or other action which sets asides, voids, annuls, or otherwise invalidates this Agreement.

4. Release and Waiver of Civil Code § 1542. Exclusive of the obligations undertaken by the Parties to this agreement, the Parties to this Agreement hereby release and forever discharge the other Party, their officers, elected officials, directors, employees, subsidiaries, agents, attorneys, representatives, successors, heirs and assigns, of and from any and all claims, debt, liabilities, demands, obligations, costs, expenses, damages, actions and causes of action, of every nature, character and description, known and unknown, which the Parties now own or hold, or have at any time owned or held, or may at any time own or hold, by reason of any matter, cause or thing whatsoever incurred, done, omitted or suffered to be done prior to the date of this Agreement, which each may have against the other on account of, or in any way related to any claim against the COUNTY for the acceptance of a deed of trust instead of a bond for the resubdivision security for Tract 1513 and all associated issues arising therefrom.

The Parties hereto, are represented by an attorney at the time of executing this release. Each Party and their attorney has spent considerable time examining the occurrences and transactions that are the subject of this Agreement, and based upon that examination expressly waive and relinquish their respective rights created under California Civil Code § 1542, which states:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

5. Joint Defense, Common Interest, and Confidentiality Agreement. The Parties agree that, in the event of any action as described in paragraph 3 above, brought by MCB, they will enter into a Joint Defense Common Interest, and Confidentiality Agreement, on such terms as are mutually agreeable to the Parties. Said agreement shall detail the Parties respective duties of cooperation in defense of a such an action, including but not limited to the treatment and disclosure of attorney-client privileged or work-product documents.

6. CHAPIN and SEATEC'S Previous Accommodations. CHAPIN and SEATEC, having accommodated USB, MCB and SIGNATURE, by forbearing to prosecute actions 18CV001948 and 18CV003121 now should be paid in full, however, USB, MCB and SIGNATURE have alleged to the contractors an inability to pay off the obligation, either the result of lack of funds or lack of regulatory permission, until and unless lots at the subdivision can be sold, which requires the California Department of Real Estate, hereinafter (“DRE”), to issue “Whitepaper” for the lots SIGNATURE owns within the Resubdivision and specifies the sales process for such lots.

7. CHAPIN and SEATEC'S Condition Precedent and CHAPIN's Forbearance from Foreclosing Deed of Trust. Provided that CHAPIN, SEATEC, USB, MCB and SIGNATURE can reach an agreement regarding the “Whitepaper” acquisition and thereafter lot sales within sixty (60) days of the effective date of this Agreement, as an accommodation to COUNTY, upon the partial assignment of the Deed of Trust and the COUNTY's rights under the SIA to enforce

the security, CHAPIN will hold the partially assigned Deed of Trust and forbear foreclosing and allow SIGNATURE, or a SIGNATURE designee to secure "Whitepapers" from the DRE initially to market the seven (7) lots in Phase 1 at which the CHAPIN and SEATEC work was performed.

If CHAPIN, SEATEC, USB, MCB and SIGNATURE cannot reach an agreement within the sixty (60) day period or MCB files suit against CHAPIN or COUNTY because of the assignment, then Chapin may proceed to initiate foreclosure of the partially assigned Deed of Trust. In the event of a foreclosure on lots 3, 4, CHAPIN shall foreclose for what it is due at the time of the foreclosure sale, principal, interest, attorney fees and costs (See, JJ above). If there is a recovery of proceeds in excess of the above amount due CHAPIN, CHAPIN shall return the overage to the COUNTY as security for the remaining subdivision improvements as required by the SIA.

8. Further Assignments Permitted. CHAPIN may subsequently assign or sell the partially assigned Deed of Trust and accompanying rights granted to it by this Agreement to a third-party who shall assume Assignee's duties and obligations under this Agreement, subject to approval by the COUNTY, which approval shall not be unreasonably withheld.; excepting that CHAPIN's duty to indemnify COUNTY under paragraph 3 above, shall not be assignable and shall remain an obligation and duty of CHAPIN. CHAPIN, or any assignee, may subcontract the performance of its duties and obligations to a third party or parties.

9. Entire Agreement; Modification. This Agreement supersedes all previous agreements between the Parties for the purposes described herein and constitutes the entire understanding between the Parties. No changes, amendments or alterations shall be effective unless in writing and signed by the Parties.

10. Law, Venue, and Attorney's Fees. This Agreement shall be deemed to be made in, and shall be governed by and construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be in Monterey County, California. In the event that any Party hereto brings an action to enforce this Agreement or any provision hereof, the prevailing party shall be entitled to an award of reasonable attorney's fees.

11. Authority. Each party executing this Agreement and each person executing this Agreement in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purposing to act.

12. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent first class mail to the following addresses:

FOR COUNTY:

Charles McKee, CAO
168 W Alisal Street 3rd Floor
Salinas, CA 93906

Office of the County Counsel
Leslie Girard, Esq.
168 W Alisal Street 3rd Floor
Salinas, CA 93906

FOR CHAPIN:

Donald D. Chapin, Jr., President
560 Crazy Horse Canyon Road
Salinas, CA 93907

Robert P Herendeen, Esq.
571 Paradise Canyon Road
Salinas, CA 93907

FOR SEATEC:

Noland, Hamerly, Etienne, & Hoss
Anne K. Secker, Esq.
PO Box 2510
Salinas, CA 93902-2510

13. No Third Party Beneficiaries. No Party hereto intends that any person shall have a cause of action against any of them as a third party beneficiary under this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. The Parties agree that this Agreement does not create, by implication or otherwise, any specific, direct or indirect obligation, duty, promise, benefit and/or special right to any person or entity, other than the Parties hereto, their successors and permitted assigns, and legal or equitable rights, remedy or claim under or in respect to this Agreement or provisions herein.

14. Resolution of Ambiguities. If an ambiguity exists in this Agreement, or in a specific provision hereof, neither the Agreement nor such provision shall be construed against the party who drafted the Agreement or such provision.

15. Waiver. Any waiver of any terms or conditions of this Agreement must be in writing signed by the Parties. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.

16. Successor and Assigns. This Agreement and the rights, privileges, duties, and obligations of the Parties hereto, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the Parties and respective successors, permitted assigns, and heirs.

17. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. For purposes of executing this Agreement, a document signed and transmitted by electronic means (such as in PDF format via e-mail or via facsimile machine) is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

19. Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date written below.

THE DON CHAPIN CO., INC.

DATE: 2-04-21

By: 

Donald D. Chapin, Jr., President

SEATEC UNDERGROUND UTILITIES, INC.

DATE: 2/4/21

By: 

Anne Secker, its attorney-in-fact

COUNTY OF MONTEREY:

DATE: 3/9/2021

By: 

Chair, Board of Supervisors

APPROVED AS TO FORM:

LESLIE GIRARD, COUNTY COUNSEL

COUNTY OF MONTEREY

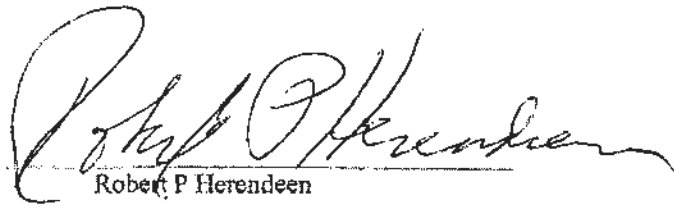
DATE: 3/9/21

By: 

Deputy County Counsel

ROBERT P HERENDEEN
THE DON CHAPIN CO., INC.

DATE: 2/04/2021



Robert P Herendeen

ANNE K. SECKER
SEATEC UNDERGROUND UTILITIES, INC.

DATE: 2/11/21



Anne K. Secker