

REQUESTED BY:

San Leandro
City Manager's Office
East 14th Street
San Leandro, CA 94577

WHEN RECORDED MAIL TO:

City of San Leandro
ATTN: City Clerk
835 East 14th Street
San Leandro, CA 94577



2019064727

04/10/2019 01:35 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 0.00



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CITY OF SAN LEANDRO

APR 24 2019

CITY CLERK'S OFFICE

\$0 Zero Consideration

NO FEE PURSUANT TO GOVERNMENT CODE §27383

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING

EFFECTIVE DECEMBER 7, 2018

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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of San Leandro
City Hall
835 East 14th Street
San Leandro, CA 94577
Attn: City Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

APN: 80G-910-15

**DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") is made as of December 7, 2018, by MTLG, LLC, a California limited liability company (the "**Trustor**") to the City of San Leandro, a California charter city, as trustee (the "**Trustee**"), for the benefit of the City of San Leandro, a California charter city (the "**Beneficiary**"). The Trustor and the Beneficiary are hereinafter collectively referred herein as the "**Parties**."

RECITALS

A. The Trustor owns fee simple title to the land and improvements located at 2539 Grant Avenue, San Leandro, County of Alameda, State of California, described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**").

B. The Beneficiary and the Trustor have entered into that certain loan agreement dated as of the date hereof (the "**Agreement**") pursuant to which the Beneficiary will provide a loan to the Trustor in a sum of up to Four Hundred Fifty Five Thousand One Hundred Seven Dollars and Thirty Six Cents (\$455,107.36.) (the "**Loan**"). The Trustor has issued to the Beneficiary a secured promissory note dated as of the date hereof (the "**Note**") to evidence the Trustor's obligation to repay the Loan. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Agreement.

C. As a condition precedent to the making of the Loan, the Beneficiary has required that the Trustor enter into this Deed of Trust and grant to the Trustee for the benefit of the Beneficiary, a lien and security interest in the Property (as hereafter defined) to secure repayment of the Note.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. Trustor, in consideration of the indebtedness herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys, and assigns to Trustee in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor's right, title, and interest now held or hereafter acquired in and to the following: (a) all of that certain real property located at 2539 Grant Avenue, San Leandro, County of Alameda, State of California, which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Land**"); (b) all buildings, improvements and fixtures now or hereafter erected on the Land and all replacements and additions thereto ("**Improvements**"); (c) all easements, rights of way, appurtenances, and other rights used in connection with the Land or as a means of access thereto ("**Appurtenances**"); (d) all fixtures now or hereafter attached to or used in and about the Land or the Improvements or hereafter located or constructed on the Land, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the Improvements in any manner ("**Fixtures and Equipment**"); and (e) all leases, subleases, licenses, and other agreements relating to use or occupancy of the Land ("**Leases**") and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of Trustor ("**Rents**") (whether or not such Leases and Rents are permitted pursuant to the Agreement).

All of the above-referenced Land, Improvements, Appurtenances, Fixtures and Equipment, Leases and Rents are herein referred to collectively as the "**Property**."

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of all of the following (the "**Secured Obligations**"): (i) all present and future indebtedness evidenced by the Note (including all principal and all other amounts payable pursuant to the Note) and all amendments, modifications, extensions, and renewals of the Note; (ii) all present and future obligations of Trustor set forth in this Deed of Trust or in the Agreement; (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the rents, royalties, issues, profits, revenues, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such rents, royalties, issues, profits, revenues, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or

any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenues, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee, and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of the lessor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment, or operation of any part of it, and unless due solely to the willful misconduct or gross negligence of Beneficiary, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

4. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the Uniform Commercial Code ("**UCC**") with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods, and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC. The full name of Trustor and the mailing address of Trustor are set forth in Section 7.6 of this Deed of Trust.

5. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

5.1. Trustor's Estate. Trustor represents and covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property.

5.2 Payment and Performance of Secured Obligations. Trustor will promptly pay and perform all obligations of the Trustor arising in connection with the Secured Obligations in accordance with the respective terms thereof.

5.3 Performance of Covenants. Trustor will observe and perform all of Trustor's covenants and agreements set forth in the Agreement, the Note, this Deed of Trust, and all other instruments secured by the Property.

5.4 Use of Loan Proceeds; Maintenance of the Property. Trustor covenants that the Loan Proceeds shall be used solely for the purposes identified in the Agreement. Trustor agrees (a) to keep the Property in good repair and in decent, safe, sanitary, tenantable condition and repair, and permit no waste thereof; (b) not to commit or suffer to be done or exist on or about the Land any condition causing the Property to become less valuable; (c) to repair, restore, or rebuild promptly any buildings or improvements on the Land that may become damaged or be destroyed while subject to the lien of this Deed of Trust; (d) to comply with all applicable laws, ordinances, and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance, or governmental regulation, nor of any covenant, condition, or restriction affecting the Property; and (e) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Beneficiary's written consent. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a Beneficiary notice of such a condition, then in addition to any other rights available to the Beneficiary, the Beneficiary shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property to recover its cost of cure.

5.5 Appear and Defend. Trustor shall appear in and defend any action or proceeding purporting to affect the Property or the rights or powers of the Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which the Beneficiary or Trustee may appear, and in any suit brought by the Beneficiary to foreclose this Deed of Trust.

5.6 Charges; Liens. Trustor shall pay prior to delinquency all taxes, assessments, and other charges, fines, and impositions affecting the Property directly to the payee thereof. Upon request of Beneficiary, Trustor shall promptly furnish to Beneficiary copies of all notices of such amounts due and shall promptly furnish to Beneficiary receipts evidencing all such payments made. Trustor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest therein, whether or not such lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, charge, or assessment so long as Trustor is actively contesting its validity in good faith and by appropriate legal proceedings which will operate to prevent the enforcement of

the lien or forfeiture of the Property or any part thereof. Trustor shall post security for the payment of such contested claims as may be requested by the Beneficiary.

5.7 Insurance. Trustor shall keep the Property insured by a standard all-risk property insurance policy in an amount equal to the replacement value of the Property with loss payable to the Beneficiary. The insurance carrier providing such insurance shall be licensed to do business in the State of California and may be chosen by Trustor, subject to approval by Beneficiary. All insurance policies and renewals thereof will be in a form acceptable to the Beneficiary, and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of any senior lien and the Beneficiary as their interests may appear and in a form acceptable to the Beneficiary. The Beneficiary shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Trustor shall promptly furnish to the Beneficiary, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor will give prompt notice to the insurance carrier and the Beneficiary or its designated agent. The Beneficiary, or its designated agent, may make proof of loss if not made promptly by Trustor. The Beneficiary shall receive thirty (30) days advance written notice of the cancellation, expiration or termination, or any material change in the coverage afforded by any of the insurance policies required under this Section.

Unless otherwise permitted by the Beneficiary in writing, insurance proceeds, subject to the rights of the holder of any senior lien, will be applied to restoration or repair of the Property damaged. If the Property is abandoned by Trustor, or if Trustor fails to respond to the Beneficiary, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the Beneficiary, or its designated agent, is authorized to collect and apply the insurance proceeds at the Beneficiary's option either to restoration or repair of the Property or to pay amounts due under the Agreement and the Note.

If the Property is acquired by the Beneficiary, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to the Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of the holder of any senior lien.

Renewal policies and any replacement policies, together with premium receipts satisfactory to the Beneficiary, shall be delivered to the Beneficiary at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the Beneficiary shall by reason of accepting, rejecting, approving, or obtaining insurance incur any liability for the existence, nonexistence, form, or legal sufficiency of such insurance, or solvency of any insurer for payment of losses.

5.8 Use of Property. Trustor shall not permit or suffer the use of any of the Property for any purpose not allowed by the San Leandro Zoning Code or any other applicable law.

5.9 Protection of Beneficiary's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, arrangements, or proceedings involving a bankrupt or decedent, foreclosure of any mortgage secured by the Property or sale of the Property under a power of sale of any instrument secured by the Property, then Beneficiary, at Beneficiary's option, upon notice to Trustor, may make such appearance, disburse such sums, and take such action as is necessary to protect Beneficiary's interest, including, but not limited to, the purchase of insurance, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this Section, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. Nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder.

5.10 Inspection. Beneficiary or its agent may make or cause to be made reasonable entries upon and inspections of the Property. Beneficiary shall give Trustor notice at the time of or prior to any such inspection specifying reasonable cause for the inspection

5.11 Awards and Damages. All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Beneficiary, subject to the rights of any senior lien holder. The Beneficiary is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the amounts collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to

Beneficiary within thirty (30) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds, at Beneficiary's option, either to restoration or repair of the Property or to the sum secured by this Deed of Trust.

5.12 Prohibition on Transfers of Interest. If all or any part of the Property or an interest therein is sold, conveyed, or otherwise transferred by Trustor without Beneficiary's prior written consent, Beneficiary may, at Beneficiary's option, declare all sums secured by this Deed of Trust to be immediately due and payable. "Transfer" shall include any assignment, sale, or other conveyance of the Property, but shall exclude encumbrances junior to the Deed of Trust and leases of the Property.

5.13 Sale or Forbearance. No sale of the Property, forbearance on the part of Beneficiary or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change, or affect the liability of Trustor either in whole or in part.

5.14 Beneficiary's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) Beneficiary may in its sole discretion: (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of the Beneficiary, may reconvey all or any part of the Property, consent to the making of any map or plot of the Land, join in granting any assessment thereon, or join in any such agreement of extension or subordination.

5.15 Reconveyance. Upon payment of all sums and satisfaction of all obligations secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

5.16 Notice of Claims; Reimbursement of Costs.

(a) Notice of Claims. The Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Ten Thousand Dollars (\$10,000) within three business days of the occurrence of such loss. The Trustor shall ensure that the Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and

shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of the Trustor's receipt thereof, the Trustor shall provide the Beneficiary with a copy of any notice of default the Trustor receives in connection with any financing document secured by the Property or any part thereof.

(b) Compensation; Reimbursement of Costs. The Trustor agrees to pay all reasonable fees, costs, and expenses charged by the Beneficiary or the Trustee for any service that the Beneficiary or the Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. The Trustor further agrees to pay or reimburse the Beneficiary for all costs, expenses, and other advances which may be incurred or made by the Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to the Beneficiary or the Trustee or both of them, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

5.17 Indemnification. Trustor agrees to indemnify, defend (with counsel approved by Beneficiary) and hold the Beneficiary, its elected and appointed officers, officials, agents, and employees ("**Indemnitees**") harmless from and against any and all losses, damages, claims, actions, demands, judgments, penalties, costs, and expenses (including reasonable attorneys' fees) and liabilities (all of the foregoing, collectively "**Claims**") which the Indemnitees may sustain or suffer directly or indirectly as a result of or arising in connection with (i) Trustor's failure to perform any obligations as and when required by the Note, the Agreement, or this Deed of Trust, (ii) the failure at any time of any of Trustor's representations and warranties made in connection with the Loan to be true and correct, or (iii) any action or omission by Indemnitees in connection with this Deed of Trust, except to the extent any such Claim arises due to the gross negligence or willful misconduct of Indemnitees.

6. Events of Default; Remedies

6.1 Events of Default. Any one or more of the following events shall constitute a default under this Deed of Trust ("**Event of Default**"):

- (a) Failure of the Trustor to pay the indebtedness secured hereby or any installment thereof when and as the same become due and payable, whether at maturity or by acceleration or otherwise, and such failure continues for ten (10) days after Lender notifies Borrower thereof in writing;
- (b) Failure of Trustor to timely observe or to perform any covenant condition or agreement to be observed or performed by Trustor pursuant to the Agreement, the Note or this Deed of Trust, and

unless such document specifies a shorter cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith;

- (c) The occurrence of any event of default which, under the terms of the Agreement or the Note, shall entitle the Beneficiary to exercise the rights or remedies thereunder;
- (d) If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 5.12 hereof or if any other transfer occurs in violation of the Agreement;
- (f) Failure of Trustor to pay taxes or assessments due on the Land or the Improvements or failure to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within 15 days;
- (g) Failure of Trustor to maintain the insurance coverage required under the Agreement and Trustor fails to cure such default within 60 days;
- (h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator, or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.
- (i) A default arises under any loan secured by a mortgage, deed of trust, or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan.
- (j) Failure of Trustor to perform any obligation arising under this Deed of Trust and to correct such failure within the required cure period.

6.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, the Beneficiary and the Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in the Agreement, and any other remedy existing at law or in equity or by statute. All of the Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. The Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs of title evidence.

(a) Acceleration. The Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. The Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Entry. The Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that the Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of the Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as the Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to the Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If the Beneficiary so requests, the Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to the Beneficiary at the site of the Land. The Trustor hereby irrevocably constitutes and appoints the Beneficiary as the Trustor's attorney-in-fact to perform such acts and execute such documents as the Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of the Trustor's name on any instruments. Regardless of any provision of this Deed of Trust, the Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of the Trustor to the Beneficiary, unless the Beneficiary has given express written notice of the Beneficiary's election of that remedy in accordance with UCC Section 9621, as it may be amended or recodified from time to time.

(d) Cure; Protection of Security. Either the Beneficiary or the Trustee may cure any breach or default of the Trustor, and if it chooses to do so in connection with any such cure, the Beneficiary or the Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the

security of, or the rights or powers of the Beneficiary or the Trustee under this Deed of Trust; paying, purchasing, contesting, or compromising any encumbrance, charge, lien, or claim of lien which in the Beneficiary's or the Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of the Beneficiary or the Trustee to be conclusive as among the Beneficiary, the Trustee, and the Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors, and other appropriate persons to assist the Beneficiary or the Trustee. The Beneficiary and the Trustee may take any of the actions permitted under this Subsection 6.2(d) either with or without giving notice to any person, except for notices required under applicable law. Any amounts disbursed by the Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

(e) UCC Remedies. The Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(f) Judicial Action. The Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(g) Power of Sale. Under the power of sale hereby granted, the Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

6.3 Power of Sale. If the Beneficiary elects to invoke the power of sale hereby granted, the Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated.

Prior to publication of the notice of sale, the Beneficiary shall deliver to the Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may, and at the Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may

postpone such sale by public announcement at the time and place fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee, or the Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of the Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, the Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by the Beneficiary or the Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

6.4 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to the Beneficiary, to be exercised at any time hereafter, without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever the Beneficiary deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

6.5 Trustor's Waivers. To the fullest extent permitted by law, the Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against the Trustor by the Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption, or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

7. Miscellaneous Provisions.

7.1 Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall bind, and the benefit and advantages hereunder shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties; provided however, nothing in this Section is intended to or shall modify any restrictions on assignment set forth herein or in the Note or Agreement. As used herein, the words

"the Beneficiary" means the present Beneficiary or any future owner or holder, including a pledgee of the indebtedness secured hereby.

7.2 Headings; Gender, Number. The captions and headings used in this Deed of Trust are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

7.3 Approvals in Writing. Except as otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, or other action by the Beneficiary is required or permitted under this Deed of Trust, such action shall be in writing.

7.4 Joint and Several Obligations. If more than one person has executed this Deed of Trust as Trustor, the obligations of all such persons hereunder shall be joint and several.

7.5 Severability. If any provision of this Deed of Trust shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

7.6 Notices. Except for any notice required under applicable law to be given in another manner (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail directed to the Property address or any other address Trustor designates by notice to Beneficiary as provided herein; and, (b) any notice to Beneficiary shall be given by certified mail, return receipt requested, to Beneficiary's mailing address stated herein or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall deem to have been given to Trustor or Beneficiary when given in the manner designated herein.

Beneficiary: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attn: City Manager

Trustor: MTLG, LLC
c/o Louis A. Rigaud
2539 Grant Avenue
San Leandro, CA 94579

Trustee: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attn: City Manager

7.7 Waiver, Modification and Amendment. Each waiver by the Beneficiary or the Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by the Beneficiary or the Trustee to take action on account of any default of the Trustor. Consent by the Beneficiary or the Trustee to any act or omission by the Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for the Beneficiary's or the Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by the Trustor and the Beneficiary. Without limiting the generality of the foregoing, the Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by the Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

7.8 Governing Law. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. The Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in Alameda County.

IN WITNESS WHEREOF, the Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR

Louis A. Rigaud,
an individual d/b/a Halus Power Systems, and authorized signatory for MTLG, LLC

By: _____

Louis A. Rigaud

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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 Alameda)

On DECEMBER 21, 2018 before me, LETICIA I. MIGUEL, Notary Public, ,
personally appeared, LOUIS A. RIGAUD, who proved to me
the basis of 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

Leticia I. Miguel

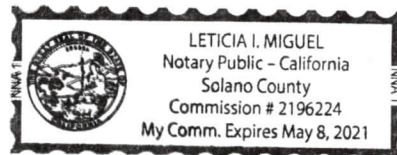


Exhibit A

LAND

APN/Parcel ID(s): 08G 0910 015 00

U.S. Postal Address: 2539 Grant Avenue, San Leandro, California 94579

Legal Description: The land referred to herein below is situated in the City of San Leandro, County of Alameda, State of California and is described as follows:

Parcel 2 of Parcel Map No. 3047 recorded on August 19, 1980, in Book 119 of Parcel Maps at Page 87, Series No. 80-141275, Alameda County Official Records.

3096837.1

LOAN AGREEMENT

by and between

THE CITY OF SAN LEANDRO

and

MTLG, LLC

2539 Grant Avenue, San Leandro, CA 94579

APN: 80G-910-15

LOAN AGREEMENT

This Loan Agreement (this "**Agreement**") is entered into effective as of _____, 2018 (the "**Effective Date**") by and between MTLG, LLC, a California limited liability company, (the "**Borrower**") and the City of San Leandro, a California charter city (the "**Lender**"). Lender and Borrower are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Borrower is the owner of that certain real property located at 2539 Grant Avenue, San Leandro, CA 94579, APN 80G-910-15 (the "Property"). The Property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference.

B. On April 1, 2013, the Lender approved Borrower's proposed wind energy conversion project and height variance ("Project") to be located on the Property.

C. On May 8, 2013, interested persons ("Petitioners") filed a writ of mandate pursuant to the California Environmental Quality Act ("CEQA") in Alameda County Superior Court, Case No. RG13677840, alleging that Lender, in its regulatory capacity, had failed to comply with CEQA and CEQA Guidelines in approving the Project (the "Litigation").

D. On April 14, 2014, the Alameda County Superior Court entered judgment in favor of the Petitioners, and the court issued a writ of mandate to the Lender. Thereafter, the court awarded Petitioner's counsel attorney's fees.

E. The Lender and Borrower appealed the award of attorney's fees, but on January 12, 2018, the Court of Appeal upheld the trial court's award of attorney's fees and awarded Petitioner attorney's fees for the appeal action.

F. Upon commencement of the Litigation, Borrower agreed to pay all costs incurred by the Lender in defending approval of the Project and related litigation. The Lender has expended, or has agreed to expend, \$186,382.25 for appeal fees and \$232,425.65 in trial court fees, and Borrower owes the Lender an additional \$36,299.46 in other outstanding fees (collectively, "Litigation Costs").

G. Lender has agreed to pay the Litigation Costs, and Borrower has agreed to repay to Lender an amount equal to the Litigation Costs, totaling Four Hundred Fifty Five Thousand One Hundred Seven Dollars and Thirty Six Cents (\$455,107.36.) (the "**Loan**") pursuant to the terms and conditions hereof for the purposes contained in this Agreement.

H. Concurrently herewith, Borrower shall execute a promissory note (the "**Note**") in the amount of the Loan, and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**"), which shall provide Lender with a

security interest in the Property. This Agreement, the Note, and the Deed of Trust are collectively hereinafter referred to as the "**Loan Documents**."

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

ARTICLE I

LOAN TERMS

1.1 LOAN AND NOTE. Lender agrees to loan to Borrower, and Borrower agrees to borrow from and repay to Lender, the sum of Four Hundred Fifty Five Thousand One Hundred Seven Dollars and Thirty Six Cents (\$455,107.36.) upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note, which shall be dated as of the Effective Date and executed by Borrower substantially in the form attached hereto as Exhibit B. The Note shall be secured by the Deed of Trust executed by Borrower as Trustor for the benefit of the Lender substantially in the form attached hereto as Exhibit C. Lender shall disburse Loan Proceeds only for the purposes set forth in Section 2.1.

1.2 INTEREST RATE; PAYMENT DATES; MATURITY DATE.

(a) Interest. Interest shall accrue on the outstanding principal balance of the Loan at the rate of two percent (2%) simple interest per annum commencing upon the Effective Date and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Note are paid in full. Interest shall be calculated on the basis of three hundred sixty five (365) days, and charged for the actual number of days elapsed.

(b) Payment Dates; Maturity Date. Commencing July 1, 2019, and annually on July 1 thereafter through the Maturity Date (each, a "Loan Repayment Date") Borrower shall make annual payments of principal and interest in the amount of at least Fifty Thousand Six Hundred Fifty Five Dollars and Fifty Two Cents (\$50,655.52)("Loan Repayment Amount"). The entire indebtedness including any remaining interest and the principal, shall be due and paid in full upon the Maturity Date (defined below). The entire outstanding principal balance of the Loan, together with any accrued interest and all other sums accrued hereunder shall be payable in full on the tenth (10th) anniversary of the Effective Date of this Loan (the "**Maturity Date**"). Payments shall be credited first to any unpaid late charges and other costs and fees then due, and then to accrued interest. In no event shall any amount due under this Loan become subject to any rights, offset, deduction, or counterclaim on the part of Borrower.

(c) Late Payment Penalty. In the event Borrower fails to pay the Loan Repayment Amount by the close of business on the tenth (10th) business day after the Loan Repayment Date, Borrower shall pay to Lender as a late fee 5% of the Loan Repayment Amount (the "Late Payment Penalty").

1.3 SECURITY. As security for repayment of the Note, Borrower shall execute the Deed of Trust in favor of Lender as beneficiary pursuant to which Lender shall be provided a lien against Borrower's interest in the Property. The Deed of Trust shall be dated as of the Effective Date, shall be substantially in the form attached hereto as Exhibit C, and shall be recorded in the Official Records of Alameda County ("Official Records"). The Deed of Trust may be subordinated to only such liens and encumbrances as Lender shall approve in writing. Notwithstanding the foregoing, the Deed of Trust may be subordinated to a deed of trust or other security filing arising from the refinancing of any loan(s) secured by a deed of trust senior to the Deed of Trust, as long as the principal amount secured as a result of such refinanced loans does not exceed two million five hundred thousand dollars (\$2,500,000).

1.4 PREPAYMENT; ACCELERATION.

(a) Prepayment. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due on the Loan under this Agreement provided that each such payment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such payment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

(b) Due on Transfer. Unless Lender agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued on the Loan under this Agreement shall be due and payable upon the Transfer, absent the prior written consent of Lender, of all or any part or interest in the Property. "**Transfer**" shall include any assignment, sale, or other conveyance of the Property, but shall exclude encumbrances junior to the Deed of Trust and leases of the Property.

ARTICLE II

USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. The proceeds of the Loan ("**Loan Proceeds**") shall be used solely to repay Borrower the Litigation Costs. Borrower and Lender acknowledge and agree that the Lender has already paid, or will pay, the full amount of the Litigation Costs, and that no portion of the Loan Proceeds shall be disbursed to Borrower, and that Borrower will have no direct possession or control over the Loan Proceeds.

2.2 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS.

Lender's obligation to fund the Loan is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's execution and delivery to Lender of this Agreement, the Note, and the Deed of Trust;

(b) Recordation of the Deed of Trust in the Official Records of Alameda County;

(c) No material adverse change as determined by Lender in its reasonable judgment shall have occurred in the condition of the Property or in the financial or other condition of Borrower since the date of this Agreement.

2.3 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT. Notwithstanding any other provision of this Agreement, the Lender shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Borrower's representations and warranties set forth in this Agreement to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 2.2 have not been satisfied within seven (7) days following the Effective Date, unless an extension of such date is approved by Lender in writing; or
- (iv) the occurrence of any Event of Default hereunder.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Borrower makes the following representations, warranties and covenants and acknowledges that Lender is relying thereupon in making the Loan:

(a) LEGAL STATUS; AUTHORITY; OWNERSHIP. Borrower is the owner of the Property, subject only to liens, encumbrances, easements, restrictions, conditions and other matters of record or disclosed in writing to Lender.

(b) NO VIOLATION. The execution of the Loan Documents and Borrower's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

(c) AUTHORIZATION. The Loan Documents and the transactions contemplated thereby have each been duly authorized by Borrower, and when executed and delivered will each constitute a valid and binding obligation of Borrower, enforceable in accordance with the respective terms thereof.

(d) LITIGATION. There are no pending or to Borrower's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Borrower or Borrower's interest in the Property.

(e) COMPLIANCE WITH LAWS. To Borrower's reasonable knowledge, Borrower is in compliance in all material respects with all local, state, and federal laws, rules, regulations, orders and decrees which are applicable to the Property or to Borrower in relation thereto ("**Applicable Law**") including without limitation, all environmental, health and safety, and employment laws. Borrower has received no notice from any governmental authority regarding any threatened or pending zoning, building, fire, or health code violation, or violation of other governmental regulations concerning the Property that has not been corrected, and no condition on the Property violates any Applicable Law.

(f) DISCLOSURE. No representation or warranty made by Borrower in this Agreement or in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading. There is no fact known to Borrower which has or might reasonably be anticipated to have a material adverse effect on the assets or financial condition of Borrower which has not been disclosed to Lender in writing.

ARTICLE IV

AFFIRMATIVE COVENANTS

4.1 USE OF FUNDS. Borrower covenants that the Loan Proceeds will be used solely for the purpose set forth in Section 2.1. Borrower acknowledges and agrees that no portion of the Loan Proceeds shall be disbursed to Borrower, and that Borrower shall not have direct possession or control over the Loan Proceeds.

4.2 PUNCTUAL PAYMENT. Borrower covenants to punctually pay the principal balance of the Loan and interest (if any) accrued thereon at the times and place and in the manner specified in the Agreement.

4.3 ACCOUNTING RECORDS; PROPERTY INSPECTION. Borrower covenants to maintain accurate books and records relating to the Loan in accordance with standard accounting principles consistently applied, and to permit the Lender, during business hours and upon reasonable notice to inspect, audit, and examine such books and records, and to inspect the Property during normal business hours upon reasonable notice to ensure compliance with this Agreement.

4.4 COMPLIANCE WITH LAWS. Borrower covenants to comply with all federal, state, and local laws, regulations, ordinances and rules applicable to the Property. Without limiting the generality of the foregoing, Borrower shall comply with all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

4.5 INSURANCE. Borrower shall maintain and keep in force at Borrower's expense insurance coverage with respect to the Property in accordance with the requirements set forth in Exhibit D attached hereto and incorporated herein.

4.6 FACILITIES. Borrower shall keep the Property and any improvements thereon, and the personal property used in Borrower's operations, in good repair and condition, and from time to time make necessary repairs, renewals, and replacements thereto so that the Property and improvements shall be preserved and maintained.

4.7 INDEMNIFICATION. Borrower shall indemnify, defend (with counsel approved by Lender), and hold harmless Lender and its elected officials, officers, agents, and employees, consultants, and contractors (collectively, the "**Indemnitees**"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, actions, suits, judicial or administrative proceedings, injunctive or other relief, expenses and charges (including attorneys' fees and court costs) (collectively "**Claims**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnatee which relates to or arises out of the Property, the improvements thereon, the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal, and local laws and regulations, in connection with the Property. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement and the making and repayment of the Loan.

4.8 TAXES AND OTHER LIABILITIES. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Borrower in relation to the Property except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

ARTICLE V

EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for ten (10) days after Lender notifies Borrower thereof in writing.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief or debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding in bankruptcy; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment, or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed, or fully bonded within sixty (60) days after its issuance.

(d) If the Borrower fails to maintain insurance as required pursuant to the Loan Documents, and Borrower fails to cure such default within ten (10) calendar days of receipt of notice from Lender.

(e) If any representation or warranty contained in the Loan Documents or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of Loan Proceeds is false or misleading in any material adverse respect when made.

(f) A default arises under any loan secured by a mortgage, deed of trust, or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan.

(g) If the Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

ARTICLE VI

REMEDIES

6.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, Lender shall have all remedies available to it under law or equity, including, but not limited to the following, and Lender may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or

expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- i) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- ii) Seek specific performance to enforce the terms of the Loan Documents;
- iii) Foreclose on the Property pursuant to the Deed of Trust;
- iv) Pursue any and all other remedies available under law or equity to enforce the terms of the Loan Documents and Lender's rights thereunder.

6.2 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. Lender may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand, or legal process of any kind.

ARTICLE VII

MISCELLANEOUS

7.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Lender: City of San Leandro
835 East 14th Street
San Leandro CA 94577
Attn: City Manager

Borrower: MTLG, LLC
c/o Louis A. Rigaud
2539 Grant Avenue
San Leandro, CA 94579

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding, or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge, and deliver such other documents and instruments, and take such other actions as either shall reasonably request may be necessary to carry out the intent of this Agreement.

7.7 PARTIES NOT CO-VENTURERS. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Borrower agrees that any controversy arising under or in relation to this Agreement or any other Loan Document shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other

venues to which it might be entitled by virtue of domicile, habitual residence, or otherwise.

7.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, Lender's obligation to make the Loan is personal to Borrower, and shall not be assignable by Borrower by operation of law or otherwise absent the express written consent of Lender, and any such assignment by operation of law or otherwise shall be void.

7.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

7.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through D attached hereto are incorporated herein by reference as though fully set forth herein.

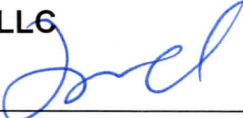
7.13 SURVIVAL. All representations made by Borrower herein and the provisions of Sections 4.7 and 4.8 hereof shall survive the expiration or termination of this Agreement and the making and repayment of the Loan. The representations of Borrower made herein have been or will be relied upon by the Lender, notwithstanding any investigation made by the Lender or on its behalf.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the date first written above.

BORROWER:

MTLG, LLC

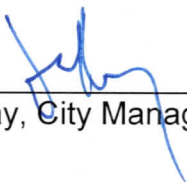


Louis A. Rigaud

Title: 

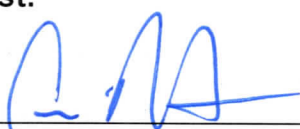
LENDER:

CITY OF SAN LEANDRO



Jeff Kay, City Manager

Attest:

 for

Leticia Miguel, City Clerk

Approved as to budget authority:



David Baum, Finance Director

Approved as to form:



Richard D. Pio Roda, City Attorney

Exhibit A

PROPERTY DESCRIPTION

APN/Parcel ID(s): 08G 0910 015 00

U.S. Postal Address: 2539 Grant Avenue, San Leandro, California 94579

Legal Description: The land referred to herein below is situated in the City of San Leandro, County of Alameda, State of California and is described as follows:

Parcel 2 of Parcel Map No. 3047 recorded on August 19, 1980, in Book 119 of Parcel Maps at Page 87, Series No. 80-141275, Alameda County Official Records.

Exhibit D

INSURANCE REQUIREMENTS

Unless Lender agrees otherwise in writing, Borrower shall, at Borrower's sole cost and expense, throughout the term of the Note dated as of the date hereof and executed by Borrower for the benefit of Lender (the "**Note**") shall keep and maintain the following policies of insurance. Capitalized terms used without definition in this Exhibit D shall have the meaning ascribed to such terms in the Loan Agreement of which this Exhibit is a part.

A. Property Insurance. Insurance for the risks of direct physical loss, naming Lender as loss payee as its interests may appear, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all Improvements, all fixtures and equipment located on or in, or constituting a part of, the Property, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Borrower from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Lender) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement," an "increased cost of construction endorsement," and an endorsement covering underground work, if applicable.

3096835.1

SECURED PROMISSORY NOTE

\$455,107.36

San Leandro, CA

FOR VALUE RECEIVED, MTLG, LLC, a California limited liability company ("**Borrower**"), promises to pay to the City of San Leandro, a California charter city ("**Lender**"), in lawful money of the United States of America, the principal sum of Four Hundred Fifty Five Thousand One Hundred Seven Dollars and Thirty Sixty Cents (\$455,107.36.), or so much thereof as may be advanced by Lender pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal in accordance with the terms and conditions described herein.

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to a Loan Agreement dated as of the date hereof by and between Borrower and Lender (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date thereof, executed by Borrower for the benefit of Lender and encumbering the property described therein. Lender shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, and in the Deed of Trust. The Deed of Trust may be subordinated to only such liens and encumbrances as Lender shall approve in writing. Notwithstanding the foregoing, the Deed of Trust may be subordinated to a deed of trust or other security filing arising from the refinancing of any loan(s) secured by a deed of trust senior to the Deed of Trust, as long as the principal amount secured as a result of such refinanced loans does not exceed two million five hundred thousand dollars (\$2,500,000).

1. **INTEREST RATE; REPAYMENT.** Interest shall accrue on the outstanding principal balance of the Loan at the rate of two percent (2%) simple interest per annum commencing upon the Effective Date and continuing through the date that all indebtedness and other amounts payable under the Loan Agreement and this Note are paid in full. Interest shall be calculated on the basis of three hundred sixty five (365) days, and charged for the actual number of days elapsed.

2. **PAYMENT DATES; MATURITY DATE.** Commencing July 1, 2019 (, and annually on July 1 thereafter through the Maturity Date (each, a "Loan Repayment Date") Borrower shall make annual payments of principal and interest in the amount of at least Fifty Thousand Six Hundred Fifty Five Dollars and Fifty Two Cents (\$50,655.52)("Loan Repayment Amount"). The entire indebtedness including any remaining interest and the principal, shall be due and paid in full upon the Maturity Date (defined below). The entire outstanding principal balance of the Loan, together with any accrued interest and all other sums accrued hereunder shall be payable in full on the

tenth (10th) anniversary of the Effective Date of this Loan (the "**Maturity Date**"). Payments shall be credited first to any unpaid late charges and other costs and fees then due, and then to accrued interest. In no event shall any amount due under this Loan become subject to any rights, offset, deduction, or counterclaim on the part of Borrower. In the event Borrower fails to pay the Loan Repayment Amount by the close of business on the tenth (10th) business day after the Loan Repayment Date, Borrower shall pay to Lender as a late fee 5% of the Loan Repayment Amount (the "Late Payment Penalty").

3. **DUE ON SALE OR DEFAULT.** The entire unpaid principal balance and all sums accrued hereunder shall be immediately due and payable upon the Transfer (as defined in Section 1.4 of the Loan Agreement) absent Lender's consent, of all or any part of the Property or the Improvements, or any interest therein, or upon the occurrence of an Event of Default under the Loan Documents, subject to the expiration of any applicable cure period. Without limiting the generality of the foregoing, this Note shall not be assigned without Lender's prior written consent, which consent may be granted or denied in Lender's sole discretion.

4. **PREPAYMENT.** Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such payment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such payment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

5. **MANNER OF PAYMENT.** All payments on this Note shall be made to Lender's Finance Department at its City Hall, located at 835 E. 14th Street, San Leandro, CA 94577 or such other place as Lender shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Lender in writing.

6. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after Lender notifies Borrower thereof in writing.

(b) Borrower fails to maintain insurance on the Property and the Improvements as required pursuant to the Loan Documents and Borrower fails to cure such default within ten (10) days of receipt of notice from Lender.

(c) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Borrower (i) commences a voluntary case or proceeding in bankruptcy; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee,

liquidator, or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(d) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed, or fully bonded within sixty (60) days after its issuance.

(e) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of an execution on any substantial part of its property, unless the property so assigned, sequestered, attached, or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(f) A default arises under any debt instrument secured by a mortgage or deed of trust on the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(g) Subject to Borrower's right to contest the following charges pursuant to the Loan Documents, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Improvements or fails to pay when due any other charge that may result in a lien on the Property or Improvements, and Borrower fails to cure such default within thirty (10) days of the date of delinquency, but in all events upon the imposition of any such tax or other lien.

(h) Any representation or warranty contained in this Agreement or any application, financial statement, certificate, or report furnished in connection with the loan or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.

(i) An event of default shall have been declared under any other Loan Document subject to the applicable cure periods set forth in such documents.

(j) Borrower defaults in the performance of any term, provision, covenant, or agreement (other than an obligation enumerated in this Section 6) contained in this Notice or in any other Loan Document, and unless such document specifies a different cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in

each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

7. REMEDIES. Upon the occurrence of an Event of Default hereunder, Lender may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to Lender under this Note and the other Loan Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Lender including, without limitation, reasonable attorneys' fees, incurred in connection with Lender's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust.

8. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the "**Default Rate**"). When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in Section 1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Lender from exercising any of its other rights or remedies.

9. MISCELLANEOUS.

9.1. WAIVER. The rights and remedies of Lender under this Note shall be cumulative and not alternative. No waiver by Lender of any right or remedy under this Note shall be effective unless in writing signed by Lender. Neither the failure nor any delay in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Lender will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of Lender arising out of this Note can be discharged by Lender, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Lender; (b) no waiver that may be given by Lender will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Lender to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

9.2. NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 7.1 of the Loan Agreement.

9.3. SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.4. GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court having jurisdiction in which the Property is located (the "Property Jurisdiction"). Borrower agrees that any controversy arising under or in relation to the Note or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note and any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence, or otherwise.

9.5. PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Lender and its successors and assigns.

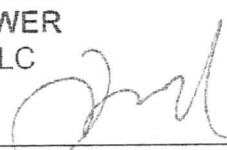
9.6. SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

9.7. RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Lender under this Note is solely that of borrower and lender, and the loan evidenced by this Note will in no manner make Lender the partner or joint venture of Borrower.

9.8. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER
MTLG, LLC



Louis A. Rigaud

Title: Owner

3096836.1