

File No. 201016

Committee Item No. 4

Board Item No. 34

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 30, 2020

Board of Supervisors Meeting

Date October 6, 2020

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Deed Amendment (draft) | _____ |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Original Deed | _____ |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Utilities Commission Resolution No. 20-0137 | _____ |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Century Urban Economic Report | _____ |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Koret Foundation Lease | _____ |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department Presentation | _____ |
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Completed by: Linda Wong

Date September 25, 2020

Completed by: Linda Wong

Date September 30, 2020

1 [Modification of Easement Deed - Koret Foundation - SFPUC Parcel 22 - Located in South
2 San Francisco, California]

3 **Resolution approving First Amendment to Easement Deed between the Koret**
4 **Foundation and the City and County of San Francisco, acting by and through its San**
5 **Francisco Public Utilities Commission (SFPUC), for the purpose of clarifying and**
6 **amending the respective rights of the parties to the Grant Deed dated April 6, 1907**
7 **(Original Deed) with respect to SFPUC Parcel 22 located between West Orange Avenue**
8 **and Southwood Drive in South San Francisco, California; and authorizing the Director**
9 **of Property and/or the SFPUC’s General Manager to execute documents, make certain**
10 **modifications, and take certain actions in furtherance of this Resolution, as defined**
11 **herein.**

12
13 WHEREAS, The City and County of San Francisco (City) owns certain real property
14 presently under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC)
15 known as SFPUC Parcel 22 located between West Orange Avenue and Southwood Drive in
16 South San Francisco, California (Property); and

17 WHEREAS, City purchased the Property from the Spring Valley Water Company
18 pursuant to a deed dated March 3, 1930, for use as part of the SFPUC’s regional water
19 transmission pipeline system known as the Bay Division Pipelines 3 and 4; and

20 WHEREAS, The Property was acquired by the Spring Valley Water Company pursuant
21 to a deed dated April 6, 1907, (Original Deed) between the Baden Company as original
22 grantor, and Spring Valley Water Company, as the original grantee; and

23 WHEREAS, In 1964, The Koret Foundation, the Baden Company’s successor in
24 interest with respect to the Property, designed and constructed on a parcel adjacent to the
25

1 Property a 102-unit market-rate apartment complex known as the Clubview Apartments
2 (Clubview); and

3 WHEREAS, City and Koret are parties to that certain lease dated January 7, 2000,
4 (Lease) whereby Koret leases the surface of the Property for Clubview’s landscaping, on-site
5 circulation, access, and parking because Koret and the SFPUC understood these rights to be
6 in excess of the rights granted to Koret under the Original Deed; and

7 WHEREAS, In its review of the Original Deed as part of negotiations for renewal of the
8 Lease, the SFPUC concluded that all of Koret’s rights under the Lease, except for parking,
9 were in fact granted under the Original Deed, and that an amendment to the Original Deed
10 would be more appropriate than a new lease; and

11 WHEREAS, City and Koret both desire to amend the Original Deed to expand Koret’s
12 reserved rights to include the right to park on the Property, in exchange for providing
13 additional rights typically granted to City in its modern leases and licenses; and

14 WHEREAS, City engaged the services of Century Urban, an economic and land use
15 consulting firm, to evaluate the rights that are proposed to be exchanged pursuant to the
16 Amendment to ensure City is not transferring net value to Koret; and

17 WHEREAS, In its report dated March 9, 2020, Century Urban concluded that no
18 identifiable, material net value is transferred between the parties to the Amended Deed; and

19 WHEREAS, A copy of the Amendment is on file with the Clerk’s Office; and

20 WHEREAS, The SFPUC Commission approved the Easement Deed by Resolution 20
21 -0137 on June 23, 2020; and

22 WHEREAS, On June 23, 2020, the SFPUC determined that the Amendment does not
23 constitute a “project” under California Environmental Quality Act (CEQA) Guidelines, Section
24 15378, because there would be no physical change in the environment; now, therefore, be it
25

1 RESOLVED, That the Board of Supervisors hereby adopts that the SFPUC's
2 determination that to the Amendment is not a project under applicable CEQA Guidelines; and,
3 be it

4 FURTHER RESOLVED, That the Board of Supervisors, in accordance with the
5 recommendations of the SFPUC and the Director of Property, hereby approves the terms and
6 conditions of the Amendment and authorizes the Director of Property and/or the SFPUC's
7 General Manager, in the name and on behalf of City, to execute the Amendment in
8 substantially the form presented to the Board and to take any and all steps as the Director of
9 Property or SFPUC General Manager deems necessary or appropriate in connection with the
10 execution and recording of the Amendment or to otherwise effectuate the purpose and intent
11 of this resolution, such determination to be conclusively evidenced by the execution and
12 delivery by the Director of Property and/or SFPUC General Manager of any such documents;
13 and, be it

14 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the Director
15 of Property and/or the SFPUC General Manager to enter into any amendments or
16 modifications to the Amendment, including its attached exhibits, that the General Manager
17 determines, in consultation with the City Attorney, are in City's best interest; do not materially
18 increase City's obligations or liabilities; are necessary or advisable to effectuate the purposes
19 and intent of the Amendment or this resolution; and are in compliance with all applicable laws,
20 including the City Charter; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors hereby ratifies, approves, and
22 authorizes all actions heretofore taken by any City official in connection with the Amendment;
23 and, be it

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1 FURTHER RESOLVED, That the Director of Property shall provide the Clerk of the
2 Board of Supervisors a fully executed copy of the Amendment within thirty (30) days of
3 signature of same.

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RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102

With copies to:

San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

and to:

Koret Foundation
611 Front Street
San Francisco, California 94111
Attn: Chief Financial Officer

The undersigned hereby declares this
instrument to be exempt from Recording Fees
(Govt. Code § 27383) and Documentary
Transfer Tax (Rev. & Tax. Code §11922).

(Space above this line reserved for Recorder's use only)

Assessor's Parcel No(s). 093 300-020

SFPUC Parcel No. 22

FIRST AMENDMENT TO DEED

THIS FIRST AMENDMENT TO DEED (this "**Amendment**"), dated as of _____, 2020 for reference purposes, is made by and between the KORET FOUNDATION, a California domestic non-profit corporation ("**Koret**"), and the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), by and through its Public Utilities Commission ("**SFPUC**").

RECITALS

- A. Pursuant to that certain Grant Deed from Baden Improvement Company ("**Original Grantor**") to the Spring Valley Water Company ("**Original Grantee**") dated April 6, 1907 and recorded May 28, 1907 in Volume 136 of Deeds, page 169, San Mateo County Records ("**Original Deed**"), which was incorporated in that certain Deed from the Original Grantee to the City and County of San Francisco ("**City**") dated as of March 3, 1930 and recorded March 3, 1930 in Volume 1462, page 697, San Mateo County Records ("**Deed**"), the parcel of real property ("**City Property**") located

between West Orange Avenue and Southwood Drive in South San Francisco, San Mateo County, California was conveyed to City, as grantee. The City Property is more particularly described in the attached **Exhibit A**.

- B. Pursuant to the Deed dated [REDACTED] and recorded [REDACTED], [REDACTED] in Volume [REDACTED] of Deeds, Page [REDACTED], San Mateo County Records, Koret acquired that certain real property adjacent to the City Property commonly known as [REDACTED] (the “**Koret Property**”) and has succeeded to the rights, title, interests, and obligations of the Grantor under and pursuant to the Original Deed as incorporated into the Deed. The Koret Property is more particularly described in the attached **Exhibit B**.
- C. City maintains certain underground water pipelines and certain related facilities in, on, and under the City Property, which facilities shall remain on the City Property and limit the acceptable uses of the surface of the City Property;
- D. Subject to the terms and conditions of this Amendment, Koret and City desire to amend the Original Deed to clarify certain provisions of the Original Deed.

AMENDMENT

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

1. **Effective Date**. This Amendment shall become effective on, and the Original Deed shall be amended as of, the date that is the later of:

- (a) The date Koret and City have executed and exchanged this Amendment;
- (b) The date City’s Mayor and Board of Supervisors have enacted a resolution approving this Amendment, at their respective sole and absolute discretion, in accordance with City’s Charter and any other applicable laws; and
- (c) The date Koret’s Board of Directors have enacted a resolution approving this Amendment, at their respective sole and absolute discretion, in accordance with Koret’s governing corporate documents and any other applicable laws.

2. **Amendment of Original Deed**. The Original Deed is hereby amended by deleting the first seven full paragraphs on pages 3 through 5 of the Original Deed (commencing from the first full paragraph on page 3 of the Deed that begins with the words: “*Excepting and reserving therefrom the right...*” and that ends with the first full paragraph on page 5 of the Deed that ends with the words: “*and provided further, that no trees or shrubs shall be planted in the roadway of said street or boulevard, nor in the center thereof:*”) and replacing the deleted language with the following provisions:

1. **City’s Rights as Owner of the City Property**.

(a) *Without limiting City’s rights as fee owner of the above-described property (“City Property”), but subject to the terms and provisions of this instrument, the party of the*

second part (“City”) shall have the right for itself, and its successors and assigns, and City’s or its successors’ and assigns’ respective officers, agents, employees, contractors, and subcontractors (collectively, “Agents”), to use the City Property for pedestrians and vehicles to: (a) access, inspect, install, use, maintain, construct, improve, alter, expand, operate, remove, and replace (“Permitted City Actions”) water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface utility facilities in, under, on, or about the City Property for the transportation or distribution of water and other utilities, together with all appurtenances thereto (together, the “SFPUC Facilities”); and (b)-use the surface of the City Property as a staging area during the installation, maintenance, construction, improvement, repair, alteration, replacement, or removal of the SFPUC Facilities, including, without limitation, the rights to: (i) enlarge, modify, expand, replace, and reconstruct the SFPUC Facilities; (ii) add additional underground pipelines and related facilities in, under, and along the City Property; and (iii) enter onto the City Property in order to perform such activities. City shall use reasonable good faith efforts to conduct any Permitted City Actions on the City Property in a manner that, to the extent practicable, will minimize any disruption to the party of the first part’s (“Koret”) use of and Koret’s improvements on the City Property permitted by this instrument.

(b) **Subject to City Uses.** Koret acknowledges that the City Property constitutes a portion of City’s water pipeline delivery system. Koret shall not engage in or permit any use of the City Property that would materially restrict access to the City Property at any time by City, its Agents, or City’s or City’s Agents construction equipment or vehicles. At Koret’s sole expense, Koret shall promptly alter or remove any and all of its improvements and remove any parked vehicles on the City Property as may be necessary to avoid any actual or potential material interference with the SFPUC Facilities or the Permitted City Actions. Subject to the terms and conditions of this instrument, any and all of the activities of Koret, its successors or assigns, Koret’s or its successors’ or assigns’ respective Agents, or Koret or its Agents, or its invitees, lessees, guests, or business visitors (collectively, “Invitees”) on, over, or across the City Property shall be subject and subordinate at all times to City’s use of the City Property for its water delivery system. Any pipelines or utilities installed by City in or on the City Property shall be located underground, and only necessary appurtenances thereto (such as hatch covers and other facilities that do not unreasonably interfere with Koret’s surface use of the City Property) may be located at or above the surface of the City Property. Without limiting City’s rights under this instrument, at City’s written request following City’s reasonable determination that Koret’s use of the City Property is not in compliance with this instrument, Koret shall promptly alter or remove, at its sole expense, any and all improvements, plantings, or other property installed or placed in, on, under, or about the City Property that are not in compliance with this instrument. In any such request, City shall have the right to specify reasonable time limits for completion of the work. If after such written request Koret fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge Koret all costs and expenses incurred by City in performing such work. Such amount shall be due and payable upon City’s demand. **In the event that City removes, or requires the temporary removal, of any pavement, landscaping, or other improvements in the exercise of its rights under this instrument, City shall have no obligation to replace such pavement, landscaping, or other improvements.** Notwithstanding the foregoing, City shall not require the removal of any of Koret’s improvements or parked vehicles permitted by this instrument unless such removal is reasonably necessary to allow City to perform any Permitted City Actions. City

acknowledges and agrees that it has reviewed Koret's current use of and improvements on the City Property, including, but not limited to, review of a potholing study prepared at City's request, and that such use of and improvements on the City Property do not currently materially interfere with SFPUC Facilities or the Permitted City Actions and do not currently violate City's policies governing use of the City Property.

2. Access Route and Costs of Permitted City Actions.

(a) City's Access to City Property. *So long as the existing paved driveway adjacent to the public road known as West Orange Avenue and adjoining paved area(s) on the City Property (the "Driveway"), which is depicted on the attached Exhibit C and was installed and is maintained by or on behalf of Koret, remain open and accessible for City's uses as provided and contemplated by this instrument, City shall use the Driveway to access the City Property; provided, however, that if the Driveway becomes inaccessible or otherwise unusable by City for such access, City may use any and all (i) routes over the City Property; or (ii) the then-existing roadways on the Koret Property that City reasonably considers appropriate to gain access to any portion of the City Property; provided that City and its Agents shall not park any vehicles or place any construction equipment or other obstacles upon the Koret Property. Any such entry by City or its Agents shall not be deemed to be a forcible or unlawful entry onto the Koret Property.*

(b) Repair, Installation, and Inspection; Damages to SFPUC Facilities. *City shall bear the expense of all Permitted City Actions, except to the extent any repairs or maintenance result from the acts, omissions, or negligence of Koret, its Agents or Invitees. City shall not be liable in any manner, and Koret hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage to the extent arising out of City's entry onto or use of the City Property, except to the extent resulting directly from the gross negligence or willful misconduct of City or its Agents. If any portion of the City Property, the SFPUC Facilities, or any other personal property or equipment located on or about the City Property is damaged or subject to imminent material threat of damage by any of the activities conducted by Koret or any of its Agents or Invitees, Koret shall immediately notify City of such damage or threat. City may remedy, but shall not be obligated to, remedy, such damage or threat at Koret's sole cost, or City may elect to witness Koret's repair work. If City elects not to remedy such damage or threat, Koret shall repair any and all such damage and restore the City Property or City's personal property to its previous condition subject to City's inspection, review, and approval. Except for the SFPUC Facilities, or damage to any utilities serving the Koret Property to the extent resulting directly from the negligence or willful misconduct of City or its Agents or Invitees, City has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the City Property, and Koret shall be solely responsible for the location of any such utilities and other existing facilities and their protection from damage except to the extent resulting directly from the gross negligence, or willful misconduct of City or its Agents or Invitees.*

3. Koret's Reserved Use of City Property. *Subject to City's Permitted City Actions and use of the City Property, Koret reserves for itself and shall limit its use of the City Property to (a) pedestrian use; (b) vehicular parking; and (c) subject to City's approval rights as stated below in this Section 3, the construction, and maintenance, and use of paved areas or roadways for vehicular and pedestrian ingress and egress*

to the City Property, street lighting and associated conduits, survey monuments, curbs, gutters, sidewalks (including pedestrian ingress and egress), walkways, landscaped areas (including irrigation), utility lines and signage, so long as such improvements do not interfere with, restrict access to, or endanger the existing or future SFPUC Facilities (collectively, “**Permitted Koret Uses**”). Except as specifically stated in this instrument, Koret shall not construct, place, or allow the construction or placement of any temporary or permanent structure or improvement in, on, under, or about the City Property. Further, City’s review and approval of all plans and specifications for any permitted improvements to be placed on the City Property, which City may grant or withhold at its reasonable discretion, shall be required prior to the construction or installation of any such improvements. For purposes of this instrument, asphalt, concrete, and cementitious concrete driveways, sidewalks, and parking areas, sheds and storage facilities, and fences shall be deemed “improvements.” Any agreements henceforth made by Koret and its successors and assigns with any person or entity, including, without limitation, the City of South San Francisco, regarding any use of the City Property shall be subject to the terms of this instrument, including City’s approval rights. Koret shall not plant any trees, shrubs, or other plants on the City Property except in a manner consistent in all material respects with the SFPUC Right-of-Way Integrated Vegetation Management Policy (including Section 13 and Subsections 13.005 and 13.006 of such Policy), as it may be amended from time to time, or such replacement policy for vegetation and other improvements on City’s-property. Koret shall restore promptly any excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as may be reasonably requested by City. Koret shall not cause or permit the dumping or other disposal on or about the City Property of refuse, hazardous materials, or other materials that are unsightly or could pose a danger to human health or safety or to the environment. At all times and at its sole cost, Koret shall maintain the surface of the City Property in a good, clean, safe, and secure condition, and shall maintain and repair the driveways thereon so they are open and accessible at all times for City’s use and access as contemplated by this instrument. Koret and its Agents shall coordinate with City personnel to avoid disruption (even if temporary) of SFPUC Facilities, in, under, on, or about the City Property. Except as specifically stated in this instrument, in no event will Koret be required to pay City any rent or other financial consideration for the use of the City Property for the Permitted Koret Uses.

4. **Covenants Regarding Use.** As a material inducement to City to enter into this instrument, Koret covenants with City as follows:

(a) **Authorization.** Before beginning any work on the City Property, Koret shall obtain any and all permits, licenses, and approvals of all regulatory agencies and other third parties that are required by any applicable law to commence, complete, and maintain the permitted work.

(b) **Restrictions on Heavy Equipment and Vehicles.** To prevent damage to the SFPUC Facilities, Koret shall strictly adhere to the following restrictions when using vehicles and equipment within twenty (20) feet of City’s pipelines; provided, however, that Koret may seek variances from the following requirements in connection with the Permitted Koret Uses

from the SFPUC General Manager and the SFPUC General Manager's approval of such requests shall be subject to the sole and absolute discretion of the SFPUC General Manager:

(i) It shall be Koret's sole responsibility to ensure that the depth of soil cover over the tops of City's pipelines is, at all times, at least three (3) feet for steel cylinder pipe and four (4) feet for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii) below. If any equipment with axle loading exceeds the weight stated in item (ii) below or if the depth of soil cover is less than stated above, Koret shall submit to the SFPUC, for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the pipelines showing that City's pipelines will not be adversely affected.

(ii) The effects of vehicle and equipment loads to the pipelines must not exceed the effects of the "AASHO Standard H-10 Loading," which is defined as loading caused by a two (2)-axle truck with a gross weight of ten (10) tons (20,000 lbs.), axles fourteen (14) feet apart, and rear axle carrying eight (8) tons (16,000 lbs.). Koret shall be responsible to provide SFPUC adequate evidence that Koret's equipment and vehicles meet the foregoing requirements.

(iii) Koret shall not use vibrating compaction equipment unless it first obtains SFPUC's written approval.

(iv) If the depth of the soil cover over City's pipelines (determined by potholing or other proof procedure) is less than the minimum stated in item (i) above, unless an alternate method is approved by SFPUC, all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty (20) feet on each side of the centerline of the pipelines (measured on the surface), Koret shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two (2) feet of soil around each pipeline shall be removed manually or by other methods approved by SFPUC with due care as provided below.

*(c) **Exercise of Due Care.** Koret shall use and shall cause its Agents to use due care at all times to avoid any damage or harm to City's water pipelines or other property. City shall have the right to approve and oversee any excavation work. When conducting any excavation work on the City Property, Koret shall mark, at its own expense, the location of City's water transmission mains within the City Property and shall not use any pick, plow, or other sharp tool to remove the two (2) feet of soil around the transmission mains, provided that Koret may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this instrument. Any damage to the coating of either pipeline shall be repaired by Koret, at its expense, prior to backfilling.*

*(d) **Covenant to Protect SFPUC Facilities.** Koret shall protect the SFPUC Facilities from any damage, injury, or disturbance arising out of the use of the City Property by Koret or its Agents or Invitees. If Koret or any of its Agents or Invitees damages, injures, or disturbs any of the SFPUC Facilities, or any portion of the SFPUC Facilities (including monuments), Koret shall immediately notify City of that occurrence. Without limiting any of*

its other rights under this instrument, City may take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Koret's sole expense.

(e) **Alterations or Improvements by Koret.** Koret shall obtain City's prior, written approval, which may be granted, conditioned, or withheld at City's reasonable discretion, prior to any alterations of the surface of the City Property or the construction or installation of any structural improvements on the City Property, including any pipelines or other subterranean improvements; in, on, across, or under the City Property, including; without limitation; approval of the plans and specifications for any such alterations or improvements and the method and timing of construction, installation, or alteration thereof. City may require that any new underground pipes or improvements in, on, across, or under the City Property be fabricated with; steel, ductile iron, or cast-iron pipe for the entire crossing. The clear distance between the bottom of any pipes installed by Koret and the top of City's existing and any proposed future water lines shall not be less than twelve inches (12"). Excluding existing utility connections as of the date of this Amendment, including, but not limited to, existing water valves and hydrants, Koret shall not install, maintain, or operate within the City Property any pipelines, electrical or gas conduits, or other utilities that run alongside or parallel to City's existing or future water lines or utilities in the City Property. Koret shall install above-ground markers identifying the location of any underground facilities installed by or on behalf of Koret pursuant to this instrument. City may adopt from time to time such rules and regulations as may be necessary or appropriate to safeguard against corrosion of City's pipelines and related facilities, and Koret shall comply with all such rules and regulations upon receipt of a copy thereof. Koret shall not permit any other entity or person to install any pipelines for such entity's or person's benefit in, on, or under the City Property without obtaining City's prior; written approval.

5. **Repairs and Maintenance.** Koret hereby assumes full and sole responsibility for the condition, operation, repair, maintenance, and management of the surface of the City Property and, except for the SFPUC Facilities, any improvements placed on the City Property by or on behalf of Koret. In the case of damage to or destruction of Koret's improvements, Koret shall, at its sole cost and with reasonable promptness and diligence, either restore the improvements or demolish and remove them (including all debris) from the City Property, except to the extent such damage or destruction was caused by the gross negligence or willful misconduct of City or its Agents or Invitees, in which case City shall either: (a) restore, repair, or rebuild the improvements to the extent damaged by City or its Agents; or (b) pay to Koret City's proportionate share of the cost to repair or replace such damaged improvements.

6. **Monuments.** Koret acknowledges that City's existing monuments on the City Property are in good condition. During the installation of any permitted improvements on the City Property by or on behalf of Koret, and at all times during Koret's use of the City Property, Koret shall protect and safeguard City's monuments. If Koret damages a monument necessitating resurvey, repair, or replacement, Koret shall, at Koret's expense: (a) perform such repair or replacement work and, if appropriate, file a land surveyor's map in the County of San Mateo; (b) furnish a recorded surveyor's map to the SFPUC for its records; (c) install any such new monuments, which shall be of the same type and quality as used by City, at the locations selected by City; and (d) install a "marker post" next to the monuments to

the extent practicable. All monuments and markers to be installed pursuant to this Section 6 shall be subject to City's reasonable prior written approval. At any time, City may replace missing monuments or install new monuments on the City Property.

7. **Run with the Land.** *The provisions, covenants, conditions, and easement provided in this instrument shall be covenants running with the land pursuant to California Civil Code Sections 1468 and 1471 and shall burden and benefit every party having an interest in the City Property. Any reference to Koret and City in this instrument shall include Koret's and City's Agents and all successor owners of interests in all or any part of the City Property.*
8. **Notices.** *Any notice, consent, or approval required or permitted to be given under this instrument shall be in writing and shall be given by : (a) hand delivery; (b) reliable next business day courier service that provides confirmation of delivery; or (c) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior, written notice in the manner provided above):*

*To City: General Manager
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102*

and to

*Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102*

*With a copy to: Real Estate Director
Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102*

*and to: Office of the City Attorney
Attn: Richard Handel, Deputy City Attorney
Real Estate/Finance Team
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102*

*To Koret: Koret Foundation
611 Front Street
San Francisco, California 94111
Attn: Chief Financial Officer*

With a copy to: Greene Radovsky Maloney Share & Hennigh LLP
One Front Street, Suite 3200
San Francisco, California 94111
Attn: James H. Abrams, Esq.

and to: Woodmont Real Estate Management
1050 Ralston Avenue
Belmont, CA 94002
Attn: Chairman

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one party to the other shall be for convenience of communication only and neither party may give official or binding notice orally or by e-mail or facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an oral notice or an e-mail or telefacsimile copy of the notice.

9. **Indemnity.** *Koret shall indemnify, defend, reimburse, and hold harmless City and its Agents, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (“Claims”), to the extent arising in any manner out of any: (a) injury to or death of any person or damage to or destruction of any property occurring in, on, or about any part of the City Property, whether such injury, death, damage, or destruction is caused by the person or property of Koret or any of its Agents or Invitees, or third persons while engaged in any use of or activity on or about the City Property by or on behalf of Koret; (b) failure by Koret to faithfully observe or perform any of the terms, covenants, or conditions of this instrument; (c) use of the City Property or any activities conducted on the City Property by Koret, its Agents, or Invitees; (d) release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Koret, its Agents, or Invitees, on, in, under, or about the City Property, any improvements or into the environment; or (e) failure by Koret to faithfully observe or perform any terms, covenants, or conditions of this instrument to the extent that such terms, covenants, or conditions relate to or are triggered by the work to be performed or improvements or alterations installed by or on behalf of Koret; except solely to the extent of Claims resulting directly from the negligence or willful misconduct of City or City’s Agents. In addition to Koret’s obligation to indemnify City, Koret shall have an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if such Claim is or may be groundless, fraudulent, or false, which obligation shall arise at the time such Claim is tendered to Koret by City and continues at all times thereafter. The foregoing indemnity shall include reasonable attorneys’, experts’, and consultants’ fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties. Koret’s obligations under this Section 9 shall survive the expiration or earlier termination of this instrument.*

10. **Attorney's Fees.** *If either party commences an action against the other or a dispute arises under this instrument, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this instrument and the indemnifications set forth in this instrument, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.*
3. **Estoppel Certificate.** Either party, from time to time and upon at least ten (10) days prior written request by the other party, shall deliver a statement to such other party, or to the person or persons that such other party directs, that the Deed, as amended by this Amendment, has not been modified and is in full force and effect, that there is no dispute pending or threatened between the parties, and that no party is in default of its obligations hereunder or, in the event any or all of the foregoing statements are not true, the reason or reasons therefor.
4. **Integration.** The Deed, as amended by this Amendment, constitutes the sole agreement of the parties with respect to their respective ownership rights in and to the City Property and may not be modified except by an instrument in writing signed by both of the parties. In the event of any conflict between the terms of the Deed and the terms of this Amendment, the terms of this Amendment shall control.
5. **Exhibits.** The Exhibits referenced in this Amendment are attached to and made a part of the Original Deed.
6. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date specified in Section 1 above.

KORET:

KORET FOUNDATION, a California non-profit mutual benefit corporation

By: _____

Its: _____

By: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

APPROVED AS TO FORM:
Dennis Herrera, City Attorney

By: _____

Richard Handel
Deputy City Attorney

CERTIFICATE OF ACCEPTANCE

This is to certify that, to the extent any interest in real property is conveyed to the City and County of San Francisco by this First Amendment to Deed dated as of __, 2020 between the Koret Foundation and the City and County of San Francisco, such conveyance is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2020

By: _____

Andrico Penick,
Director of Property

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)
)
) ss.
COUNTY OF _____)

On _____, 2020, before me, _____, personally appeared _____, who proved to me on 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(ies) 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. (SEAL)

Notary's Signature

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)
)
) ss.
COUNTY OF _____)

On _____, 2020, before me, _____, personally appeared _____, who proved to me on 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(ies) 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. (SEAL)

Notary's Signature

EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

[Attach legal description of City Property]

EXHIBIT B

LEGAL DESCRIPTION OF KORET PROPERTY

[Attach legal description of Koret Property]

EXHIBIT C

DEPICTION OF DRIVEWAY

[Attach depiction of Driveway]

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 20-0137

WHEREAS, The City and County of San Francisco (City) owns certain real property presently under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) known as SFPUC Parcel 22 located between West Orange Avenue and Southwood Drive in South San Francisco, California (Property); and

WHEREAS, The City purchased the Property from the Spring Valley Water Company pursuant to a deed dated March 3, 1930 for use as part of the SFPUC's regional water transmission pipeline system known as the Bay Division Pipelines 3 and 4; and

WHEREAS, The Property was acquired by the Spring Valley Water Company pursuant to a deed dated April 6, 1907 (Original Deed) between the Baden Company as original Grantor, and Spring Valley Water Company, as the original Grantee; and

WHEREAS, In 1964, The Koret Foundation, successor in interest to the Baden Company, designed and constructed a 102-unit market-rate apartment complex known as the Clubview Apartments (Clubview) located adjacent to the Property; and

WHEREAS, The City and Koret are parties to that certain lease dated January 7, 2000 (Lease) whereby Koret leases the surface of the Property for Clubview's landscaping, on-site circulation, access, and parking because Koret and the SFPUC understood these rights to be in excess of the rights granted to Koret under the Original Deed; and

WHEREAS, In its review of the Original Deed as part of negotiations for renewal of the Lease, the SFPUC concluded that all of Koret's rights under the Lease, except for parking, were in fact granted under the Original Deed, and that an amendment to the Original Deed would be more appropriate than a new lease; and

WHEREAS, Koret desires to amend the Original Deed to expand its reserved rights to include the right to park on the Property, in exchange for providing additional rights to the SFPUC; and

WHEREAS, The SFPUC desires to amend the Original Deed to expand its rights in exchange for providing Koret with the right to park on the Property; and

WHEREAS, The First Amendment to the Deed provides Koret with the right to park on the Property, in exchange for additional rights granted to the City that are consistent with the rights typically granted to the City in its modern leases and licenses; and

WHEREAS, The City engaged the services of Century Urban, an economic and land use consulting firm, to evaluate the rights exchanged in the Amended Deed to ensure the City is not transferring net value to Koret; and

WHEREAS, In its report dated March 9, 2020, Century Urban concluded that no identifiable, material net value is transferred between the parties to the Amended Deed; and

WHEREAS, A copy of the First Amendment is on file with the Commission Secretary;
and

WHEREAS, Adoption of this Resolution does not constitute a “project” under California Environmental Quality Act Guidelines Section 15378 because there would be no physical change in the environment; now, therefore, be it

RESOLVED, That this Commission hereby approves the terms and conditions of the First Amendment to the Deed on file with the Commission Secretary; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to seek approval by the Board of Supervisors and Mayor of the First Amendment to the Deed and, upon such approval, to execute the First Amendment; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to this First Amendment to the Deed, including its attached exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the First Amendment or this resolution; and are in compliance with all applicable laws, including the City Charter; and, be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with this First Amendment.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 23, 2020.



Secretary, Public Utilities Commission



Century | Urban

**Strategic
Real Estate
Advisory Services**

Valuation of Deed Amendment Rights

Presented to:

**San Francisco Public Utilities
Commission**

March 9, 2020

235 Montgomery Street, Suite 1042 | San Francisco, CA 94104 | 415.358.1218 | www.centuryurban.com



VALUATION OF DEED AMENDMENT RIGHTS

TO: San Francisco Public Utilities Commission
FROM: Century Urban, LLC
SUBJECT: Valuation of Koret Deed Amendment Rights
DATE: March 9, 2020

Executive Summary

The City and County of San Francisco (the “City”) owns a 0.96-acre parcel of land between West Orange Avenue and Southwood Drive in South San Francisco, which was purchased in 1930 from the Spring Valley Water Company, subject to an original deed dated April 6, 1907 (the “Property”). The parcel is used as a right-of-way for public utilities, but additional use is subject to certain restrictions imposed by the deed of trust from the parcel’s acquisition. On behalf of the City, the San Francisco Public Utilities Commission (“SFPUC”) wishes to clarify and amend these restrictions concerning the Property with the original seller’s successor. SFPUC has engaged Century | Urban to review and value the rights given and received in a proposed amendment, as well as to identify whether the amendment transfers net value between the parties.

The proposed amendment clarifies many rights of the parties, and adds a small number of rights, privileges and obligations for each. However, Century | Urban concludes that no identifiable material net value is transferred by the parties in the proposed terms.

Documents Reviewed and Disclaimer

In its analysis and review of the amendment, original deed of trust, and the property, Century | Urban relied upon the following documents, received from SFPUC. Century | Urban did not independently verify the accuracy of these documents.

- ❖ A photocopy of Deed #7 between Baden Company and Spring Valley Water Company dated April 6, 1907 (the “Original Deed”).
- ❖ A transcription of certain sections of the Original Deed by Richard Handel in the City Attorney’s office.
- ❖ A copy of the proposed “First Amendment to Deed” between the SFPUC and the Koret Foundation, unsigned, the file dated March 10, 2020 (the “Amendment”).
- ❖ An appraisal conducted by Clifford Advisory, LLC dated March 2015 and prepared for the SFPUC (the “Appraisal”).
- ❖ A map entitled “Map of Clubview Apts” which reflects the Property and adjacent parcels.



Parcel History and Use

On April 6, 1907, for ten dollars in gold coin, Spring Valley Water Company purchased the Property from Baden Company. Located in South San Francisco between El Camino Real and the California Golf Club of San Francisco, and more specifically between Southwood Drive and West Orange Avenue, the Property is approximately 80 feet wide by approximately 522 feet long. Per the Original Deed, the sale was subject to Baden and its successors retaining the rights to a variety of uses on the site, further detailed below. Though, as the fee owner, not all of Spring Valley Water Company's detailed uses were mentioned in the Original Deed, the document does reference installing and maintaining underground utilities and an above ground trestle. The City, the successor in interest to the Spring Valley Water Company, continues to utilize the Property for underground water pipes which link the Hetch-Hetchy reservoir to the City and provide part of the City's water supply.

In 1964, a 102-unit apartment complex, Clubview Apartments, was designed and then built adjacent to the Property by the successors to the Baden Company. Clubview Apartments and its current owners, the Koret Foundation ("Koret"), utilize a portion of the Property for landscaping, on-site circulation, access, and parking areas, among other uses. These uses were historically perceived by the City and Koret not to be permitted under the Original Deed, and as a result, Koret and its predecessors leased the Property from the City for these uses on a long-term basis.

While reviewing the Original Deed in preparation for a lease renewal negotiation, SFPUC concluded that most of Koret's activities under the lease were permitted under the Original Deed, and that instead of renewing the lease on a long-term basis, it would be more appropriate to clarify the rights granted to each party under the Original Deed. The parties therefore drafted the Amendment, which provides both the owners of the Clubview Apartments and the City with certain additional rights, privileges and obligations, and which obviate the need for further leasing. While SFPUC wishes to clarify the uses and avoid further leasing, it does not wish to transfer net value to the owners of the Clubview Apartments in the process, and has thus engaged Century | Urban to determine whether any such net value transfer is proposed in the Amendment.

Rights, Benefits and Obligations in the Original Deed

The Original Deed transferring the Property included a number of retained rights for the Baden Company and its successors. Without including exhaustive detail, those rights may be summarized as follows:¹

¹ This summary of Original Deed provisions is not meant to be complete or used for any legal purposes. It is a summary for the convenience of this report. Please refer to the Original Deed for a complete description of the rights and obligations of the parties.



- ❖ The Baden Company and its successors have the right to construct and maintain sewers and utilities across the Property as long as these sewers and utilities don't interfere with the Property owner's pipes and conduits.
- ❖ The Baden Company and its successors have the right to cultivate the Property and the right to ingress and egress over the Property at all times except over the Property owner's trestle.
- ❖ The Baden Company and its successors have the right to construct and maintain roads and streets on the Property provided they do not interfere with the pipes and conduits of the Property owner.
- ❖ The Baden Company and its successors have the right to enjoy the Property without fencing and with the Property surface left "in its present condition."
- ❖ The Baden Company and its successors have the right to be reimbursed for any damages by the Property owner to any crops on the Property.
- ❖ The Baden Company and its successors have the right to use the Property as a street for light vehicles, automobiles, saddle animals, pedestrians, except where the Property owner might have a trestle.
- ❖ The Baden Company and its successors are not allowed to use the Property as a right of way for any steam, electric or other railroad.

The following are rights the Original Deed provided the Property owner:

- ❖ The Property owner has the right to construct a trestle on the Property to carry its pipes or pipelines.
- ❖ The Property owner has the right to use the Baden Company's roads on Baden's property to convey pipes and materials and for the ingress and egress to the Property.
- ❖ The Property owner has the right to have its chief engineer supervise and approve the grade of any street or boulevard on the Property.

Rights, Benefits and Obligations in the Amendment

In the proposed Amendment, several of the aforementioned rights are clarified and expanded, and certain new rights, obligations and liabilities are created for each of the parties. Those rights, generally described in Section 2 of the Amendment, may be summarized as follows²:

Rights or Benefits of the City

- ❖ The City has the right to access the Property (on foot or with vehicles), inspect, install, maintain, expand, construct, improve or remove utility pipelines and related equipment, and the right to stage such activities on the Property. §2(1)(a)

² As per the note above, this summary is for convenience only and does not restate the Amendment in detail nor is it an attempt to represent its terms for legal or contractual purposes.



- ❖ The City has the right to request the removal of Koret's property at the Property if it interferes with the City's permitted actions; and if the removal is not completed in a reasonable timeframe, to remove the property itself. §2(1)(b)
- ❖ Koret may not restrict the City's access to the Property, and Koret's activities on the Property are subordinate to the City's use of the Property. §2(1)(b)
- ❖ If the City needs to remove any of Koret's pavement, landscaping or other improvements, the City is not obligated replace the same in its prior condition. §2(1)(b)
- ❖ The City may access the Property through roads on Koret's neighboring property or in any fashion across the Property. §2(2)(a)
- ❖ The City is not liable for inconvenience, nuisance or loss of income suffered by Koret which results from the City's entry into or use of the Property. §2(2)(b)
- ❖ Koret shall notify the City of any damage or threat to City property and is responsible for repairing such damage or paying for the City's remedy, at the City's option. §2(2)(b)
- ❖ The City has no responsibility for or liabilities associated with Koret's utilities, except to the extent of the City's negligence or willful misconduct. §2(2)(b)
- ❖ Koret shall not construct any infrastructure or improvement on the Property without the City's review and approval, which includes roads, driveways, shacks, storage, and fences.
- ❖ Koret shall not plant any trees, shrubs or plants except as permitted by SFPUC regulations, shall restore excavated areas, and shall prevent dumping of refuse or hazardous materials on the Property. §2(3)
- ❖ Koret shall maintain the Property in a good, clean and safe condition and coordinate with the City to avoid disruptions to the City's facilities. §2(3)
- ❖ Koret is required to obtain permits, licenses and approvals before commencing work at the Property, and then must maintain the work. §2(4)(a)
- ❖ When using vehicles near the City's facilities, Koret must follow SFPUC guidelines and requirements to avoid damaging the City's pipelines. Koret must ensure a minimum soil depth over the pipelines, and shall limit vehicular and equipment loads, vibrating compaction equipment and grading and excavation over the pipelines to activities and methods permitted by the SFPUC. §2(4)(b)
- ❖ Koret has a duty of care to avoid damage to the pipelines, and the City has the right to approve and oversee excavation work, which is regulated. §2(4)(c)
- ❖ Koret shall protect SFPUC facilities from invitees and shall notify the City of any damage and be responsible for the cost of any repairs. §2(4)(d)
- ❖ Koret shall obtain the City's written permission to make any surface or subsurface alterations at the Property, and any such work shall not interfere with or damage the City's infrastructure. §2(4)(e)
- ❖ Koret is responsible for maintaining the surface of the Property and shall repair any damage unless caused by the gross negligence or willful misconduct of the City. §2(5)
- ❖ Koret must replace any City monuments that it damages. §2(6)



- ❖ Koret indemnifies and holds the City harmless against any claims arising out of any injury or death or property destruction at the Property. §2(9)

Rights or Benefits of Koret

- ❖ To the extent practicable, the City will minimize disruption to Koret's use of the Property. §2(1)(a)
- ❖ Any City pipelines must be located underground, except to the extent of hatches and covers on the surface. §2(1)(b)
- ❖ The City shall not require the removal of Koret's improvements or parking unless necessary, and the City agrees that the City's and Koret's current uses are not currently in conflict. §2(1)(b)
- ❖ Subject to the City's rights and the preservation of its equipment, Koret's permitted uses include pedestrian use, vehicular parking, the construction and maintenance of roadways, lighting, sidewalks, utilities, landscaping and other related infrastructure. §2(3)

Rights or Benefits of Both Parties

- ❖ Both parties agree that the prevailing party in a legal action can collect attorney's fees from the other party. §2(10)
- ❖ Both parties agree to provide an estoppel to the other party within ten days. §3

Net New Benefits and Obligations

While much of the Amendment is a clarification of the relationship outlined between the parties in the Original Deed, several provisions do expand upon the rights and obligations in the Original Deed:

- ❖ Koret is granted a direct right to parking on the Property and no longer needs to accommodate a trestle on the Property surface.
- ❖ The City benefits from substantial clarification of the requirements on Koret to 1) protect and not interfere with the City's pipelines, 2) limit the type of work conducted on the Property, and 3) obtain permission before work is commenced. The City also receives clarification of Koret's duties to repair or pay the repair cost of damage to the City's infrastructure, while the City is not required to replace Koret infrastructure it need to remove for repairs to City property. In addition, Koret is required to remove Koret's property when necessary for the City to access or work on the Property. Finally, the City receives indemnification from Koret and protection against actions from Koret's invitees and their damage or injuries.

While the net changes specified by the Amendment are meaningful to the parties and will provide benefits through clarification of requirements, processes, and responsibilities, they are difficult to



value quantitatively, as such rights are not commonly transacted independently in arms-length purchases or sales. Qualitatively, both parties obtain new privileges and responsibilities, but not substantial ones relative to the rights and obligations in the Original Deed.

Koret benefits from new parking rights, but likely Koret and its predecessors have been overpaying for parking rights in their leases with the City, as many of the rights accorded in the previous lease with the City were in fact granted by the Original Deed. Koret no longer needs to contend with a trestle onsite, but a trestle was never built and there are no plans for one.

The City receives indemnification benefits, which potentially have enormous monetary value in the case of an expensive legal action. However, the chances of such a legal action are limited and not easy to predict. The City also receives the cost savings associated with Koret removing its property in the case of repairs, which may or may not ever be necessary. However, the largest monetary value for the City may be cost savings generated through the clarification of how Koret and its successors may or may not interact with the City's pipelines and subsurface equipment. Though also difficult to predict, the avoidance of damage to these pipelines (and resultant the downstream savings) may be extremely valuable for the City.

Both the City and Koret gain certain rights, privileges, and responsibilities in the Amendment, which are generally minor relative to the use rights granted in the Original Deed. Because both parties gain value in not easily-quantifiable ways that do not change the overall nature of the original transaction, Century | Urban concludes that no material value differential is created in the Amendment, and that both parties receive an approximately equal new set of benefits and responsibilities.

Conclusion

The City of San Francisco owns a 0.96-acre parcel of land in South San Francisco, which was purchased in 1930 for right-of-way utility purposes that remain important today. The purchase was subject to a grant deed from the seller including various use rights and limitations associated with the site. On behalf of the City, SFPUC wishes to clarify these rights with a new Amendment, which provides significantly more detail than the Original Deed and which creates some additional rights, privileges and obligations for each of the parties. After reviewing the net changes between the Original Deed and the Amendment, Century | Urban concludes that the proposal would not result in a transfer of material value between the parties.

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✓
✓

DEED.

40

BADEN IMPROVEMENT COMPANY

to

SPRING VALLEY WATER COMPANY.

50 ft strip

Dated April 6th, 1907.

FILED FOR RECORD AT REQUEST OF

Edw. F. Fitzpatrick

May 28th A. D. 1907

at 3:00 pm. past 2 o'clock

136

of Deeds, page 169
San Mateo County Records.

J. F. Johnson Recorder.

By Pauline E. Heenan Deputy Recorder

\$2.75 Printing
\$.10 Copy
Plotted ✓

DUPLICATE
NOT AN OFFICIAL RECORD

DUPLICATE
NOT AN OFFICIAL RECORD

DEED

7

ENGR LAND FILE
S. F. 678.

PREAMBLE AND RESOLUTION.

WHEREAS, the BADEN COMPANY has agreed to convey to the SPRING VALLEY WATER COMPANY certain lands near Baden in the County of San Mateo, in consideration of value received.

NOW, THEREFORE, BE IT RESOLVED that the President and Secretary of this Corporation be and they are hereby duly authorized, empowered and instructed to execute and acknowledge ^{a deed} in the name of the BADEN COMPANY, and the said Secretary is hereby authorized, empowered and instructed to affix the corporate seal to the said deed dated the sixth day of April, 1907, from the BADEN COMPANY to the SPRING VALLEY WATER COMPANY, conveying said property to said SPRING VALLEY WATER COMPANY.

AND BE IT FURTHER RESOLVED that the said President and Secretary be and they are hereby duly authorized, empowered and instructed to deliver said deed to the said SPRING VALLEY WATER COMPANY in consideration of the said value received.

I, C. C. BURR, Secretary of the BADEN COMPANY, hereby certify that the foregoing is a true and correct copy of the resolution of the BADEN COMPANY, adopted at a meeting of its Board of Directors held on Monday, the 8th day of April, 1907, and said resolution appears upon the minute books of said company.

C. C. Burr

Secretary,



Form 601
2/10/11

O.V.
Geo. Schumacher

DEED

7

ENGR LAND FILE
S. F. W. D.

DUPLICATE
NOT AN OFFICIAL RECORD

SSA

THIS INDENTURE, made this ^{6th}
day of April, A. D. 1907, by and between the

BADEN ~~IMPROVEMENT~~ COMPANY,

a corporation duly organized and existing under and by virtue of
the laws of the State of California, the party of the first
part, and the

SPRING VALLEY WATER COMPANY,

also a corporation duly organized and existing under and by
virtue of the laws of the State of California, the party of the
second part, -

WITNESSETH : -

That the said party of the first part, for and in con-
sideration of the sum of Ten (\$10.00) Dollars, gold coin of the
United States, to it in hand paid by the said party of the second
part, the receipt of which is hereby acknowledged, has granted,
bargained, sold, conveyed and confirmed and, by these presents,
does grant, bargain, sell, convey and confirm unto the said party
of the second part, its successors and assigns forever, all that
certain piece or parcel of land, situate, lying and being in the
County of San Mateo, State of California, and described as follows,
to-wit:-

see
L.C.B.
1/1

A strip of land, eighty (80) feet in width, the center line
of which is described as follows:-

DUPLICATE
NOT AN OFFICIAL RECORD

DEED

7

ENGR LAND FILE
S. F. W. D.

Beginning at a point marked "G" on the accompanying map, said point being located in the westerly line of the County Road from San Francisco to San Jose, and bearing north twenty-seven (27°) degrees fifteen (15') minutes west, a distance of one thousand two hundred and twelve (1,212) feet from the most easterly corner of the lands of the party of the first part on the west line of the County Road; thence, running north sixty-two (62°) ^{degrees} ~~feet~~, twenty-five (25') minutes west, one thousand six hundred and nine (1,609) feet, to a point marked "F" on map; thence north fifty-six (56°) degrees fifteen (15') minutes west, one hundred and six (106) feet, more or less, to a point marked "E" on map, - said point "E" being located in the division line between said tract of the party of the first part and the Flood and Mackay tract; said division line having been located from a description of the recorded deed of said property of the party of the first part:

122d

The northeasterly and southwesterly boundary lines of the said tract of land, eighty (80) feet in width, are located forty (40) feet, measured at right angles, on either side of and parallel to said center line; - the southeasterly end of this tract, through "G", being bounded by the westerly line of the County Road, bearing north twenty-seven (27°) degrees fifteen (15') minutes west, and the northwesterly end of this tract, through "E", being bounded by said division line between the lands of said party of the first part and those of Flood and Mackay, bearing south seventy-two (72°) degrees forty-five (45') minutes west: said point "E" being identical with the southeasterly end of the center line of a corresponding tract of land, eighty (80) feet in width, through the said Flood and Mackay tract, which latter forms a continuation of the tract hereinabove described; courses being expressed by true

rec'd
C. C. B.

DEED

7

ENGR LAND FILE
S. F. W. D.

meridian; and the entire tract, herein described, containing three and fifteen hundredths (3.15) acres, more or less:

Excepting and reserving therefrom the right, on the part of the party of the first part, to construct and maintain sewers over and across said strip of land and to construct and maintain over and across said strip of land conduits and poles, with wires, for conducting, carrying and transmitting electric current for telephone, telegraph, lighting, heat and power purposes, and also the right to construct and maintain over and across said strip of land lines of pipe for carrying water and for carrying and conducting gas for light, heat and power purposes, and also the right, at all reasonable times, to enter upon said strip of land for the purpose of repairing or renewing said sewers, conduits, wires and pipes, and to keep the same, or any part thereof, in proper condition for use,- all of which must be done in such manner as to avoid any interference with the pipes and conduits of the party of the second part, and all of which must be done to the satisfaction of the Chief Engineer of the party of the second part:

Also excepting and reserving therefrom the right, on behalf of the party of the first part, and their tenants, to cultivate said strip of land, and the right to have ingress and egress to and from said strip of land and to passage over all parts thereof at all times: *excepting over trestle.*

*rcp
ecb
ksh*

Also excepting and reserving therefrom the right, on behalf of the party of the first part, to construct and maintain existing or other roads and streets across said strip of land; provided

DUPLICATE
NOT AN OFFICIAL RECORD

DEED

ENGR LAND FILE
S. F. W. D.

that the same shall not interfere with the pipes, pipe lines or conduits of the said party of the second part:

IT IS UNDERSTOOD AND AGREED that the said party of the second part shall not fence said strip of land, hereinbefore described, and shall leave the surface thereof as nearly as possible in its present condition, except that the said party of the second part shall have a right to construct a trestle thereon, wherever necessary to carry its pipes or pipe lines.

IT IS FURTHER UNDERSTOOD AND AGREED that the party of the second part will pay to the said party of the first part, or its tenants, any actual damage accruing to the crops of the said party of the first part, or its tenants, growing upon said strip of land, which said damage shall accrue from any acts of the said party of the second part; and the amount of said damage, if possible, shall be mutually agreed upon, but, if not, it shall be determined by arbitrators, one of whom shall be selected by the party of the first part, or its tenants, and one by the said party of the second part; and if the two cannot agree, they shall select a third, whose decision shall be final, without recourse to any Court:

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall have the right to use any and all roads upon the premises of the party of the first part for the purpose of conveying pipe and materials to the said tract of land, hereinbefore described, and for the purposes of ingress and egress to and from and passage across said strip of land at all times:

*rec'd
cc 13
4*

DEED

ENGR LAND FILE
S. F. W. D.

DUPLICATE
NOT AN OFFICIAL RECORD

IT IS FURTHER UNDERSTOOD AND AGREED that the said tract of land shall not be used as a right of way for any steam, electric, or any other railroad, but the said party of the first part shall have the right to use the same as a street or boulevard for light vehicles, automobiles, saddle animals, pedestrians and the like, except where it is necessary for the party of the second part to construct a trestle to carry its pipes or pipe-lines; provided, further, that the grade of the said street or boulevard be established under the supervision and to the satisfaction of the Chief Engineer of the party of the second part; and provided, further, that if the said party of the first part shall subdivide and sell its property adjacent to the said strip of land, so herein conveyed, that then and in that event said street or boulevard may be used for heavy teams and traffic for a distance not exceeding one block; and provided, further, that no trees or shrubs shall be planted in the roadway of said street or boulevard, nor in the center thereof:

These covenants and conditions shall bind the successors and assigns of both parties hereto:

The party of the second part, by the acceptance of this deed, agrees to all the conditions, covenants, reservations and stipulations in the entire grant contained; and, in addition to such acceptance of this conveyance, the record of the same, by or at the request of the said party of the second part, shall be further and conclusive evidence of such acceptance:

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining,

CCB
CCB
CCB

DEED

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ENGR LAND FILE
S. F. W. D.

and the reversion and reversions, remainder and remainders,
rents, issues and profits thereof:

TO HAVE AND TO HOLD, all and singular, the said land
above described (subject to said reservations, covenants, condi-
tions and stipulations), together with the appurtenances, unto
the said party of the second part, its successors and assigns
forever:

IN WITNESS WHEREOF, the said party of
the first part has caused this indenture to be executed, in its
corporate name and under its corporate seal, by its President
and Secretary, thereunto duly authorized, - all on the day and
year first herein written.

*cc 13
ces*

SIGNED, SEALED AND DELIVERED)
IN THE PRESENCE OF:-)

BADEN ~~IMPROVEMENT~~ COMPANY, *W.S.P.*

by

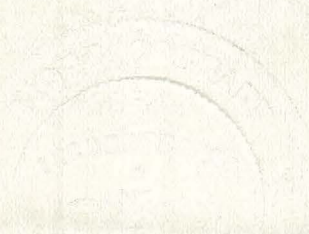
[Handwritten Signature]

President.

and by

[Handwritten Signature]

Secretary.



State of California,
City and County of San Francisco

SS.

On this Tenth day of April

in the year One Thousand Nine Hundred and seven before me, GEO. T. KNOX, a Notary Public, in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared

E C Burr & C C Burr

known to me to be the President and Secretary respectively of Baden Company

the Corporation described in and that executed the within instrument, and also known to me to be the person~~s~~ who executed it on behalf of the Corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year in this Certificate first above written.

Geo T Knox

NOTARY PUBLIC.

In and for the City and County of San Francisco, State of California.



EXECUTIVE DEPARTMENT
SPRING VALLEY WATER COMPANY
425 MASON STREET

DEED

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ENGR LAND FILE
S. F. W. D.

DUPLICATE
NOT AN OFFICIAL RECORD

SAN FRANCISCO, CAL.

March 7, 1924.

Mr. John E. Behan,
Secretary,
B u i l d i n g.

Dear Sir:

In response to your letter of March 7th, with reference to anything further that might be done in the matter of the Baden property of the Company, proposed to be used by the California Golf Club; the exercise of any rights that we may have are limited to Mr. Thomas' recent legal opinion. I have nothing to suggest unless there be something in this opinion that it is desirable to do which may not have been done. I have not read this opinion closely.

Yours very truly,

S. P. Eastman

DEED
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DEED

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ENGR LAND FILE
S. F. W. D.

March 7th, 1924.

S. P. Eastman, Esq.
 President,
 Building.

Dear Sir:-

Herewith exchange of letters between J. F. Leicester, Attorney for the Baden Company and ourselves with relation to a reserved use in a portion of our Baden-Merced right of way.

Facts are that we paid \$10,000 to the Baden Company on April 6th, 1907 for a strip of about 3 $\frac{1}{2}$ acres running through a large tract of land, where the line divides near Baden, subject to certain reservations as to surface use.

Our main use is for transmission lines, but the Baden Company is selling its reservation to "cultivate" to our present tenants at Ingleside, the California Golf Club of San Francisco for golf club purposes and said Club desires to construct "bunkers" on the strip.

The stand we have thus far taken, upon the advice of our attorneys, is a willingness to concede the use for "fairways and greens" if we are not put to the expense of damages in case of other disturbances for our purposes, but not to permit the construction of "bunkers".

I hate to think that we paid \$10,000 for the fee to our land and that we do not control it.

What further course do you suggest we pursue?

Yours very truly,

JEB:H

DROWN, LEICESTER & DROWN
ATTORNEYS AND COUNSELORS AT LAW
1001-1004 CALIFORNIA PACIFIC BUILDING
TELEPHONE SUTTER 1430

J. F. LEICESTER
W. N. DROWN

CABLE ADDRESS
"BELD"

DEED

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ENGR LAND FILE
S. F. W. D.

DUPLICATE
NOT AN OFFICIAL RECORD

SAN FRANCISCO, CAL. Mch. 6, 1924.

Mr. John E. Behan
Secretary and Treasurer of
Spring Valley Water Company
425 Mason Street, City.

Dear Sir:

I have yours of the 3rd inst. I hardly agree with your construction of the instrument so far as our right to use the surface of the land for a golf course. ^{is concerned} The deed gives us the express right to cultivate this land, and if we choose to cultivate it for the purpose of lawns we could, of course, use the lawn for any proper purpose, including the play of golf. Certainly such a use would not interfere with the purposes for which you have the right to use the land, at least not nearly as much as our clear and express right of laying out roads and erecting telephone poles. However, in view of what you say in your letter it is useless to further discuss this matter because I believe we can come to an agreement.

You say that the construction of bunkers on this strip of land would not meet the views of your engineering department. I think if they will reconsider this matter they will agree with me that such a construction could not possibly be of any detriment to your rights. We clearly have the right to grade the strip of land for a road and use it for many other purposes. The construction of one or more bunkers would not disturb the surface of the ground nearly as much as would the construction of a road along the strip. Indeed, it would hardly disturb the surface at all. The Club takes the view that it could not carry out its plans for a properly constructed golf course without placing one or more of its bunkers on this strip. I believe if we discuss the matter together that we could reach an agreement in this matter.

Should you have to repair your conduits, any excess cost occasioned by digging through a bunker could be paid by the Club. It could only be a matter of a few dollars in any event.

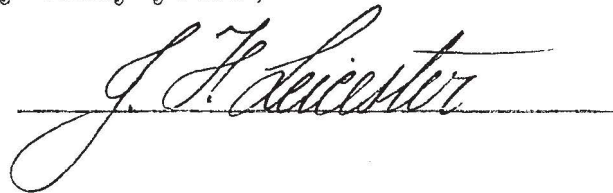
DEED

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ENGR LAND FILE
S. F. W. D.

I will take the matter up with you further after I have discussed it with the officers of the Club. Meanwhile I thank you for your attention to the matter, and trust that we can shortly arrive at an amicable agreement satisfactory to all parties.

Very truly yours,



JFL

DEED

ENGR LAND FILE
S. F. W. D.

March 3rd, 1924.

J. F. Leicester, Esq.
1001 California Pacific Building,
San Francisco, California.

Dear Sir:-

Your letter of February 18th has been received and we have given consideration to the matter you present.

We cannot acknowledge that the property conveyed in fee to this company by the deed of April 6, 1907, is subject to rights reserved by the grantor to use the same for the purposes of a golf course. The right of conducting sports on land is a well recognized easement, and if the reservation of such an easement had been intended it would have been a simple matter to have so provided in the instrument. It is unquestionably the fact that such a use of the land was not contemplated. This company did not acquire an easement only, leaving the grantor free to use the property for any purpose not inconsistent with the easement. We acquired the fee title subject to certain rights expressly reserved; and no rights remained in the grantor except those that were reserved.

However, it is our policy to co-operate with others in matters of this kind so far as we can consistently with our own interests, and we should be willing to consider joining with the proper parties in an instrument whereby the reservations should be changed from those expressed in the deed to the right to use the surface of the ground at its present grade for greens or fairways for a golf course at such points as are not now occupied by us with trestles or other surface structures or improvements, conditioned for the payment by the holder of the reserved rights but on our behalf of the taxes and assessments levied on the land, with the obligation on our part to interfere with the use of the course as little as reasonably possible and to refill with all convenient despatch and substantially to present grade the excavations which it may be necessary for us to make from time to time, but without obligation to compensate for damage necessarily done to lawns, etc., the new instrument not to alter our present right of ingress and egress for purposes in connection with our use of our property, and no fences to be made. Permitting the disturbance of the

DEED

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ENGR LAND FILE
S. F. W. D.

DUPLICATE
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present surface of the ground which would be incidental to the construction of bunkers on our land does not meet the views of our engineering department; but we presume if the strip may be used for greens and fairways the course may be so laid out that the bunkers are located elsewhere.

Any such proposition will, of course, have to be passed upon by our Board of Directors or Executive Committee.

Yours very truly,

Secretary

JEB:H

DEED

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ENGR LAND FILE
S. F. W. D.

DUPLICATE
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February 28th, 1924.

S. P. Eastman, Esq.
President,
Building.

Dear Sir:-

I noticed in the columns of the Daily Press that the California Golf Club of San Francisco, our present tenants on the old golf course at Lake Merced, have arranged to purchase from the Baden Company a few hundred acres of land at Baden for a golf course.

We own an eighty foot strip near the proposed golf course which was bought from the Baden Company on April 6th, 1907, and the strip is used as a portion of the Baden Merced right of way. In this connection, Attorney J. F. Leicester, representing the Baden Company seems to think that reserved rights to said Company give them the privilege of assigning the use of the strip to the Golf Club for fairways, greens and bunker purposes.

The opinion of our attorneys has been obtained and they suggest a reply to Mr. Leicester as to our position, with which I fully agree. Will you please read the suggested reply contained in our attorneys' opinion and let me have your views.

Mr. Leicester's client may pay taxes on the strip, but we do likewise.

Very truly yours,

JEB:H

EDWARD J. McCUTCHEN
WARREN OLNEY, JR.
J. M. MANNON, JR.
A. CRAWFORD GREENE
ALLAN P. MATTHEW
FARNHAM P. GRIFFITHS
F. F. THOMAS, JR.
JOHN T. PIGOTT

JOSEPH B. McKEON
JOHN F. CASSELL
JOHN W. PARKER
RUSSELL A. MACKAY
JAMES D. ADAMS
STANLEY MORRISON
ROBERT L. LIPMAN
JAY T. COOPER
HAROLD A. BLACK
EDWIN S. PILLSBURY

McCUTCHEN, OLNEY, MANNON & GREENE

COUNSELORS AT LAW

DEED

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CABLE ADDRESS MAGPAG-
ENGR LAND FILE
S. F. W. D.

BALFOUR BUILDING
SAN FRANCISCO, CALIFORNIA

February 26, 1924

Mr. John E. Behan,
425 Mason Street,
San Francisco, Calif.

Dear Sir:

Baden Company.

We return herewith (a) original deed, Baden Company to Spring Valley Water Company, dated April 6, 1907, and recorded May 28, 1907, in Volume 136 of Deeds, p. 169, records of San Mateo County, and (b) letter from J. F. Leicester, Esq., to Spring Valley Water Company dated February 18, 1924. We have considered the questions asked in your letter of February 20th, with reference thereto.

By the deed the Baden Company reserved a great variety of rights in respect to the strip of land conveyed to the water company: the right, on the part of the first party, to construct and maintain over and across the strip sewers, conduits, poles, wires, pipe lines; the right, on behalf of the first party, "and their tenants", to cultivate said strip of land and the right to have ingress and egress to and from the strip and passage over all parts thereof (excepting trestle) at all times; the right, on behalf of first party, to construct and maintain existing and other roads and streets across said strip; the right to have the strip unfenced and the surface kept as nearly as possible in its then condition (except for necessary trestles); and the right to use the strip as a street or boulevard (except where trestles are necessary).

This brief enumeration of the principal reserved rights is made to indicate their broad scope. While the water company acquired the fee title, subject to the reserved rights, the character of the reservations is such that the water company acquired little more, in substance, than the equivalent of an easement with, as you say, the necessity of paying the taxes on the fee.

In view of these broad provisions we think the definition of the word "cultivate" (as restricted to tillage for the purpose of raising crops, or, on the other hand, as meaning to change from a state of nature) is not determinative; while it is impossible to

Mr. Behan:
Approved
Feb. 29, 1924

DUPLICATE
NOT AN OFFICIAL RECORD

Mr. John E. Behan.

give unqualified advice, we incline to the view that use for the general purposes of a golf course may reasonably be regarded as within the effect of the reservations if it does not unduly impair your use of the strip for the purposes of a conduit for water. Greens, although a form of cultivation which is not for the purpose of yielding crops, may be included in the term "cultivate" if given a liberal construction; fairways and the passing and repassing incident thereto may be included in the term "passage" and other provisions which indicate an intention that passing and repassing shall be unrestricted except where there are trestles and except by heavy teams and traffic.

It is true, as you say, that a golf course is a use which was probably not thought of in connection with the property at the time the conveyance was executed. It is also true that the right of conducting lawful sports upon land is a recognized easement (Civil Code, Section 801) and if contemplated could easily have been expressed. Nevertheless, while a grant is to be interpreted in favor of the grantee, a reservation contained in a grant is to be interpreted in favor of the grantor (Civil Code, Section 1069), and it seems to us probable that the reservations in this deed, given a liberal construction in favor of the grantor, would be held to permit these proposed uses, at any rate if they do not materially interfere with your use of the conduit.

Bunkers, involving a disturbance of the surface of the ground, may stand in a different position. They may tend seriously to interfere with your conduit, and you may, we think, properly insist that the deed contemplates that the surface of the ground will be kept in its natural position subject only to grade changes approved by your Chief Engineer.

The foregoing answers your first, second and fourth questions. There remains the third question: whether the reservations are personal to the grantor (the Baden Company) and its tenants, or on the other hand may be assigned. Whether the reservations are regarded as appurtenant (as is perhaps implied, as to some of them, by the reference to tenants) or as in gross, we believe they are not personal to the grantor but may be assigned, and that the conveyance of the contiguous land of the Baden Company on both sides of the strip, together with the reservations in the interlying portion of the strip, would be effective to pass the reservations in respect thereto. In the deed, following the reservations is a paragraph reading as follows:

"These covenants and conditions shall bind the successors and assigns of both parties hereto:"

DEED

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ENGR LAND FILE #7
S. F. W. D.

Mr. John E. Behan.

We attach no particular importance to the reference to them as "covenants and conditions"; or to the colon(:) at the end of the quoted paragraph (the same punctuation was used at the end of practically all of the paragraphs in lieu of a period (.) and obviously was not intended to make the paragraph refer to what followed rather than to what preceded); or to the omission of "and enure to the benefit of" after "bind".

There are several points in Mr. Leicester's letter which call for comment:

He states that the water company would be liable to make good damage, resulting from your excavations, to lawns (used in connection with the golf course), and to replace the surface as found. We should question whether the obligation to pay "any actual damage accruing to the crops" of the first party or its tenants would include lawns cultivated for purposes other than crops, or whether the obligation to "leave the surface thereof as nearly as possible in its present condition" could refer to a subsequent condition differing from that existing at the time of the deed.

He refers to liability for taxes heretofore paid for your account on this land. We question whether there is any liability to make reimbursement therefor if the payment was not made at your request.

Ede v. Heywood,
153 Cal. 615.

We feel there is probably merit in his suggestion that the use of the property for a golf course would be less burdensome to you than many of the uses expressly permitted. This negotiation may make it possible for you to better your position. You may deem it good judgment to write Mr. Leicester substantially as follows:

Your letter of February 18th has been received and we have given consideration to the matter you present.

We cannot acknowledge that the property conveyed in fee to this company by the deed of April 6, 1907, is subject to rights reserved by the grantor to use the same for the purposes of a golf course. The right of conducting sports on land is a well recognized easement, and if the reservation of such an easement had been intended it would have been a simple matter to have so provided in the instrument. It is unquestionably the fact that such a use of the land was not contemplated. This company did not acquire an easement only, leaving the grantor free to use the property for any purpose not inconsistent with the easement. We acquired the fee title subject to certain

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ENGR LAND FILE
S. F. W. #4

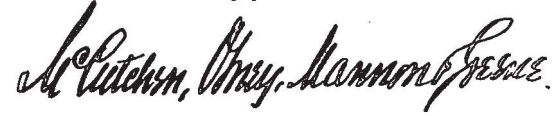
Mr. John E. Behan.

rights expressly reserved; and no rights remained in the grantor except those that were reserved.

However, it is our policy to co-operate with others in matters of this kind so far as we can consistently with our own interests, and we should be willing to consider joining with the proper parties in an instrument whereby the reservations should be changed from those expressed in the deed to the right to use the surface of the ground at its present grade for greens or fairways for a golf course at such points as are not now occupied by us with trestles or other surface structures or improvements, conditioned for the payment by the holder of the reserved rights but on our behalf of the taxes and assessments levied on the land, with the obligation on our part to interfere with the use of the course as little as reasonably possible and to refill with all convenient despatch and substantially to present grade the excavations which it may be necessary for us to make from time to time, but without obligation to compensate for damage necessarily done to lawns, etc., the new instrument not to alter our present right of ingress and egress for purposes in connection with our use of our property, and no fences to be made. Permitting the disturbance of the present surface of the ground which would be incidental to the construction of bunkers on our land does not meet the views of our engineering department; but we presume if the strip may be used for greens and fairways the course may be so laid out that the bunkers are located elsewhere.

Any such proposition will, of course, have to be passed upon by our Board of Directors or Executive Committee.

Yours truly,



Enclosures.

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DEED

ENGR LAND FILE
S. F. W. D.

February 20th, 1924.

Messrs. McCutchen, Olney,
Mannon & Greene, Attys.,
Balfour Building,
San Francisco, Calif.

Gentlemen:-

ATTENTION F. F. THOMAS, ESC.

Herewith communication dated February 18th, 1924, from J. F. Leicester of Drown, Leicester & Drown, 1001 California Pacific Building, this City, and also the original deed of April 6th, 1907 from Baden Company to Spring Valley Water Company granting an 80 foot strip near Baden, San Mateo County, subject to certain reservations and conditions. From Mr. Leicester's letter it is apparent that he is seeking to sell an added use in our lands for golf course purposes. In this connection, will you kindly express your opinion on the following questions:

Are we justified legally in acceding to Mr. Leicester's request in permitting the construction of bunkers and fairways upon the strip of land in question?

While we have acceded to the condition that the land may be "cultivated" by the tenants of the Baden Company, does this mean that another use never thought of before can be carried out by the Baden Company?

Is the deed personal in its conditions, that is, does it apply only to the Baden Company and its tenants?

What did we really get by the conveyance other than the payment of taxes upon the strip and where does the paramount interest lie?

Will you be kind enough to return the deed and the communication with your opinion.

Very truly yours,

JEB:H

DROWN, LEICESTER & DROWN
ATTORNEYS AND COUNSELORS AT LAW
1001-1004 CALIFORNIA PACIFIC BUILDING
TELEPHONE SUTTER 1430

J. F. LEICESTER
W. N. DROWN

CABLE ADDRESS
"DELD"

DEED

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ENGR LAND FILE
S. F. W. D.

DUPLICATE
NOT AN OFFICIAL RECORD

SAN FRANCISCO, CAL. Feb. 18, 1924.

Spring Valley Water Company
425 Mason Street
San Francisco, Cal.

Gentlemen:

By deed dated April 6th 1907 Baden Company conveyed to you, subject to certain restrictions and exceptions, a strip of land eighty feet wide forming a part of the Baden Farm in San Mateo County, California.

The Baden Company excepted and reserved from the said strip of land a right to construct and maintain sewers, conduits, poles, wires and gas pipes over and across the same, also the right to cultivate said strip of land, also the right to construct and maintain roads and streets upon and across the same, and to construct and maintain over and across said strip of land pipes and pipe lines for water; and in and by the said Deed you agree not to fence said strip of land, and to leave the surface thereof unmolested, except by way of constructing a trestle thereon, and to pay any actual damages that may accrue to any crops that may be grown upon said strip of land.

The Baden Company now has in contemplation a sale of the entire Baden Farm to a Golf Club. If the sale goes through the Club desires to construct golf courses upon said tract of land and to maintain the same as a golf course. It has raised the question as to whether or not you would seek in any way to interfere with this right to construct bunkers and fairways upon the strip of land in question. I am inclined to think that under the rights excepted and reserved by the Baden Company you could not object to any use of the surface of the strip of land the Golf Club might desire to make thereof. However, it would be better for all parties to remove all doubt upon this subject, and I am therefore requested by the Baden Company to ascertain your views on the matter. Of course, anything that is done by the Golf Club must not in any way damage or interfere with your pipe line, but on the other hand the use of this property for a golf course, and the construction of fairways and bunkers thereon, could not possibly damage your pipe line. If, however, you should desire to repair or replace your pipe line, it would become necessary for you to dig up the surface of at least some portion of the land in question, and in so doing you would damage the lawns growing thereon; and I think under the terms of the deed you would readily admit your liability to make good

DEED

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ENGR LAND FILE
S. F. W. D.

this damage and to replace the surface of the ground as you found it.

It would greatly facilitate the pending negotiations if you would agree to execute a contract in which you acknowledge the right of the Golf Club to construct bunkers upon and over this strip of land, and generally to use the same for the purposes of this golf course, and in which you further agree not to interfere with the use of the land for a golf course, excepting so far as may be necessary for the purpose of protecting your rights to maintain, repair and lay your water conduits therein.

As I understand it you are liable for the taxes upon the strip of land in question, although the Baden Company has been paying these taxes for some years last past, and is probably entitled to reimbursement. Perhaps as a consideration for the agreement which the Golf Club will desire from you in case it buys the property, it might agree to make no change in the assessment, and to permit the strip in question to be assessed as heretofore to the owners of the rest of the tract, and the Baden Company might release you from all liability for taxes heretofore paid for your account on this land. However, this is a matter of little importance.

I believe that the use of the property for a golf course would prove more satisfactory to you than its use for almost any other purpose, and would interfere less with any possible use you might desire to make of the strip of land than would the subdivision of the tract into building lots.

Will you kindly give this matter your immediate consideration, and let me hear from you at your earliest possible convenience. We feel sure that you will not desire to impede the proposed sale, but will be willing to accommodate the Baden Company so far as you can do so without prejudicing any of your rights.

Yours very truly,

J. H. Leicester

B 136

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DUPLICATE
NOT AN OFFICIAL RECORD

South San Francisco Land and Improvement Co. (Seal)
(Corp Seal) By Leroy Hough, Vice- President.

Secretary
Geo. H. Chapman.

State of California,)
) SS.
County of San Mateo.)

On this 24th day of May nineteen hundred and seven before me, E. E. Cunningham, a Notary Public in and for said County and State of California, residing therein duly commissioned and sworn, personally appeared Leroy Hough, and George H. Chapman, known to me to be the officers who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

(Seal) E. E. Cunningham,

Notary Public in and for said City and County of San Mateo, State of California.

A true copy of an original recorded at the request of Hensley Green Co. May 23th A. D. 1907 at 22 min. past 9 oclock A. M.,

By *J. F. Johnson* County Recorder,
C. Adams Deputy Recorder.

PREAMBLE AND RESOLUTION.

WHEREAS, the BADEN COMPANY has agreed to convey to the Spring Valley Water Company certain lands near Baden in the County of San Mateo, in consideration of value received.

Now, Therefore be it resolved that the President and Secretary of this Corporation be and they are hereby duly authorized, empowered and instructed to execute and acknowledge a deed in the name of the Baden Company, and the said Secretary is hereby authorized, empowered and instructed to affix the corporate seal to the said deed, dated the sixth day of April 1907, from the Baden Company, to the Spring Valley Water Company, conveying said property to said Spring Valley Water Company.

And be it further resolved that the said President and Secretary he and they are hereby duly authorized, empowered and instructed to deliver said deed to the said Spring Valley Water Company in consideration of the said value received.

I, J. C. Burr, Secretary of the Baden Company, hereby certify that the foregoing is a true and correct copy of the resolution of the Baden Company, adopted

at a meeting of its Board of Directors held on Monday, the 9th day of April 1907, and said resolution appears upon the minute books of said company.

(Corp Seal)

C. C. Burr,
Secretary-

THIS INDENTURE, made this 6th day of April A. D. 1907 by and between the Baden Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, the party of the first part, and the

SPRING VALLEY WATER COMPANY,
also a corporation duly organized and existing under and by virtue of the laws of the State of California, the party of the second part,-

WITNESSETH :-

That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, gold coin of the United States, to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents, does grant, bargain sell, convey and confirm unto the said party of the second part, its successors and assigns forever, all that certain piece or parcel of land, situate lying and being in the County of San Mateo, State of California, and described as follows, to-wit:-

A strip of land, eighty (80) feet in width, the center line of which is described as follows:

Beginning at a point marked "G" on the accompanying map, said point being located in the westerly line of the County Road from San Francisco to San Jose and bearing north twenty seven (27°) degrees fifteen (15') minutes west, a distance of one thousand two hundred and twelve (1,212) feet from the most easterly corner of the lands of the party of the first part on the west line of the county road; thence, running north sixty two (62°) degrees twenty five (25') minutes west one thousand six hundred and nine (1,609) feet to a point marked "F" on map; thence north fifty six (56°) degrees fifteen (15') minutes west, one hundred and six (106) feet more or less, to a point marked "E" on map, said point "E" being located in the division line between said tract of the party of the first part and the Flood and Mackay tract; said division line having been located from a description of the recorded deed of said property of the party of the first part:-

The northeasterly and southwesterly boundary lines of the said tract of land eighty (80) feet in width, are located forty (40) feet, measured at right angles, on either side of and parallel to said center line;- the southwesterly end of this tract, through "G" being bounded by the westerly line of the County Road, bearing North twenty seven (27°) degrees fifteen (15') Minutes west, and the northwesterly end of this tract, through "E" being bounded by said division line between the lands of said party of the first part and those of Flood and Mackay, bearing south seventy two (72°) degrees forty-five (45') minutes

DUPLICATE
NOT AN ORIGINAL RECORD

DUPLICATE
OF ORIGINAL

west: said point "E" being identical with the southeasterly end of the center line of a corresponding tract of land, eighty (80) feet in width, through the said Flood and Mackay tract, which latter forms a continuation of the tract hereinabove described; courses being expressed by true meridian; and the entire tract, herein described, containing three and fifteen hundredths (3.15) acres more or less:

Excepting and reserving therefrom the right, on the part of the party of the first part, to construct and maintain sewers over and across said strip of land and to construct and maintain over and across said strip of land conduits and poles, with wires, for conducting, carrying and transmitting electric current for telephone, telegraph, lighting heat and power purposes, and also the right to construct and maintain over and across said strip of land lines of pipe for carrying water and for carrying and conducting gas for light, heat and power purposes, and also the right, at all reasonable times, to enter upon said strip of land for the purpose of repairing or renewing said sewers, conduits wires and pipes, and to keep the same, or any part thereof, in proper condition for use, all of which must be done in such manner as to avoid any interference with the pipes and conduits of the party of the second part, and all of which must be done to the satisfaction of the Chief Engineer of the party of the second part:-

Also excepting and reserving therefrom the right, on behalf of the party of the first part, and their tenants to cultivate said strip of land and the right and egress to have ingress to and from said strip of land and to passage over all parts thereof at all times: excepting over trestle.

Also excepting and reserving therefrom the right, on behalf of the party of the first part, to construct and maintain existing or other roads and streets across said strip of land; provided that the same shall not interfere with the pipes pipe lines or conduits of the said party of the second part:-

It Is Understood and Agreed that the said party of the second part shall not fence said strip of land, hereinbefore described, and shall leave the surface thereof as nearly as possible in its present condition, except that the said party of the second part shall have a right to construct a trestle thereon, wherever necessary to carry its pipes or pipe lines:-

It Is Further Understood And Agreed that the party of the second part will pay to the said party of the first part or its tenants any actual damage accruing to the crops of the said party of the first part, or its tenants, growing upon said strip of land, which said damage shall accrue from any acts of the said party of the second part; and the amount of said damage if possible, shall be mutually agreed upon, but, if not, it shall be determined by arbitrators, one of whom shall be selected by the party of the first part, or its tenants, and one by the said party of the second part; and if the two cannot agree, they shall select a third, whose decision shall be final without recourse to any Court:

It Is Further Understood And Agreed that the said party of the second part shall have the right to use any and all roads upon the premises of the party of the first part for the purpose of conveying pipe and materials to the said tract

of Land, hereinbefore described, and for the purposes of ingress and egress to and from and passage across said strip of land at all times:-

It Is Further Understood And Agreed that the said tract of land shall not be used as a right of way for any steam, electric, or any other railroad but the said party of the first part shall have the right, to use the same as a street or boulevard for light vehicles, automobiles, saddle animals, pedestrians and the like, except where it is necessary for the party of the second part to construct a trestle to carry its pipes or pipe-lines; provided, further, that the grade of the said street or boulevard be established under the supervision and to the satisfaction of the Chief Engineer of the party of the second part; and provided, further, that if the said party of the first part shall subdivide and sell its property adjacent to the said strip of land, so herein conveyed, that then and in that event said street or boulevard may be used for heavy teams and traffic for a distance not exceeding one block; and provided, further, that no trees or shrubs shall be planted in the roadway of said street or boulevard, nor in the center thereof:

These covenants and conditions shall bind the successors and assigns of both parties hereto:

The party of the second part, by the acceptance of this deed agrees to all the conditions covenants reservations and stipulations in the entire grant contained; and in addition to such acceptance of this conveyance, the record of the same, by or at the request of the said party of the second part, shall be further and conclusive evidence of such acceptance:

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof:

To have and to hold, all and singular the said land, above described (subject to said reservations, covenants conditions and stipulations) together with the appurtenances unto the said party of the second part its successors and assigns forever:

In Witness Whereof, the said party of the first part has caused this indenture to be executed, in its corporate name and under its corporate seal, by its President and Secretary thereunto duly authorized all on the day and year first herein written.

Baden Company,

(Corp Seal)

By E. C. Burr,
President.

and by C. C. Burr,
Secretary.

Signed, Sealed and Delivered

in the Presence of :-

DUPLICATE
NOT AN OFFICIAL RECORD

State of California,)
) SS.
City and County of San Francisco.)

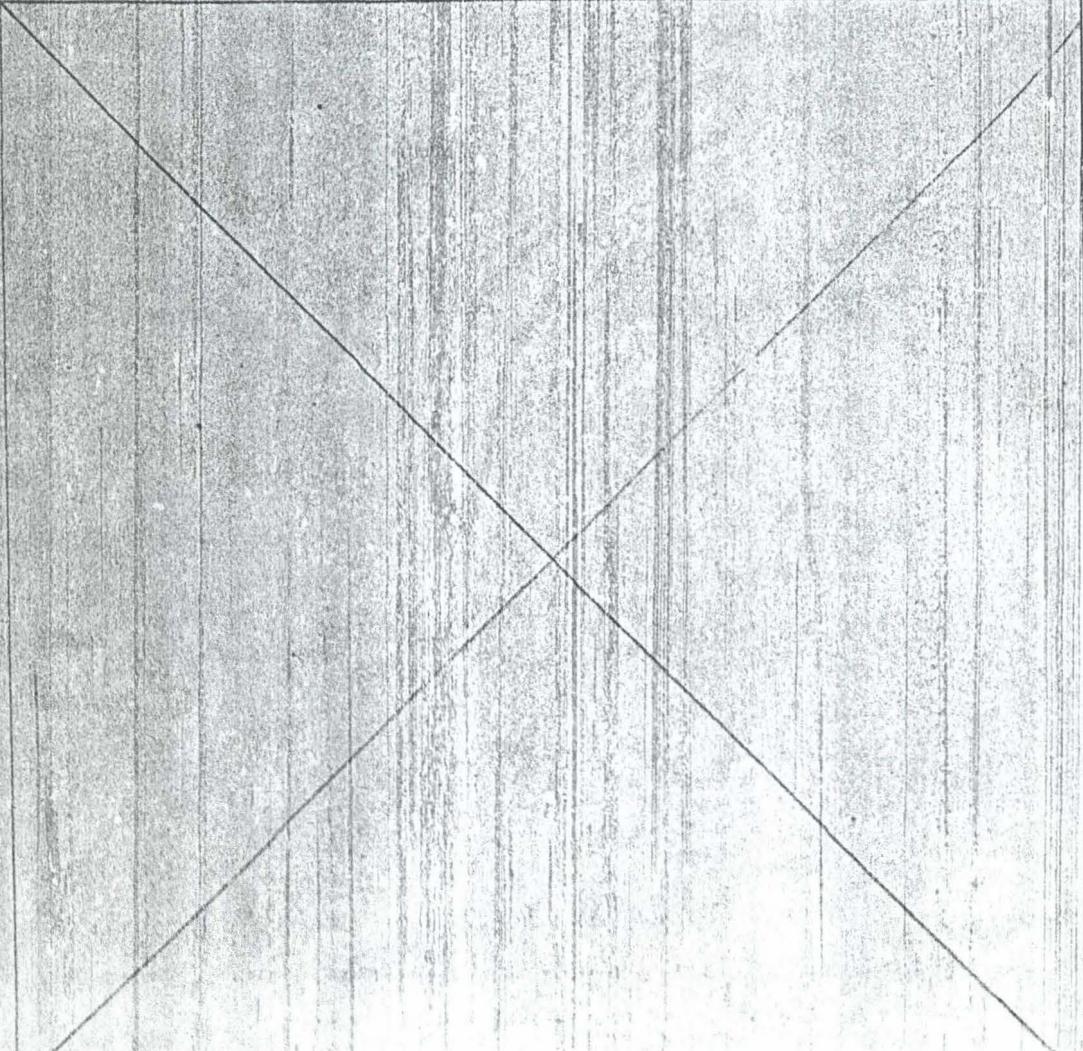
On this tenth day of April in the year one thousand nine hundred and seven, before me, Geo. T. Knox, a Notary Public in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared E. C. Burr & C. C. Burr, known to me to be the President and Secretary respectively of Baden Company the Corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the Corporation therein named, and they acknowledged to me that such Corporation executed the same.

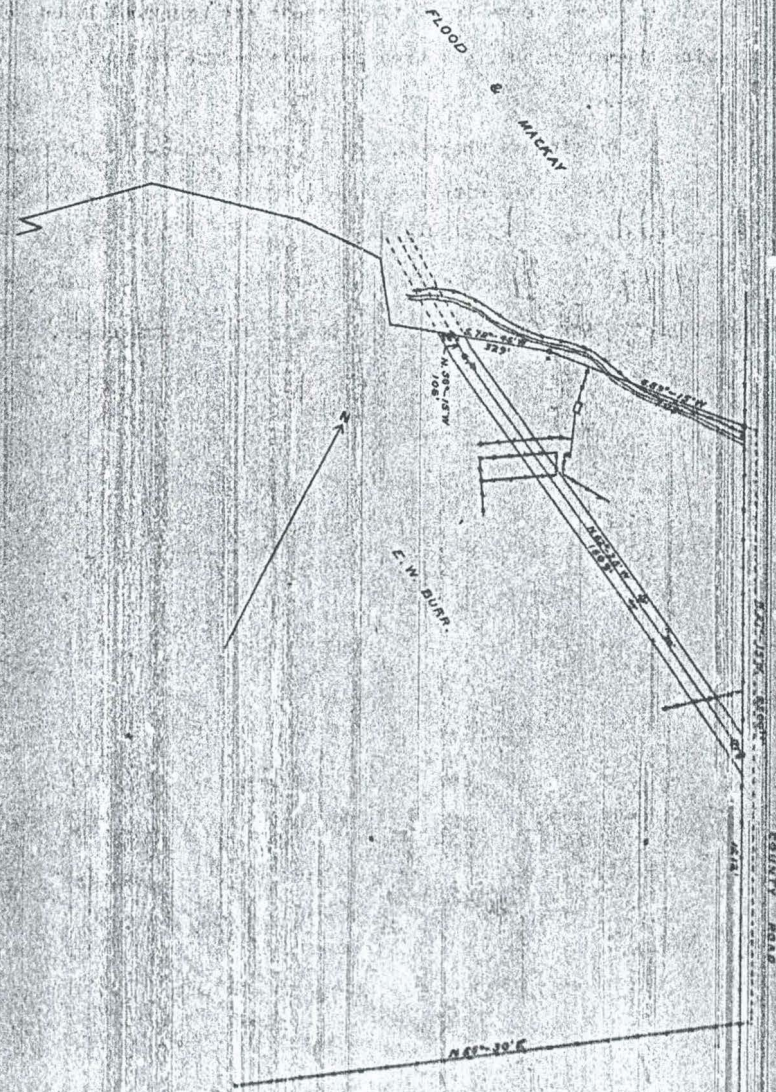
In witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this Certificate first above written.

(seal)

Geo. T. Knox,

Notary Public in and for the City and County of San Francisco, State of California.





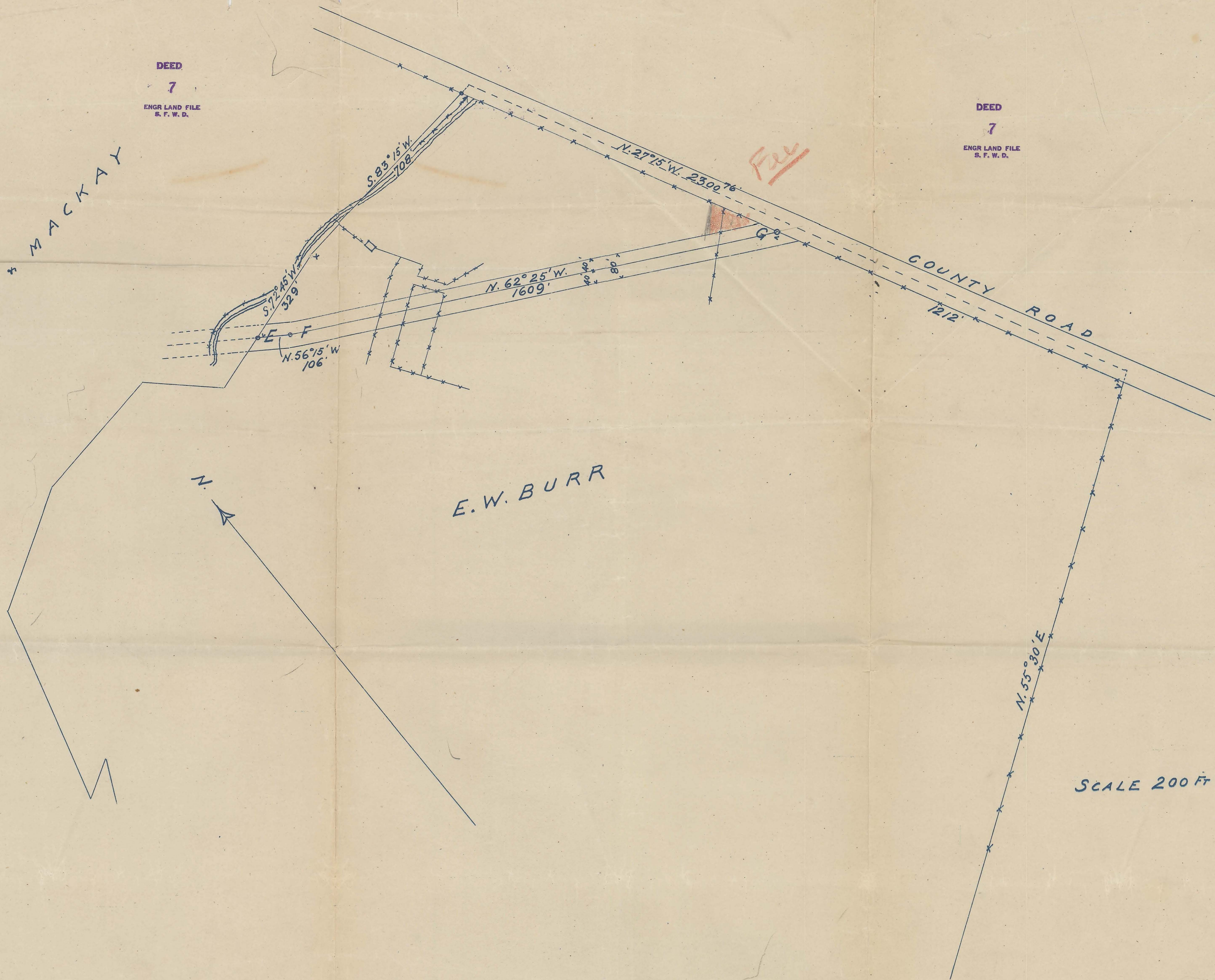
A true copy of an original recorded at the request of Edw. P. Fitzpatrick,
May 28th A. D. 1907 at 30 min. past 2 o'clock P. M.,

By *D. S. Johnson* County Recorder,
Charles E. Thomas Deputy Recorder.

DEED
7
ENGR LAND FILE
S. F. W. D.

DEED
7
ENGR LAND FILE
S. F. W. D.

FLOOD * MACKAY



E.W. BURR

COUNTY ROAD
1212'

SCALE 200 FT TO 1 INCH

4/20
E.W.B.

PUBLIC UTILITIES COMMISSION

WILLIE L. BROWN, JR., MAYOR

GROUND LEASE

between

**CITY AND COUNTY OF SAN FRANCISCO,
as Landlord**

and

**Koret Foundation
as Tenant**

For the lease of

A Portion of San Andreas, Baden Merced Pipeline R/W Parcel 22

January 7, 2000

PUBLIC UTILITIES COMMISSION

**Ann Moller Caen - President
Frank L. Cook - Vice President
E. Dennis Normandy - Commissioner
Victor G. Makras - Commissioner
Ben L. Hom - Commissioner**

**Anson B. Moran
General Manager of Public Utilities**

PUBLIC UTILITIES COMMISSION

GROUND LEASE

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EXHIBIT B -- SFPUC Drawing of Premises

PUBLIC UTILITIES COMMISSION

GROUND LEASE

THIS GROUND LEASE (this "Lease") dated for reference purposes only as of January 7, 2000, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and Koret Foundation, a California Corporation ("Tenant").

City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	January 7, 2000
Landlord:	CITY AND COUNTY OF SAN FRANCISCO
Tenant:	Koret Foundation
Premises (Section 3.1):	Land located in South San Francisco, California, owned by City and under the jurisdiction of its Public Utilities Commission, as more particularly described in Exhibit A attached hereto.
Term	Estimated Commencement Date: March 1, 2000
(Section 4.1):	Commencement Date: Upon approval, execution of Lease following approval by PUC
	Expiration Date: Twenty (20) Years after commencement Of Lease
Base Rent	\$13,211.00/year
(Section 5.1):	\$1,101.00/month

Adjustment Dates
(Section 5.2):

First (1st) anniversary of the
Commencement Date and every
twelve (12) months thereafter.

Use (Section 8.1):

Parking, ingress and egress, electronic gate, monument sign
landscaping; however, in no event shall the gross weight of
any vehicle (weight of the vehicle plus all cargo thereon)
used or parked on the Premises exceed 20,000 pounds.

Security Deposit
(Article 23):

Two (2) Months Rent

Notice Address of City
(Section 24.1):

Bureau of Commercial Land Management
Public Utilities Commission
1155 Market St., 5th Flr.
San Francisco, California 94103
Attn: Director

with a copy to:

Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Finance/Transactions

Key Contact for City:

Garrett M. Dowd

Telephone No.:

(415) 487-5211

Notice Address of Tenant
Section 24.1):

Koret Foundation
c/o Woodmont Real Estate Services
1050 Ralston Avenue
Belmont, CA 94002

Key Contact for Tenant:

Robert M. Rouse
President

Telephone No.:

(650) 592-3960

Brokers (Section 24.7):

N/A

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

2.1 "Additional Charges" means any and all real and personal property taxes, possessory interest taxes and other costs, impositions and expenses described in Article 7 hereof or otherwise payable by Tenant under this Lease.

2.2 "Adjustment Date" means the annual date for adjusting the Monthly Base Rent as specified in Basic Lease Information and Section 5.2 hereof.

2.3 "Adjustment Index" means the Index which is published most immediately preceding a particular Adjustment Date.

2.4 "Affiliate of Tenant" means any person or entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Tenant. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

2.5 "Agents" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

2.6 "Alterations" means any alterations, installations or additions to any Improvements or to the Premises.

2.7 "Assignment" has the meaning given in Section 15.1 hereof.

2.8 "Award" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

2.9 "Base Index" means in the case of the first Adjustment Date the Index which is published most immediately preceding the Commencement Date and, in the case of any subsequent Adjustment Date, the Adjustment Index which is published most immediately preceding the previous Adjustment Date.

2.10 "Basic Lease Information" means the information with respect to this Lease summarized in **Article 1** hereof.

2.11 "Base Rent" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof.

2.12 "City" means the City and County of San Francisco, a municipal corporation.

2.13 "Commencement Date" means the date on which the Term of this Lease commences as described in **Section 4.2** hereof.

2.14 "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

2.15 "Effective Date" means the date on which this Agreement becomes effective pursuant to **Section 4.5** hereof.

2.16 "Encumber" means create any Encumbrance; **"Encumbrance"** means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

2.17 "Encumbrancer" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

2.18 "Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

2.19 "Event of Default" means any one of the events of default described in **Section 16.1** hereof.

2.20 "General Manager" means the General Manager of the Public Utilities Commission.

2.21 "Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any Improvements to be constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

2.22 "Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the PUC, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

2.23 "Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

2.24 "Indemnify" means indemnify, protect, defend and hold harmless forever.

2.25 "Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, its PUC, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

2.26 "Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States

Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

2.27 "Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

2.28 "Invitees" when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

2.29 "Land" means the real property described in **Exhibit A** attached hereto.

2.30 "Landlord" means the City and County of San Francisco.

2.31 "Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

2.32 "Lease" means this Lease as it may be amended in accordance with its terms.

2.33 "Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

2.34 "Official Records" means the official records of the county(ies) in which the Premises are located.

2.35 "Party" means City or Tenant; **"Parties"** means both City and Tenant.

2.36 "Premises" has the meaning given in **Section 3.1** hereof. The Premises shall include any permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include the SFPUC Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

2.37 "PUC" means the Public Utilities Commission of the City and County of San Francisco.

2.38 "Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or SFPUC Facilities or any portion thereof.

2.39 "Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or SFPUC Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

2.40 "Rent" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.2** hereof, together with any and all Additional Charges.

2.41 "SFPUC Facilities" means any and all water pipelines, drainage pipelines, hatch covers, wells and other surface and subsurface facilities owned by the SFPUC and now or later located in, under, on or about the Premises for the storage, transportation or distribution of water for municipal purposes, together with all appurtenances thereto and all monuments thereof.

2.42 "Sublease" has the meaning given in **Section 15.1** hereof.

2.43 "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

2.44 "Tenant" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

2.45 "Tenant's Personal Property" means the personal property of Tenant described in **Section 8.3** hereof.

2.46 "Term" means the term of this Lease as determined under **Section 4.1** hereof.

2.47 "Transfer" means any Assignment or Sublease.

2.48 "Transferee" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with **Article 15** hereof.

2.49 "Unmatured Event of Default" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property located in the City of South San Francisco, County of San Mateo, State of California, more particularly described in the attached **Exhibit A**, together with any and all improvements existing thereon and owned by City as of the date of this Lease (the "Premises"); excluding therefrom and reserving during the Term unto City, its successors and assigns, during the Term the rights described in **Section 3.2** below. The Premises are shown generally on SFPUC Drawing No. B-4277, a copy of which is attached hereto as **Exhibit B**. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. However, the Parties agree that for all purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use or operate the SFPUC Facilities, or any portion thereof.

3.2 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the SFPUC Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(f) Without limiting the generality of Section 3.2(e) above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in Article 19 below.

3.3 Subject to Pipeline Right-of-Way. Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's pipeline right-of-way, which City holds for the purposes of transporting and distributing water for municipal use. Tenant's rights under this Lease shall be subject to City's use of the Premises for such purposes and for other City uses. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. The use of the terms "right-of-way" in this document shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature of City's title to any of its property. Landlord shall in no way be liable for any damage or destruction to Tenant's property and/or improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. Tenant shall, at Landlord's request, immediately remove any property or improvements on the Premises to allow Landlord access to the pipelines. In the event Landlord deems it necessary, in Landlord's sole discretion, Landlord shall have the right to remove any such property or improvements and Landlord shall not be responsible for restoring or returning same to its prior condition.

3.4 As Is Condition of Premises.

(a) **Inspection of Premises.** Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Tenant acknowledges and agrees that the Premises are being leased and accepted in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City, PUC, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

4. TERM

4.1 Term of Lease. The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"), subject to this Lease becoming effective pursuant to **Section 4.5** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

4.2 Commencement Date and Expiration Date. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.3 Delay in Delivery of Possession. If City is unable to deliver possession of the Premises to Tenant on or before the Estimated Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Tenant for any Losses resulting therefrom. Tenant waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Estimated Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

4.4 Delays Caused by Tenant. Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the Estimated Commencement Date results from the acts or omissions of Tenant or any of Tenant's Agents, then the Base Rent and Additional Charges payable by Tenant hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

4.5 Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which (i) the PUC and the City's Board of Supervisors each pass a resolution approving this Lease, and in their absolute and sole discretion and Mayor approves the same, and (ii) the Parties hereto have duly executed and delivered this Lease.

5. RENT

5.1 Base Rent. Tenant shall pay to City during the Term of this Lease, beginning on the Commencement Date, the Monthly Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the Finance Bureau, Public Utilities Commission, 1155 Market Street, 8th Floor, San Francisco, California 94103 (Reference SFPUC lease number), or such

other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

5.2 Adjustments in Base Rent. On each Adjustment Date, if any, commencing on the commencement date, the Base Rent payable by Tenant shall be adjusted in the following manner. The Adjustment Index shall be compared with the Base Index. If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the Monthly Base Rent on or after the Adjustment Date be less than the Monthly Base Rent in effect immediately prior to the Adjustment Date.

5.3 Late Charge. If Tenant fails to pay any Rent within five (5) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

5.4 Default Interest. If any Rent is not paid within five (5) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5.5 Net Lease. This Lease is a "net lease." Accordingly, Tenant shall pay to City the Base Rent, Additional Charges and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which

City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

5.6 Processing Fee. Upon execution of this Lease, Tenant shall pay SFPUC the sum of Seven Hundred Fifty Dollars (\$750.00) as a fee for processing this Lease.

5.7 Market Adjustments in Base Rent.

(a) In addition, to the cost of living increases set forth in Section 5.2 above, the Base Rental payable by the Tenant shall be adjusted to the prevailing fair market value on the fifth (5th), tenth (10th) and fifteenth (15th) Adjustment Dates (the "Market Adjustment dates"). Fair market value on each Market Adjustment Date shall be determined by comparison to space of comparable size, quality and location to the Premises situated within the general vicinity of the City of South San Francisco ("Reference Area"); provided, however, in no event shall the Base Rent be reduced below the Base Rent at the time of the Market Adjustment Date as determined in accordance with Section 5.2 above. As used herein, the term "prevailing market rate shall mean the Base Rent for such comparable space, taking into account (i) land values in the Reference Area; (ii) the location and size of the premises covered by leases of such comparable space, and (iii) the duration of the comparable leases. The prevailing market rate shall be discounted to reflect the restrictions on the use of the Premises as a result of the underground pipelines, but instead of the Landlord's standard twenty percent discount (20%) based on the use restrictions, the discount shall be reduced to ten percent (10%) due to the length of the Term. Upon Landlord's determination of the prevailing fair market value, it shall notify Tenant of same. Landlord's determination of the prevailing fair market value shall be binding unless Tenant disputes such determination as set forth in Subsection (b) below.

(b) If Tenant disputes Landlord's determination of the prevailing market rate, Tenant shall notify Landlord within fourteen (14) days following Landlord's notice to Tenant of the prevailing market rate and such dispute shall be resolved as follows:

(i) Within thirty (30) days following Landlord's notice to Tenant of the prevailing market rate, Landlord and Tenant shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(ii) If within this thirty (30) day period Landlord and Tenant cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and Tenant within thirty (30) days of the expiration of the thirty (30) day consultation period described in subparagraph (i) above.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the prevailing market rate and submit such determination to Landlord and Tenant. This third appraisal shall then be averaged with the closer of the two previous appraisals and the result shall be the prevailing market rate.

(iv) During the period in which the parties are negotiating the prevailing market rate, Tenant shall pay such amount as it believes is the prevailing market rate (provided, it shall not be less than the base Rent at the time of the Market Adjustment Date as determined in accordance with Section 5.2 above). If it is determined through the above appraisal process that the prevailing market rate is higher, Tenant shall pay to Landlord, within thirty (30) days following the date of determination, such additional amount as is due and owing for the period from and after the Market Adjustment Date to the date of payment.

(v) All appraisers specified herein shall be members of the American Institute of Real Estate Appraisers (MAI) with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the South San Francisco area. All appraisals prepared hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. Landlord and Tenant shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration.

(vi) Landlord shall not waive any rights by failing to notify Tenant of an

adjustment within thirty (30) days following an Market Adjustment Date; provided, however, if Landlord subsequently demands and adjustment, the prevailing market rate shall be as determined on the date of such demand (not the Market Adjustment Date) and the adjustment shall be effective on a prospective basis only

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 Other Expenses. Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

6.3 Evidence of Payment. Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND SFPUC FACILITIES

7.1 Tenant's Permitted Use. Tenant may use the Premises and any Improvements allowed hereunder only for the use specified in the Basic Lease Information, and for no other purpose.

7.2 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) **Covenant Against Waste.** Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant to Protect SFPUC Facilities.** At all times during the Term of this Lease, Tenant shall protect the SFPUC Facilities from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the SFPUC Facilities, or any portion of the SFPUC Facilities (including monuments), Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Tenant's sole expense. Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal utility purposes. Alternatively, subject to the SFPUC General Manager's approval in his or her sole discretion, Tenant may pay City for the

costs determined by the SFPUC General Manager that City will incur as a result of such interference.

City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard against corrosion of City's pipelines and related SFPUC Facilities. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) Covenant to Protect Water Courses. Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(e) Covenant Against Dumping. Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(f) Covenant to Protect Trees or Other Native Vegetation. Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the SFPUC.

(g) No Tree Planting. Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises except as otherwise expressly provided herein.

(h) Covenant Against Hunting or Fishing. Tenant shall not engage in or permit any hunting, trapping or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the SFPUC provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(i) **Pesticides Prohibition.** As of January 1, 1998, Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the SFPUC an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

Nothing herein shall prevent Tenant, through the SFPUC, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 39.8 thereof.

(j) **Weed Control.** Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of Section 7.2(i) above.

(k) **Maintenance of Roads.** Tenant shall keep all roads on the Premises open and in the same condition as such roads are now in, ordinary wear and tear excepted, and shall not interfere with any travel on such roads.

(l) **Covenant Against Burning.** Tenant shall not burn any weeds, debris or other substances on or about the Premises.

(m) **No Off-Road Vehicles.** Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

(n) **Restrictions on Heavy Equipment and Vehicles.** To prevent damage to City's underground pipelines, Tenant shall strictly adhere to the following restrictions when using vehicles and equipment within twenty feet (20') of City's pipelines:

(i) The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four (4) feet for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii). If any equipment with axle loading exceeds the weight stated in item (ii) below or if the depth of soil cover is less than

stated above, Tenant shall submit to SFPUC for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the pipelines showing that City's pipelines will not be adversely affected.

(ii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying 8-tons (16,000 lbs.). Tenant shall be responsible to provide SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

(iii) Tenant shall not use vibrating compaction equipment unless it first obtains City's written approval.

(iv) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by City all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the pipeline (measured on the surface), Tenant shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two feet (2') of soil around the pipeline shall be removed manually or by other methods approved by SFPUC with due care as provided above.

(o) **Watershed Management Plan.** Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises hereunder.

8. IMPROVEMENTS

8.1 Construction of Improvements. Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without SFPUC's prior written consent in each instance, which SFPUC may give or withhold in its sole and absolute discretion. Subject to SFPUC's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by SFPUC in writing, (ii) by duly licensed and bonded contractors or mechanics approved by SFPUC, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that SFPUC may reasonably impose, including, without limitation, provision of such completion security as is acceptable to SFPUC. In no event shall the construction or installation of any such

Improvements or the making of any Alterations impair the use or operation of the SFPUC Facilities, or any portion thereof, or SFPUC's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to SFPUC. No material change from the plans and specifications approved by SFPUC may be made without SFPUC's prior consent. SFPUC and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish SFPUC with a complete set of final as-built plans and specifications. If the cost of any proposed Improvements or Alterations is in excess of Five Thousand Dollars (\$5,000), Tenant shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in Section 18.2(c).

8.2 Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and limitations of Section 8.1 above shall be and remain Tenant's property during the Term. Upon the Expiration Date or any earlier termination hereof, Tenant shall remove all such Improvements and Alterations from the Premises in accordance with the provisions of Section 21.1 hereof, unless SFPUC, at its sole option and without limiting any of the provisions of Section 8.1 above, requires as a condition to approval of any such Improvements or Alterations that such Alterations or Improvements remain on the Premises following the expiration or termination of this Lease or unless SFPUC as a condition of such approval reserves the right to elect by notice to Tenant not less than 30 days prior to the end of the Term to have such Improvements or Alterations remain on the Premises.

8.3 Tenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 21.1 hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

9. REPAIRS AND MAINTENANCE

9.1 Tenant Responsible for Maintenance and Repair. Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the

Premises and any permitted Improvements from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises and any permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

9.2 Utilities. City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, connection and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. The Parties agree that any and all utility improvements shall be subject to the provisions of Section 8.1 and that such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

9.3 Maintenance of Fences. Tenant shall maintain in good condition and repair and its expense the existing fence along or about the property line of the Premises.

9.4 No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any

right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

Tenant shall keep the Premises and all of City's property free (including, without limitation, the SFPUC Facilities) from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws. Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action

to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting Section 5.5 hereof, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2 Regulatory Approvals.

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the SFPUC. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** Tenant further understands and agrees that City, acting by and through its PUC, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

11.3 Compliance with City's Risk Management Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its

expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

11.4 Reports. Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance thereof with this Lease and all Laws.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) Encumbrance By Tenant. Tenant shall not under any circumstances whatsoever Encumber in any manner the Premises, the SFPUC Facilities, City's estate in the Premises or any adjoining property, City's interest under this Lease, or any portion thereof.

12.2 Leasehold Encumbrances. Without limiting Article 15 hereof, Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1 Damage or Destruction to the Improvements. In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, Tenant shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents.

With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted hereunder made by or on behalf of Tenant during the Term hereof, Tenant may, at its option and at its sole cost, restore, repair, replace or rebuild such Improvements to the condition such Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above. However, if Tenant does not notify City in writing within thirty (30) days after the date of such damage or destruction of Tenant's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements as provided above, Tenant shall promptly, at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 21.1** below.

13.2 Abatement in Rent. In the event of any damage or destruction to the Premises or any permitted Improvements, there shall be no abatement in the Base Rent or Additional Charges payable hereunder.

13.3 Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. EMINENT DOMAIN

14.1 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

14.2 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

14.3 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises

untenantable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenantable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City shall have the right to terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this Article 14 shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

14.4 Rent; Award. Upon termination of this Lease pursuant to an election under Section 14.3 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 14.5 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.5 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 14.3 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.6 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

15. ASSIGNMENT AND SUBLETTING

15.1 Restriction on Assignment and Subletting. Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the PUC's prior written consent in each instance, which the PUC may withhold in its sole discretion. Any Assignment or Sublease, without the PUC's prior consent, shall be voidable at the option of the City in its sole and absolute discretion; and the General Manager shall have the right to terminate immediately this Lease by sending written notice to Tenant.

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to an assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant which is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

Anything herein to the contrary notwithstanding, Tenant shall have the right with the prior written consent of the PUC, which consent shall not be unreasonably withheld or delayed, to enter into an Assignment of this Lease, or to Sublease the Premises, in connection with the transfer of Tenant's interest in the adjacent apartment complex presently owned by Tenant. None of the provisions of this Article 15, except Sections 15.2, 15.6 and 15.7, shall apply to such an Assignment or Sublease, and following any such Assignment or Sublease, Tenant shall be relieved of any and all obligations to be performed by Tenant under this Lease and accruing after the effective date of such Assignment or Sublease.

15.2 Notice of Proposed Transfer. If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a "Notice of Proposed Transfer") to the PUC of its intention to do so. The Notice of Proposed Transfer shall identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide the PUC with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the PUC may reasonably request.

15.3 PUC's Response. Within twenty (20) business days after PUC's receipt of the Notice of Proposed Transfer and any such additional information requested by PUC (the "Response Period"), the PUC may, by written notice to Tenant, elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 15.4**, or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If the PUC declines to exercise either of the options provided in clauses (a) and (b) above, then Tenant shall be entitled for a period of ninety (90) days following the earlier of PUC's notice that it will not elect either such option or the expiration of the Response Period, to enter into such Assignment or Sublease, subject to the PUC's prior written approval of the proposed Transferee and the terms and conditions of the proposed Transfer. However, any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Rent payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease or Recapture) shall be paid one hundred percent (100%) to the PUC, after Tenant has recovered any verifiable, customary and reasonable brokers' commissions and the verifiable, customary and reasonable cost of any leasehold improvements that Tenant has actually incurred in connection with such Sublease or Recapture. Tenant shall provide the PUC with such information regarding the proposed Transferee and the proposed Assignment or Sublease as the PUC may reasonably request.

Notwithstanding the foregoing, if following the PUC's decline to exercise the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give PUC a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and PUC shall again be entitled to elect one of the options provided in clauses (a) and (b) above at any time within fifteen (15) business days after the PUC's receipt of such new Notice of Proposed Transfer.

In the event the PUC elects either of the options provided in clauses (a) or (b) above, the PUC shall be entitled, at its sole option, to enter into a lease, sublease or assignment

agreement with respect to the Premises (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies hereunder or at Law or in equity.

15.4 Sublease or Recapture Premises. If City elects to Sublease or Recapture from Tenant as provided in Section 15.3, the following shall apply:

(a) **Sublease.** In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Premises") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Premises if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Premises to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

(b) **Recapture.** In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "Recapture Premises") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all of their rights and obligations hereunder with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such separation.

15.5 Effect of Transfer. No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Article shall, at the option of the City in its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such

Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Article.

15.6 Assumption by Transferee. Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Article. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

15.7 Indemnity for Relocation Benefits. Without limiting Section 15.6, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16. DEFAULT; REMEDIES

16.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Tenant hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided

Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

16.2 Remedies. Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only

to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this Section 16.2(b) shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

16.3 City's Right to Cure Tenant's Defaults. If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

17. WAIVER OF CLAIMS; INDEMNIFICATION

17.1 Waiver of Claims. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby

waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

17.2 Tenant's Indemnity. Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the SFPUC Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

18. INSURANCE

18.1 Tenant's Insurance. Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof the following insurance:

(a) **Commercial General Liability Insurance.** Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, personal injury, products and completed operations.

(b) **Worker's Compensation Insurance.** Worker's Compensation Insurance, including employer's liability coverage, with limits not less than \$1,000,000 each accident.

(c) **Business Automobile Liability.** Business Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles as applicable, if Tenant uses or causes to be used any vehicles in connection with its use of the Premises.

18.2 General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation or intended non-renewal, mailed to the address(es) for City set forth in the Basic Lease Information.

18.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least ten (10) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

18.4 Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

18.5 No Limitation on Indemnities. Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under Sections 17.2 and 22.2 above, or any of Tenant's other obligations or liabilities under this Lease.

18.6 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

18.7 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

18.8 City's Self Insurance. Tenant acknowledges that City self-insures against property and liability risks and agrees City shall not be required to carry any insurance with respect to the Premises or otherwise.

18.9 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises, whether or not such loss is caused by the fault or negligence of such other party, but only to the extent such loss or damage is actually recovered from such insurance.

19. ACCESS BY CITY

19.1 Access to Premises by City.

(a) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Tenant (except in the event of an emergency) for any of the following purposes:

(i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Section 16.3 hereof;

(iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

(v) To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

(b) **Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) **No Liability.** City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other

damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

(d) **No Abatement.** Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) **Minimize Disruption.** City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

19.2 Pipeline and Utility Installations. Without limiting Section 19.1 above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities, nor shall City be responsible to replace any planting, pavement or other improvements removed by City.

19.3 Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of the SFPUC Facilities, provided that City shall use its reasonable good faith efforts to use such roadways in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

20. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General

Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

21. SURRENDER

21.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law.

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

21.2 Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

22. HAZARDOUS MATERIALS

22.1 No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting Section 19 hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

22.2 Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in Section 22.1 above, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in Section 17.2 above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23. SECURITY DEPOSIT

Tenant shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms,

covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or SFPUC Facilities caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to Section 5.7 (Market Adjustments in Base Rent), Tenant shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

24. GENERAL PROVISIONS

24.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 24.1 and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

24.2 No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such

term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

24.3 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

24.4 Authority. If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

24.5 Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

24.6 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion.

24.7 Successors and Assigns. Subject to the provisions of Section 15 hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

24.8 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

24.9 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

24.10 Governing Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

24.11 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

24.12 Attorneys' Fees. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24.13 Holding Over. Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Monthly Base Rent equal to one hundred fifty percent (150%) of the amount set forth in Section 5.2 hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

24.14 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

24.15 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.16 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

24.17 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

24.18 Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

24.19 Recording. Tenant agrees that it shall not record this Lease nor any memorandum or short form hereof in the Official Records.

24.20 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

24.21 Wages and Working Conditions. With respect to the construction of the Improvements and any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Mateo County, California. Tenant shall require any contractor to provide, and shall deliver to City every two (2) weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

24.22 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race,

color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar

day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

24.23 No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

24.24 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.25 Burma (Myanmar) Business Prohibition. Tenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. The City reserves the right to terminate this Lease for default if Tenant violates the terms of this clause.

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Tenant to comply with any of its requirements shall be deemed a material breach of this Lease. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in an amount equal to Tenant's net profit under this Lease, or 10% of the total amount of the Lease, or \$1,000, whichever is greatest. Tenant acknowledges and agrees the liquidated damages assessed shall be payable to the City upon demand and may be setoff against any moneys due to the Tenant from this Lease.

24.26 Conflicts of Interest. Tenant states that it is familiar with the provisions of Sections 15.103 and C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a

complete disclosure to the PUC of all facts bearing upon any possible interest, direct or indirect, which Tenant believes any member of the PUC, or other officer or employee of the City and County of San Francisco, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

24.27 Charter Provisions. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

24.28 Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood product.

24.29 Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

24.30 Any consent or approval required by the SFPUC, or any election or option exercisable by the SFPUC, must be given or exercised pursuant to a resolution duly passed by the SFPUC in its discretion. No consent, approval, election or option shall be effective unless evidenced by a written instrument.

24.31 Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24.32 Disclosure. Tenant understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 *et seq.*), apply to this Lease and any and all records, information, and materials submitted to the City in connection with this Lease. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE PUC AND OF THE BOARD OF SUPERVISORS SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE MAYOR APPROVES THE SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE PUC AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, EACH IN THEIR IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

City and Tenant have executed this Lease in triplicate as of the date first written above.

TENANT:

**Koret Foundation,
a California Corporation**

By: *Jeffrey P. Feun*

Its: *Treasurer*

By: _____

Its: _____

CITY:

**CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation**

By: *[Signature]*

General Manager
Public Utilities Commission

APPROVED BY
PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. 00-0063
ADOPTED February 22, 2000

Jul R. Thompson

Secretary

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By [Signature]
Deputy City Attorney

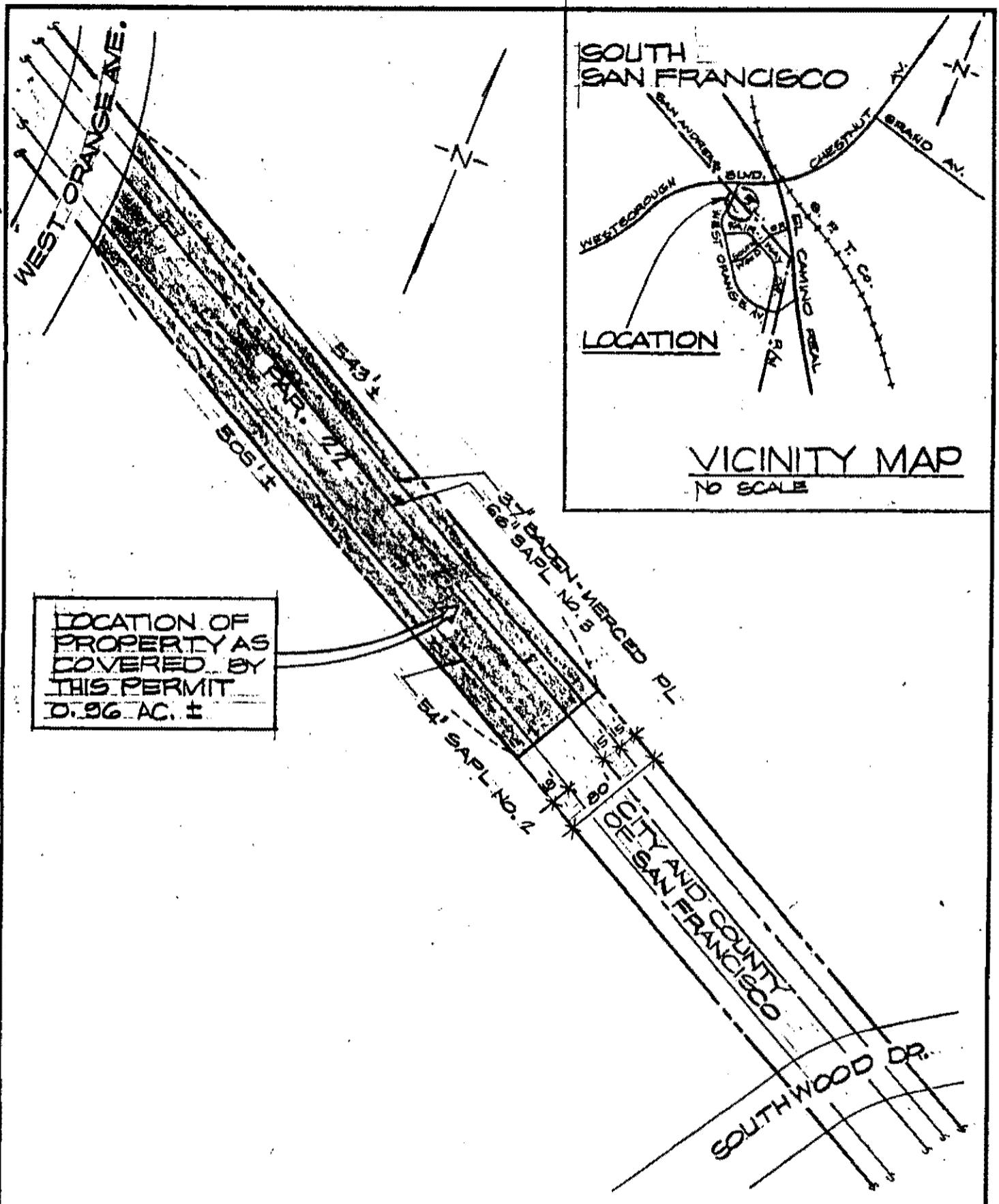
EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

All that certain real property located in San Mateo County, California, described as follows: A portion of Baden-Merced Bay Division Pipeline Right of Way being Parcel 22, consisting of approximately 41,817+/- square feet. Located in San Mateo County, between West Orange Avenue and Southwood Drive in South San Francisco.

EXHIBIT B

SFPUC WORKING DRAWING NO. B-4277
CONSISTING OF 1 PAGE



LOCATION OF PROPERTY AS COVERED BY THIS PERMIT
0.96 AC. ±

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT

REVOCABLE PERMIT TO KORET FOUNDATION
FOR PARKING - LANDSCAPING

SAPL # BADEN MERCED PL R/W, PAR. 22 SAN MATEO CO.

APPROVED	SCALE 1"=100'	BY 8-3467	DR. CVR	DRAWING NO.
APPROVED		REVIEWED	CH.	B-4277
GENERAL MANAGER AND CHIEF ENGINEER		DATE 12/8/04	REVISED	

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 00-0063

WHEREAS, The City and County of San Francisco owns certain real property under the jurisdiction of the San Francisco Public Utilities Commission in San Mateo County and;

WHEREAS, Koret Foundation has requested to enter into a Lease Agreement to use the area for a paved parking lot, ingress and egress and landscaping; and

WHEREAS, SPEAC has determined, and completed a certification, that the project described by the proposed agreement has a categorical exemption from the requirements of the California Environmental Quality Act; now, therefore, be it

RESOLVED, That this Commission hereby approves the terms and conditions and authorizes the execution of that certain Lease of approximately .96 acres of land to Koret Foundation as Lessee, for the purpose of a parking lot, ingress and egress and landscaping for an adjacent apartment complex in South San Francisco, as set forth in the Lease of certain real property under jurisdiction of the Public Utilities Commission, as shown on SFPUC Drawing No. B-4277 of the Lease, commencing upon final execution following authorization and approval of said Lease by the PUC, the Board of Supervisors and Mayor and expiring twenty (20) years from the commencement date provided the Lessee shall pay an annual rental rate of \$13,211.00 per year or \$1,101.00 per month with a CPI adjustment on the first (1st) anniversary of the commencement date and every twelve (12) months thereafter and a re-appraisal of the rental rate on the fifth (5th), tenth (10th), fifteenth (15th) anniversaries of the commencement of the Lease; and be it

FURTHER RESOLVED, That all actions authorized by this resolution and heretofore taken by any City official in connection with such Agreement are hereby ratified, approved and confirmed by this Commission; and be it

FURTHER RESOLVED, That upon approval by this Commission, the General Manager of Public Utilities is hereby authorized and directed to execute said Lease.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of FEB 22 2000

Lerna T. Navarro

Secretary, Public Utilities Commission



TO: Angela Calvillo, Clerk of the Board

FROM: Megan Imperial, Policy and Government Affairs

DATE: September 4, 2020

SUBJECT: Modification of Easement Deed – First Amendment to Grant Deed for SFPUC Parcel 22 located in South San Francisco, California

Attached please find a proposed resolution approving First Amendment to Easement Deed (Amendment) between the Koret Foundation and the City and County of San Francisco, acting by and through its Public Utilities Commission (SFPUC), for the purpose of clarifying and amending the respective rights of the parties to the Grant Deed dated April 6, 1907 (Original Deed) with respect to SFPUC Parcel 22 located between West Orange Avenue and Southwood Drive in South San Francisco, California; and authorizing the Director of Property and/or the SFPUC's General Manager to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution.

The following is a list of accompanying documents:

1. Board of Supervisors Resolution
2. SFPUC Resolution No. 20-0137
3. Koret Foundation Deed Amendment
4. Century Urban Economic Report

Please contact Megan Imperial at (415) 654-1654 if you need any additional information on these items.

London N. Breed
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Anson Moran
Commissioner

Sophie Maxwell
Commissioner

Tim Paulson
Commissioner

Harlan L. Kelly, Jr.
General Manager



From: [Imperial, Megan M](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Scarpulla, John \(PUC\)](#)
Subject: SFPUC - [Modification of Easement Deed – First Amendment to Grant Deed for SFPUC Parcel 22 located in South San Francisco, California]
Date: Friday, September 4, 2020 11:10:59 AM
Attachments: [1. BOS Resolution.docx](#)
[2. SFPUC Reso 20-0137.pdf](#)
[3. Koret Foundation Deed Amendment.pdf](#)
[4. Century Urban Economic Report.pdf](#)
[Cover Letter.doc](#)

Hi BOS Legislative Team,

Attached is the proposed legislation concerning “Resolution approving First Amendment to Easement Deed (Amendment) between the Koret Foundation and the City and County of San Francisco, acting by and through its Public Utilities Commission (SFPUC), for the purpose of clarifying and amending the respective rights of the parties to the Grant Deed dated April 6, 1907 (Original Deed) with respect to SFPUC Parcel 22 located between West Orange Avenue and Southwood Drive in South San Francisco, California; and authorizing the Director of Property and/or the SFPUC’s General Manager to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution.”

The electronic attachments are listed below:

1. Board of Supervisors Resolution
2. SFPUC Resolution No. 20-0137
3. Koret Foundation Deed Amendment
4. Century Urban Economic Report
5. Cover Letter

Staff Contact: [Megan Imperial, Policy & Government Affairs Analyst] [415-654-1654]

Best,
Megan

Megan M. Imperial 竜芽願
Policy & Government Affairs Analyst
San Francisco Public Utilities Commission
525 Golden Gate Ave., 12th Floor
San Francisco, CA 94102
mimperial@sfgwater.org
Office: 415-554-3241 | Mobile: 415-654-1654
Pronouns: She, Her, Hers

Deed Amendment Between the Koret Foundation, as Grantor's Successor-in-Interest, and the City and County of San Francisco, as Grantee

**September 30, 2020
Tony Bardo, Assistant Real Estate Director,
Real Estate Services**

City Property



Description of City Property

- .96 acres of SFPUC Parcel No. 22 in South San Francisco, California acquired from Spring Valley Water Company in 1930
- Serves as a utility right-of-way improved with SFPUC's Bay Division Pipelines 3 & 4 linking Hetch Hetchy with the City and County of San Francisco
- Serves as an integral part of the Koret Foundation's adjacent Clubview Apartment Complex, a market-rate housing complex built in 1964.

Background

- The City purchased City Property from Spring Valley Water Company in 1930, which was subject to the original deed between the Spring Valley Water Company and the Baden Company (Baden Deed)
- In 1964, Koret constructs the Clubview Apartments adjacent to the City Property.
- For decades, the City has leased the surface of the City property to Koret for Clubview's landscaping, on-site circulation, access, and parking because Koret and City understood these rights to be in excess of the rights granted to Koret under the deed.
- Koret's most recent lease from the City expired on March 31, 2020.

Why a Deed Amendment?

- While negotiating a lease renewal, SFPUC concludes that all of Koret's rights under the former lease, except for parking, were granted under the Baden Deed.
- Koret's rights under the Baden Deed and City's limited surface rights significantly reduce the value of parking on the City Property.
- SFPUC concludes that an amendment to the Baden Deed granting Koret the right to park in exchange for certain additional rights to the City would be more appropriate than a new lease.

New Right Granted to Koret

- The proposed Deed Amendment grants the Koret Foundation the incremental right to park on City's Property.

New Rights Granted to City

The proposed Deed Amendment grants to City:

- Improved access to the City Property;
- Subordination of Koret's use of the City Property to the City's use;
- Express contractual indemnification from Koret;
- Greater protection of the City's pipelines through new review and approval rights; and
- No City obligation to restore Koret's improvements if damaged in connection with the City's repair and improvement of its pipelines.

Economic Analysis Conclusion

The SFPUC engaged the services of Century Urban, an economic and land use consulting firm, to evaluate the rights exchanged in the Amended Deed to ensure the City is not transferring net material value to Koret.

Century Urban concluded that no identifiable, material net value is transferred between the parties to the Amended Deed.

QUESTIONS

Any ?