



**Century | Urban**

**Strategic  
Real Estate  
Advisory Services**

**Valuation of Deed Amendment Rights**

**Presented to:**

**San Francisco Public Utilities  
Commission**

**March 9, 2020**

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## VALUATION OF DEED AMENDMENT RIGHTS

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

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### *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:<sup>1</sup>

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<sup>1</sup> 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 follows<sup>2</sup>:

#### *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)

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<sup>2</sup> 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.