

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

City of San Leandro  
Community Development Department  
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: \_\_\_\_\_

**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 \_\_\_\_\_, 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 Sixty 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: 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 \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, ,  
personally appeared, \_\_\_\_\_, 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 \_\_\_\_\_

Exhibit A

**LAND**  
(Attach legal description.)

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