

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

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

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]