**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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| PASADENA REPUBLICAN CLUB, a General Purpose Political Committee, on behalf of itself and its members, *Plaintiff-Appellant,* v. WESTERN JUSTICE CENTER, a California nonprofit corporation; CITY OF PASADENA; JUDITH CHIRLIN, *Defendants-Appellees.* | No. 20-55093<br>D.C. No. 2:18-cv-09933-AWT-AFM<br>OPINION |

Appeal from the United States District Court
for the Central District of California
A. Wallace Tashima, District Judge, Presiding*

Argued and Submitted December 7, 2020
Pasadena, California

Filed January 25, 2021

Before: Susan P. Graber and Carlos T. Bea, Circuit Judges, and Jennifer A. Dorsey,** District Judge.

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* A. Wallace Tashima, Circuit Judge, for the Ninth Circuit Court of Appeals, sitting in the United States District Court, for the Central District of California, by designation.

** The Honorable Jennifer A. Dorsey, United States District Judge for the District of Nevada, sitting by designation.

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## COUNSEL

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## OPINION

BEA, Circuit Judge

The restraints set forth in the United States Constitution generally bind only government actors, excluding private actors from its reach. Nearly sixty years ago, however, the Supreme Court held that, in certain circumstances, a private actor who leased government property must comply with the constitutional restraints as though they were binding covenants

written into the lease agreement itself. Although the Court deemed the lessee to be a state actor, it reserved this finding for the set of circumstances under which the "State has so far insinuated itself into a position of interdependence with [a private actor] that it must be recognized as a joint participant in the challenged activity." *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961). Indeed, the Court explicitly limited its applicability to the "peculiar facts or circumstances present," cautioning that the conclusions drawn from the case "are by no means declared as universal truths on the basis of which every state leasing agreement is to be tested."[1] *Id.* at 725-26. We, now, must revisit this precedent and determine whether it is applicable to the case before us.

Pasadena Republican Club (the "Club") contracted with Western Justice Center ("WJC"), a private nonprofit organization, to rent some space in WJC's building for a speaking event. Shortly before the event, however, WJC learned about the speaker's association with a politically active group that, as WJC explained, holds "positions on same-sex marriage, gay adoption, and transgender rights [that] are antithetical to [its] values." WJC then rescinded the rental agreement. In

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[1] In fact, the dissenting justices criticized the Court's opinion for failing to elucidate a workable standard in determining what constitutes "state action." *See Burton*, 365 U.S. at 728 (Harlan, J., dissenting) ("The Court's opinion, by a process of first undiscriminatingly throwing together various factual bits and pieces and then undermining the resulting structure by an equally vague disclaimer, seems to me to leave completely at sea just what it is in this record that satisfies the requirement of 'state action.").

response, the Club filed a lawsuit alleging that its First Amendment rights had been violated. The Club claimed that WJC's leasing arrangement with the City of Pasadena (the "City") constituted sufficient grounds to bring constitutional claims against WJC, a private § 501(c)(3) nonprofit organization dedicated to civic improvement. Relying exclusively on *Burton*, the Club filed claims against the City, WJC, and WJC's Executive Director under 42 U.S.C. § 1983.

We reject the Club's assertions and hold that WJC is not a state actor for purposes of the Club's constitutional claims. Neither the circumstances under which WJC rehabilitated the building and acquired the lease, nor the terms of the lease itself, convert WJC into a state actor. Similarly, the government does not, without more, become vicariously liable for the discretionary decisions of its lessee. To apply the ruling in *Burton*, the private party's conduct of which the plaintiff complains must be inextricably intertwined with that of the government. *See Brunette v. Humane Soc'y of Ventura Cty.*, 294 F.3d 1205, 1212-13 (9th Cir. 2002); *Vincent v. Trend W. Tech. Corp.*, 828 F.2d 563, 569 (9th Cir. 1987). For the reasons set forth herein, we affirm the District Court's dismissal.

## I. BACKGROUND

### A. The City acquires the Property and leases it to WJC

In 1988, the City sought to purchase from the United States Government real property located at

55-85 South Grand Avenue, Pasadena, California. (the "Property"). The purchase was contingent upon the approval of a leasing agreement between the City and WJC for the rehabilitation and use of the Property. Among other things, the City intended to "provide increased and improved legal services to the citizens of Pasadena" and "provide a forum for educational research."

In 1989, the City purchased the Property and executed an agreement to lease it to WJC (the "Lease").[2] The Lease described the relationship:

> [WJC] is entering into this Lease, rather than diretly purchasing the Premises, because [WJC] does not qualify as an organization eligible to purchase the Premises [from the U.S. Government]. It is the intent that neither [the Pasadena Surplus Property Authority] nor the City of Pasadena shall be required to contribute general funds to the acquisition, restoration or renovation of the Premises, but nothing contained herein shall be construed as prohibiting or restricting the City against assisting [WJC] in applying to third parties for grants of funds to be used for restoring the Premises. This Lease is not entered into as a commercial transaction by either party. . . .

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[2] Initially, the Lease was between WJC and the Pasadena Surplus Property Authority, a public corporation formed by the City. It was not until 1994 that the Authority transferred the Property to the City. For purposes of this Opinion, however, we reference only the City.

The Lease required WJC to pay for all costs related to the acquisition, improvement, repair, and maintenance of the Property. Indeed, the Lease specifically stated that the City shall "have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, whether structural or nonstructural."

The Lease also limited WJC's use of the Property to "non-profit law related functions," including:

> (i) operation of a center for the study of the following matters: alternative dispute resolution, administration of justice, delivery of legal services, and other legally oriented issues; (ii) providing space to non-profit entities for legal seminars, meetings, conferences, hearing rooms, deposition rooms, arbitration rooms, law library, research space; (iii) residential and office facilities for legal researchers and scholars and ancillary services such as dining facilities; and (iv) for subleasing portions of the Premises to tax exempt organizations providing law related services, and for no other purposes whatsoever.

Although the Lease required WJC to "use the [Property] for these purposes during ordinary business hours," it also stated that WJC was not precluded from "using the [Property] for community meetings and other purposes during non-business hours." Critically, the City asserts that it "derives no income, revenue or other financial benefit on account of [WJC]'s rental of meeting rooms" and "has no input or control over the

entities to which [WJC] may rent its meeting rooms . . . during the evening hours."

In 1994, the City agreed to lend to WJC up to $458,000 for further rehabilitation of the Property. WJC has repaid those loans (and accrued interest thereon) in full through rental payments to the City. WJC currently pays to the City $1 per month in rent.

### B. WJC rescinds the Club's rental for the scheduled speaking event

Prior to the planned event that gave rise to this litigation, the Club periodically rented event space for its meetings that occurred outside of normal business hours. Consistent with that practice, the Club contracted with WJC to rent some space on the Property for a speaking event to occur on April 20, 2017. Dr. John Eastman, former dean at the Chapman University School of Law and professor of constitutional law, was scheduled to speak during the event.

After reserving the space for April 20 but before the event had occurred, the Club attempted to reserve the space for an additional event to occur the following month. The Executive Director of WJC, retired Los Angeles Superior Court Judge Judith Chirlin, informed the Club that WJC's Executive Committee had enacted a new policy to "not make the [Property] available for rental to political groups—one side or the other." WJC enacted this new policy "because of the heightened political rancor these days, and because it is the mission of [WJC] to promote peaceful conflict resolution and

reduce prejudice and intergroup conflict." The Club was told that WJC would honor the Club's rental for April 20, but would not rent to the Club thereafter.

Notwithstanding the pledge to honor its commitment, on the very afternoon of April 20, Judge Chirlin informed the Club that WJC would not allow the scheduled speaking event to take place on the Property later that same evening:

> It is with regret that I inform you that [the Club] cannot use our facilities for your meeting tonight. While I knew that Prof Eastman was a professor and author, we learned just today that he is the President of the National Organization for Marriage (NOM). NOM's positions on same-sex marriage, gay adoption, and transgender rights are antithetical to the values of [WJC]. [WJC] exists to build a more civil, peaceful society where differences among people are valued. WJC works to improve campus climates with a special focus on LGBT bias and bullying. We work to make sure that people recognize and stop LGBT bullying. Through these efforts we have built a valuable reputation in the community, and allowing your event in our facility would hurt our reputation in the community
>
> We will return the fee that you have paid immediately.

### C. Procedural history

In November 2018, the Club filed this action against WJC, Judge Chirlin, and the City. Relying on § 1983, the Club alleges that all defendants discriminated against the Club's political viewpoints and religious beliefs in violation of the First Amendment. Additionally, under 42 U.S.C. § 1985(3), the Club alleges that Judge Chirlin conspired to violate the Club's First Amendment rights.

In May 2019, WJC and Judge Chirlin moved to dismiss the claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the City moved for summary judgment. The District Court granted both motions. For purposes of this appeal, the District Court held that the operative complaint does not plausibly allege that either WJC or Judge Chirlin acted "under color of state law" pursuant to the "joint action" or "symbiotic relationship" test found in *Burton*. The District Court also held that the undisputed facts show that the City did not delegate to WJC any final policymaking authority of the City that caused the Club's alleged constitutional violation. The Club timely appeals from this decision.

## II. JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 1291.

We review *de novo* a district court's decision to grant a motion to dismiss. "To survive a motion to

dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (internal quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads the factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal quotation marks omitted).

We also review *de novo* a district court's decision to grant a motion for summary judgment. *See Balint v. Carson City*, 180 F.3d 1047, 1050 (9th Cir. 1999) (en banc). In doing so, we do not weigh the evidence but, rather, determine whether there is a genuine issue of material fact. *See id.*

## III. MOTION TO DISMISS

### A. The Club's § 1983 claims against WJC and Judge Chirlin

Title 42 U.S.C. § 1983 provides that "[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State* . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law" (emphasis added). "The ultimate issue in determining whether a person is subject to suit under § 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of

federal rights fairly attributable to the [government]?" *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999) (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)); *see also Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 n.18 (1982) (noting that "conduct satisfying the state-action requirement of the Fourteenth Amendment [also] satisfies the [§ 1983] statutory requirement of action under color of state law").

### 1. State action under *Burton* and its progeny

**"**The determination of whether a nominally private person or corporation acts under color of state law 'is a matter of normative judgment, and the criteria lack rigid simplicity." *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020) (quoting *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295-96 (2001)). Courts must engage in "sifting facts and weighing circumstances" to answer what is "necessarily a fact-bound inquiry." *Lugar*, 457 U.S. at 939. Indeed, "[no] one fact can function as a necessary condition across the board . . . nor is any set of circumstances absolutely sufficient." *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002) (quoting *Brentwood Acad.*, 531 U.S. at 295-96).

The Supreme Court has developed four different tests that "aid us in identifying state action: '(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus.'" *Rawson*, 975 F.3d at 747 (quoting *Kirtley v. Rainey*, 326 F.3d

1088, 1092 (9th Cir. 2003)). The "[s]atisfaction of any one test is sufficient to find state action," but "[a]t bottom, the inquiry is always whether the defendant has exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Id.* at 747-48 (internal citations omitted).

Here, the Club relies exclusively on the "joint action" or "symbiotic relationship" test.[3] The test asks "whether the government has so far insinuated itself into a position of interdependence with a private entity that the private entity must be recognized as a joint participant in the challenged activity." *Brunette*, 294 F.3d at 1210. A private entity may be considered a state actor "only if its particular actions are 'inextricably intertwined' with those of the government." *Id.* at 1211.

In *Burton*, the progenitor of this test, a state parking authority acquired land to construct a public parking garage. 365 U.S. at 718. Before construction began, however, the parking authority learned that the anticipated revenue from the garage would not be sufficient to finance its purchase, construction, or operations. *Id.* at 719. To secure additional monies, the parking authority executed long-term leases with commercial tenants. *Id.* The leasing agreements required

[3] We therefore need not decide if any other state-action test applies. *See Harvey v. Brewer*, 605 F.3d 1067, 1078 (9th Cir. 2010) (explaining that "a court will not pass upon a constitutional question if there is some other ground upon which the case may be disposed").

the parking authority to pay the cost of the tenants' utilities, heat, maintenance, and repairs—all of which were paid for from public funds. *Id.* at 720.

The Supreme Court held that one of the tenants, a restaurant that refused to serve customers based on their race, was a state actor because the parking authority was a joint participant in the tenant's operations and, thus, a joint participant in the tenant's discrimination. *Id.* at 723-25. The Court focused on the mutual benefits conferred from the relationship: the tenant transacted more business because its customers were afforded a convenient spot to park in the public garage, and that convenience had an effect of increasing the utilization (and revenue) for the garage. *Id.* at 724. Critically, the parking authority also depended on the tenant's rental payments for its financial success because the garage was not a self-sustaining facility. *See id.* In other words, the tenant's commercial operations "constituted a physically and financially integral and, indeed, indispensable part of the State's plan to operate its project as a self-sustaining unit." *Id.* at 723-24. In all, *Burton* teaches us that "substantial coordination" and "significant financial integration" between the private party and government are hallmarks of a symbiotic relationship. *Brunette*, 294 F.3d at 1213.

Heeding the Supreme Court's own instruction to limit *Burton's* holding to "the peculiar facts or circumstances present," *Burton*, 365 U.S. at 725-26, we have repeatedly distinguished *Burton* and declined to expand its applicability. In *Vincent*, for instance, we held

that a government contractor performing maintenance services at an Air Force base was not a state actor because "the government did not profit from [the contractor]'s alleged unconstitutional conduct." 828 F.2d at 569-70. "While [the contractor] may have been dependent economically on its contract with the Air Force, [the contractor] was most certainly not an indispensable element in the Air Force's financial success." *Id.* at 569. We, therefore, found "no significant financial 'integration' between [the contractor] and the Air Force." *Id.*; *see also Brunette*, 294 F.3d at 1213-14 (holding that there was no symbiotic relationship where a private news company accompanied a "quasi-public" Humane Society in executing a search warrant of a breeder's ranch because plaintiff failed to allege that the news company "rendered any service indispensable to the Humane Society's continued financial viability").

That is not to say that *Burton* is not binding precedent. Recently, in *Rawson v. Recovery Innovations, Inc.*, we concluded that a private nonprofit hospital was a state actor. There, a patient sought to hold a private hospital and its doctors liable for petitioning a state court to commit him involuntarily to hospital custody and forcibly injecting him with antipsychotic medications. *Rawson*, 975 F.3d at 747. Noting that "*Burton* remains instructive," we held that the § 1983 claims survived summary judgment because the private hospital operated its facility on the same grounds as the state's main psychiatric hospital. *Id.* at 745-46. Not only did the private hospital lease its facility from the state, but the grounds were "recognizable" and

"clearly marked as a state hospital." *Id.* at 756. Further entangling the two, the private hospital's medical director was also a full-time physician at the state hospital. *Id.* at 746. We considered this particular leasehold relationship only one of several factors weighing in favor of finding state action.[4] We ultimately concluded that the state had "undertaken a complex and deeply intertwined process [with private actors] of evaluating and detaining individuals for long-term [involuntary] commitments, and therefore, the state has so deeply insinuated itself into this process that [the private actors'] conduct constituted state action." *Id.* at 757 (internal quotation marks omitted) (alterations in original).

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[4] Indeed, we "consider[ed] the full factual context" in *Rawson*, observing numerous factors weighing in favor of finding state action, such as (1) the private hospital "exercise[d] powers traditionally held by the state" by detaining and forcibly treating Rawson to "protect[ ] both the public and Rawson himself"; (2) the private hospital "perform[ed] actions under which the state owes constitutional obligations to those affected" by attempting to commit him involuntarily, thereby depriving Rawson of his liberty interests; (3) the state, through the county prosecutor, significantly involved itself and "played an outsized role" in the private hospital's decisionmaking to petition to commit Rawson involuntarily; (4) the state approved the private hospital's petition to commit Rawson involuntarily; and (5) the private hospital was "charged with applying state protocols and criteria in making evaluation and [involuntary] commitment recommendations." *See Rawson*, 975 F.3d at 751-56.

### 2. WCJ and the City lack the significant degree of integration, dependency, and coordination that was apparent in *Burton*

Applying the principles distilled from *Burton* and its progeny, we cannot find state action here. First, WJC and the City manage their operations independently of each other. In *Burton*, the parking authority operated a parking garage in the same building as its commercial tenants and depended on those for-profit tenants for its initial financing and continued viability. The parking authority relied on rental payments—the restaurant paid $28,700 per year—to defray the parking authority's own operating expenses because the parking garage was not a self-sustaining facility. In contrast, the Club does not allege that WJC helps to defray any operating expenses for the City. Nor does the Club allege that the City performs any City functions on the Property or that the City is responsible for any expenses related to the Property. Indeed, all expenses related to the Property are paid directly by WJC, which is a self-sustaining organization itself. *Cf. Rendell-Baker*, 457 U.S. at 842-43 (noting the salience in *Burton* that "the rent from the restaurant contributed to the support of the garage"); *Geneva Towers Tenants Org. v. Federated Mortg. Inv'rs*, 504 F.2d 483, 487 (9th Cir. 1974) (explaining that, in *Burton*, the "interdependence was principally financial" and the "rents paid by the shop partially defrayed the cost of the public facility and enhanced its success").

Although WJC borrowed money from the City to acquire and improve the Property, the Club does not allege that WJC and the City are financially integrated. *Cf. Rendell-Baker*, 457 U.S. at 840 (holding that "receipt of public funds does not make [a private school's] discharge decisions acts of the State"). The Club does not allege that the City provided any capital to support WJC's operations, nor does the Club allege that the City provided any below-market interest rates.[5] *Cf. Geneva Towers*, 504 F.2d at 487 (holding that there was interdependence where private parties invested in a public housing project and received below-market interest rates). On the contrary, the operative complaint acknowledges that WJC has reimbursed the City in full for all loans and accrued interest.

Indeed, the City distanced itself from WJC through the terms in the Lease. Unlike in *Burton*—where the lease required the parking authority to pay its tenants' bills for utilities, heat, maintenance, and repairs—the Lease here does not require the City to cover any costs related to WJC or the Property. Instead, the Lease explicitly requires WJC to pay for its own utilities, operations, maintenance, and repairs. Also, unlike in *Rawson*—where a private hospital not only leased its facility from the state, but operated alongside the state hospital on the same campus that was "clearly marked as a state hospital," 975 F.3d at

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[5] We do not mean to suggest that any one of those particular facts "function[s] as a necessary condition" or would be "absolutely sufficient" to establish that WJC acted under color state of law. *Lee*, 276 F.3d at 554.

756—the Club does not allege that the Property hosts any City-managed operations or that the Property is marked as City-owned land. And further unlike in *Rawson*, the Club does not allege that WJC and the City share any personnel. *See id.* at 746.

The Club suggested during oral argument that WJC's leasing arrangement with the City, alone, is enough to satisfy *Burton*. But merely contracting with the government does not transform an otherwise private party into a state actor. *See Rendell-Baker*, 457 U.S. at 840-41 (distinguishing *Burton* and explaining that "[a]cts of such private contractors do not become acts of government by reason of their significant or even total engagement in performing public contracts"); *Vincent*, 828 F.2d at 569-70 (distinguishing *Burton* and finding no state action where a contractor performed maintenance services at a U.S. Air Force base because "[t]here is no significant financial 'integration' between [the contractor] and the Air Force").

Moreover, the City does not profit financially from WJC's alleged discrimination. In *Burton*, the financial successes of the parking authority and its tenant were inextricably linked an increase in the tenant's revenue achieved through the restaurant's business plan of racial discrimination (more customers, at least in 1961) correlated with an increase in the parking authority's revenue (more cars parked). The parking authority's financial success also hinged on the tenant's success to the extent that the tenant could afford the critical rental payments, which subsidized the garage's operations. Therefore, the "profits earned by [the tenant's]

discrimination not only contribute[d] to, but also [were] indispensable elements in, the financial success of [the] governmental agency." 365 U.S. at 724. But here, the City does not realize any share of the revenue earned from WJC's rental agreements. Regardless of however much WJC may profit from renting or refusing to rent event space, the City receives only $1 per month in rent. Thus, the Club fails to plead that WJC's nonprofit operations are indispensable to the City's continued viability. *Cf. Brunette*, 294 F.3d at 1213-14 (finding no symbiotic relationship because plaintiff failed to allege that the private news company "rendered any service indispensable to the Humane Society's continued financial viability"); *Vincent*, 828 F.2d at 569-70 (finding no symbiotic relationship because the contractor performing maintenance services at the Air Force base "was most certainly not an indispensable element in the Air Force's financial success").

Setting aside the fact that the City does not profit *financially* from WJC's alleged discrimination, the Club maintains that the City "profits" *intangibly* by allowing civic programs to operate in the City. The Club contends that WJC canceled the speaking event to preserve its reputation, which allowed WJC to continue carrying out its "non-profit law related functions," which in turn benefited the City and its citizens. But this contention expansively stretches *Burton* to capture the mere generic promotion of a public purpose—the principal goal of government writ large. Adopting this theory would cast almost any nonprofit with a civic mission and some contractual relationship with

the government as a state actor. The City certainly derives *some* benefit insofar as its citizens benefit from WJC's "study of dispute resolution and the administration of justice." But "any exchange of mutual benefits . . . falls far short of creating the substantial interdependence legally required to create a symbiotic relationship." *Brunette*, 294 F.3d at 1214.

Finally, the City's involvement in WJC's alleged discrimination is nowhere near the requisite degree of "substantial cooperation" mentioned in *Burton*. The City did not participate in, or know in advance about, the initiation or the cancellation of the Club's speaking event. In fact, the City did not even learn about the incident until the Club filed the complaint in this case. The Club fails to allege that the City "significantly involve[d] itself in the private parties' actions and decisionmaking at issue." *Rawson*, 975 F.3d at 753; *see also Brunette*, 294 F.3d at 1212 (finding that a private party and a "quasi-public" entity "acted independently" where neither "assisted the other in performance of its separate and respective task" nor participated in the other's preparatory meetings before the alleged constitutional violation).

In all, WJC and its agents were not state actors for purposes of the Club's § 1983 claims. The Club fails to allege that the City has "undertaken a complex and deeply intertwined process" with WJC to discriminate against the Club by canceling its speaking event. *Rawson*, 975 F.3d at 757 (internal citation omitted). The Club also fails to allege that the City "has so deeply insinuated itself into this process that [WJC's] conduct

constituted state action." *Id.* (internal citation omitted). Accordingly, we affirm the District Court's dismissals.

### B. The Club's § 1985(3) claim against Judge Chirlin

While § 1983 provides a cause of action if *one* person deprives an individual of his constitutional rights, § 1985(3) provides a cause of action if *two or more* persons conspire to deprive an individual of his constitutional rights. Like § 1983, which requires the wrongdoer to be a state actor, § 1985(3) requires at least one of the wrongdoers in the alleged conspiracy to be a state actor. Indeed, the Supreme Court has held that "an alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) unless it is proved that the State is involved in the conspiracy." *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 830 (1983).

Here, however, the Club fails to allege that a state actor participated in the alleged conspiracy. The Club alleges only that Judge Chirlin "conspired with members of the staff and executive committee of [WJC] to deprive [the Club] and its members of civil rights." The Club attempts to sidestep the state-action requirement by arguing that WJC itself is a state actor, but for the same reasons described above, this argument fails as to WJC and its agents. Because WJC and its agents are not state actors, and because the Club does not allege that the City or some other state actor participated in

the alleged conspiracy, the Club fails to state a claim under § 1985(3).

## IV. SUMMARY JUDGMENT

A municipality may be sued for constitutional violations under § 1983, but "claims cannot predicate municipal liability for constitutional violations of its officers under the theory of respondeat superior." *Lockett v. Cty. of L.A.*, 977 F.3d 737, 741 (9th Cir. 2020) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). To establish *Monell* liability under § 1983, the constitutional violation must be caused by a municipality's "policy, practice, or custom" or be ordered by a policy-making official. *See Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011); *Gibson v. Cty. of Washoe*, 290 F.3d 1175, 1185-86 (9th Cir. 2002), *overruled on other grounds by Castro v. Cty. of L.A.*, 833 F.3d 1060, 1076 (9th Cir. 2016).

The Club argues that the City is liable for WJC's alleged constitutional violation because the City delegated final policy-making authority when it leased the Property to WJC. Through the terms in the Lease, the Club argues, the City delegated complete discretion over whether and to whom the Property could be rented during nonbusiness hours. Therefore, WJC's refusal to rent the Property to political groups and its subsequent cancellation of the Club's speaking event constituted "an act of official governmental policy." The Club seems to suggest that we should infer delegation—and thus liability—from the mere fact that a

private party rented out space on the property that it had leased from the government.

Although it is true that the Lease did not prohibit WJC from renting out event space during nonbusiness hours, a permissive lease covenant does not convert discretion into delegation, even when that discretion rests with a public official. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 481-84 (1986) (plurality opinion) ("The fact that a particular official—even a policymaking official—has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion."). And even more so here. When the City executed the Lease, it was not delegating final policy-making authority on political speaking events in the City; it was simply conveying a property interest—the right of occupancy—in the premises. WJC maintained the authority to decide who, when, for what reason, and for how long a visitor could occupy the premises during nonbusiness hours. Therefore, when WJC executed—and rescinded—the rental agreement with the Club, WJC was exercising its discretionary authority on its own behalf as the holder of a possessory interest in the Property. WJC was not exercising any "policymaking authority for a particular city function" on behalf of the City. *Hammond v. Cty. of Madera*, 859 F.2d 797, 802 (9th Cir. 1988), *abrogated on other grounds as stated in L. W. v. Grubbs*, 92 F.3d 894, 897-98 (9th Cir. 1996). "[T]he fact that the government licenses, contracts with, or grants a monopoly to a private entity does not convert the private entity into a state actor—unless

the private entity is performing a traditional, exclusive public function." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1931-33 (2019) (holding that the private operator of a public access channel was not a state actor). And, of course, there is no claim that renting out event space during nonbusiness hours is a "traditional, exclusive public function." The government does not, without more, become vicariously liable for the discretionary decisions of its lessee. Accordingly, the undisputed facts show that the City did not delegate any final policy-making authority that caused the Club's alleged constitutional injury.

**AFFIRMED.**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

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| PASADENA REPUBLICAN CLUB,<br><br>Plaintiff,<br><br>v.<br><br>WESTERN JUSTICE CENTER; CITY OF PASADENA, CALIFORNIA; and JUDITH CHIRLIN,<br><br>Defendants. | No. 2:18 cv-09933 AWT-AFM<br><br>**ORDER RE MOTIONS:**<br><br>**(1) TO DISMISS [26]; AND**<br><br>**(2) FOR SUMMARY JUDGMENT [27]** |

(Filed Dec. 30, 2019)

The Pasadena Republican Club alleges that the Western Justice Center, a private nonprofit organization, discriminates on the basis of political and religious viewpoint in the rental of event space to outside groups, in violation of the First Amendment. The Club has sued the Center, the Center's former executive director, and the City of Pasadena, which owns the property and leases it to the Center, under 42 U.S.C. § 1983. It has also asserted an additional claim against Judith Chirlin, the former executive director of the Center, under 42 U.S.C. § 1985(3). The Center and Chirlin have moved to dismiss the first amended complaint under Fed. R. Civ. P. 12(b)(6). ECF 26. The City has moved for summary judgment under Fed. R. Civ. P. 56. ECF 27.

The court will grant the Center's and Chirlin's motion to dismiss because the complaint does not

plausibly allege that the Center and Chirlin were acting under color of state law, as § 1983 requires, or that the City was involved in the alleged conspiracy, as § 1985(3) requires. Although a symbiotic relationship existed *to some degree* between the Center and the City, this case is distinguishable from *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), upon which the Club relies, because, among other things, the property was not partly maintained by the City, the City did not knowingly accept the benefits of the alleged discrimination and the Center's involvement was not indispensable to the City's financial success. Under the facts and circumstances alleged here, the City has not "so far insinuated itself into a position of interdependence with [the Center] that it must be recognized as a joint participant in the challenged activity." *Id.* at 725.

The court also will grant the City's motion for summary judgment, because the record does not support the conclusion that the alleged constitutional violations were caused by a City policy or custom, as required to establish municipal liability under § 1983. *See Monell v. Dept of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978). The policies at issue here regarding the rental of the Center's premises to outside groups were those of the Center, not those of the City. Although the Club contends that the City delegated final policymaking authority to the Center, the record shows only that the City, by lease, conveyed a property interest to the Center, not that it delegated City policymaking authority to the Center.

## BACKGROUND

Plaintiff Pasadena Republican Club ("Club") is a voluntary membership organization that supports the election of Republican candidates to local, state, and national office. First Amended Complaint ("complaint" or "FAC") ¶ 4. Defendant Western Justice Center ("Center") is a § 501(c) (3) nonprofit corporation. FAC ¶ 6. Defendant Judith Chirlin was the executive director of the Center at the time of the events at issue in this action. FAC ¶ 7. Defendant City of Pasadena ("City") is a city in the State of California. FAC ¶ 5.

In 1989, the Center agreed to lease certain real property, commonly known as 55-85 South Grand Avenue, Pasadena, from the Pasadena Surplus Property Authority, a public corporation formed by the City pursuant to state law. FAC ¶¶ 8-9. Among the buildings included in the lease is the historic Maxwell House, located at 55 South Grand Avenue. FAC ¶ 8; Lease Agreement 1 6.1.

The lease states:

> Landlord is entering into this Lease as a means of benefiting the citizens of the city of Pasadena (the "City") and its environs through a center for the study of dispute resolution and the administration of justice, to provide additional employment and revenues to the local economy, to provide for improvements in both the local, regional, national, and international components of the legal system, and to provide a forum for educational research. Landlord is also entering into this Lease for

> the purpose of insuring the restoration and historic preservation of the Premises. A detailed copy of Landlord's goals is attached in the Plan of Public Use for Surplus Property attached hereto as Exhibit B. Tenant is entering into this Lease, rather than directly purchasing the Premises, because the Tenant does not qualify as an organization eligible to purchase the Premises [from the federal government]. It is the intent that neither Landlord nor the City of Pasadena shall be required to contribute general funds to the acquisition, restoration or renovation of the Premises. . . .

Lease Agreement ¶ 1.2; FAC ¶ 10.[1]

The lease is for an initial term of 55 years and grants the Center an option to extend the lease for an additional 44 years. FAC ¶ 8; Lease Agreement ¶¶ 2.1, 2.3. It requires the Center to cover all costs related to the acquisition, improvement, repair and maintenance of the premises, and it specifically states that the landlord – initially the Pasadena Surplus Property Authority, and later the City – shall "have no obligation, in any manner whatsoever, to repair and maintain the

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[1] The complaint incorporates the lease agreement by reference. *See United States v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011) ("As a general rule, we may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion. We may, however, consider . . . unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document." (citations and internal quotation marks omitted)).

Premises nor the buildings located thereon nor the equipment therein, whether structural or non-structural." Lease Agreement ¶¶ 1.2, 3.1-3.2, 5.3.1, 6, 7.1, 7.3; Duyshart decl. ¶ 8. The lease expressly prohibits the Center from discriminating against "any employee or applicant for employment . . . because of race, color, religion, sex, physical handicap, or national origin," and it requires the Center to "establish and carry out an Affirmative Action Plan for equal employment opportunity and affirmative action in contracting." Lease Agreement ¶¶ 31-32.

The provision of the lease governing the Center's use of the premises states that:

> The Premises shall be used and occupied by Tenant and its sublessees only for the purposes described in the Plan of Public Use for Surplus Property, including but not limited to the following non-profit law related functions: (i) operation of a center for the study of the following matters: alternative dispute resolution, administration of justice, delivery of legal services, and other legally oriented issues; (ii) providing space to non-profit entities for legal seminars, meetings, conferences, hearing rooms, deposition rooms, arbitration rooms, law library, research space; (iii) residential and office facilities for legal researchers and scholars and ancillary services such as dining facilities; and (iv) for subleasing portions of the Premises to tax exempt organizations providing law related services, and for no other purposes whatsoever. Tenant is expressly prohibited from leasing the Premises

> or any portion thereof to lawyers offering legal services for profit or allowing the Premises or any portion thereof to be used for any for profit activities. Tenant shall continuously during the term of this Lease following completion of all Tenant Improvements (as herein defined) use the Premises for these purposes during ordinary business hours. *Nothing herein precludes Tenant from using the Premises for community meetings and other purposes during non-business hours.*

Lease Agreement ¶ 5.1 (emphasis added); FAC ¶¶ 11-13.

With respect to this last subject – the rental of the premises to outside groups during non-business hours – the lease places no restrictions on the Center, and the undisputed evidence in the summary judgment record states that the City "has no input or control over the entities to which the Western Justice Center may rent its meeting rooms at the premises during the evening hours." Duyshart decl. ¶ 9. It further states that the City "derives no income, revenue or other financial benefit on account of the Western Justice Center's rental of meeting rooms." Duyshart decl. ¶ 7.

In 1994, the City agreed to provide up to $458,000 to the Center for tenant improvements. FAC ¶ 14. The City acquired these funds through its governmental borrowing authority. FAC ¶ 15. The Center, in turn, repaid the funds through rental payments to the City. FAC ¶¶ 14-15. Those loans have now been repaid, and the Center's current rent – through the end of the lease

– is $1 per month. FAC ¶ 15. Also in 1994, the Pasadena Surplus Property Authority transferred title to the property to the City, subject to the Center's lease. FAC ¶ 14.[2]

Before the events giving rise to this litigation, the Club periodically rented the Maxwell House from the Center for Club events. FAC ¶ 16; Gabriel decl. ¶ 2. Consistent with that practice, in early 2017 the Club rented the Maxwell House from the Center for a Club event to take place on April 20, 2017. FAC ¶ 17; Gabriel decl. ¶ 3. The rental fee was $190, and the scheduled speaker was Dr. John Eastman, a noted professor of constitutional law. FAC ¶ 17, 20-21; Gabriel decl. ¶ 3.

The Club also inquired about renting the Maxwell House for a Club event to take place in May 2017. Gabriel decl. ¶ 5. In an April 23 email, however, Chirlin informed Gabriel that the Maxwell House would be unavailable for the May event because the Center would no longer rent the premises to political groups:

> Nicole forwarded your email to me. I'm sorry you have been left hanging, so to speak. When the issue of your April meeting came to my attention, I presented it to our Executive Committee. It was decided that because of the

[2] The quitclaim deed includes a rider by which the "grantee" covenants not to "discriminate upon the basis of race, color, religion, sex, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon." ECF 30-2 at 99. At the October 23 hearing, counsel for the City suggested that the Center was the grantee under this rider. It appears, however, that the City was the grantee.

> heightened political rancor these days, and because it is the mission of the Western Justice Center to promote peaceful conflict resolution and reduce prejudice and intergroup conflict, we should not make the Maxwell House available for rental to political groups – one side or the other.
>
> Because your April meeting was already scheduled I thought it inappropriate for us to implement the policy with regard to that meeting. (It also helped that you have a recognized legal scholar as your speaker.) So the Executive Committee agreed that we could go ahead with the rental for April, but not beyond.
>
> I apologize that this comes to you just days before you leave on vacation. I do hope you are able to find a suitable venue quickly and that you have a safe and lovely vacation.

FAC ¶ 18; Gabriel decl. ¶ 5; Gabriel decl., exh. C.[3]

The Club contends that the Center applied this new policy selectively. It asserts that, even after Chirlin announced the new policy in April 2017, the Center continued to allow the League of Women Voters Pasadena Area – which subleases a portion of the 55-85 South Grand Avenue property and which the FAC alleges is a "political organization" that "opposes President Trump" – to use the grounds of the Maxwell

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[3] The complaint incorporates Chirlin's April 3 and April 20, 2017, emails by reference.

House for political events. FAC ¶ 18; Gabriel decl. ¶¶ 5-6.[4, 5]

On the afternoon of April 20, 2017, Chirlin informed Gabriel by email that the Club would not be able to use the Maxwell House for the Eastman event scheduled to take place that evening. FAC ¶ 24; Gabriel decl. ¶ 7. Chirlin wrote:

> Dear Ms. Gabriel,
>
> > It is with regret that I inform you that The Pasadena Republican Club cannot use our facilities for your meeting tonight. While I knew that Prof Eastman was a professor and author, we learned just today that he is the President of the National Organization for Marriage (NOM). NOM's positions

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[4] On its website, the League of Women Voters Pasadena Area describes itself as "a nonpartisan political organization" that neither supports nor opposes "any political party or candidate." https://my.lwv.org/california/pasadena-area/about.

[5] To support this allegation, the Club relies on Gabriel's declaration, which states in relevant part: "On information and belief, the League of Women Voters continues to rent city-owned property from the Western Justice Center on the Maxwell House campus and the League uses the grounds of the Maxwell House for some of its political events." Gabriel decl. ¶ 6. The City has filed evidentiary objections to this evidence on several grounds, including lack of personal knowledge. ECF 40-1 at 2. *See* Fed. R. Evid. 602 ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). Because this testimony is not material to the court's analysis, however, the court need not address the City's objections. Notably, the Center has not yet answered the complaint, and so it has not to date either admitted or denied the Club's allegation.

> on same-sex marriage, gay adoption, and transgender rights are antithetical to the values of the Western Justice Center. Western Justice Center exists to build a more civil, peaceful society where differences among people are valued. WJC works to improve campus climates with a special focus on LGBT bias and bullying. We work to make sure that people recognize and stop LGBT bullying. Through these efforts we have built a valuable reputation in the community, and allowing your event in our facility would hurt our reputation in the community.
>
> We will return the fee that you have paid immediately.

Gabriel decl., exh. D; FAC ¶ 24. Chirlin later informed Gabriel that the decision had been made by the Center's executive committee. FAC ¶ 26; Gabriel decl. ¶ 7. The Club was able to relocate the evening's event to an another venue, but at additional cost and with diminished attendance. FAC ¶¶ 29-31.

In November 2018, the Club filed this action. ECF 1. The operative FAC names three defendants – the Center, Chirlin and the City – and asserts four causes of action. ECF 14.

The first cause of action, arising under 42 U.S.C. § 1983, alleges viewpoint discrimination in violation of the First Amendment against all defendants and is based on the allegation that the defendants discriminated against the Club on account of the viewpoint of the speaker it chose for its event. FAC ¶¶ 32-39. The

second cause of action, also arising under § 1983, alleges religious belief discrimination in violation of the First Amendment against all defendants and is based on the allegation that the Center adopted a policy prohibiting the rental of the Maxwell House to political groups, but applied that policy selectively to the Club on account of the viewpoint of the Club and its members. FAC ¶¶ 40-47. The third cause of action, again arising under 1983, alleges religious belief discrimination against all defendants based on the allegation that the defendants discriminated against the Club on account of the religious viewpoint of the speaker it chose for its event. FAC ¶¶ 48-55. The fourth cause of action, arising under 42 U.S.C. 1985, is asserted against Chirlin alone. FAC ¶¶ 56-60. It alleges that Chirlin conspired with members of the Center's staff and executive committee to deny civil liberties guaranteed by the First Amendment to the Club and its members, and that the conspiracy was motivated by political and religious animus. FAC ¶¶ 56-60.[6]

The FAC alleges that the Center and Chirlin are "state actors" for purposes of § 1983 – i.e., that they acted under color of state law – because the property is owned by the City and is leased to the Center to promote the governmental purposes of the City. FAC ¶¶ 33, 41, 49. It seeks declaratory and injunctive relief,

[6] Chirlin's motion to dismiss does not challenge this claim under the intracorporate conspiracy doctrine. *See Portman v. County of Santa Clara*, 995 F.2d 898, 910 (9th Cir. 1993) (declining to resolve whether "the 'intra-corporate conspiracy' doctrine applies in section 1985 cases"); *Padway v. Palches*, 665 F.2d 965, 968-69 (9th Cir. 1982) (same).

compensatory and punitive damages, and attorney's fees and costs. FAC at 21-24.

On May 1, 2019, Chirlin and the Center moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). ECF 26. Chirlin and the Center argue that: (1) they cannot be liable under § 1983 because they did not act under color of state law; (2) the Center cannot be liable under § 1983 because the complaint does not allege a relevant policy or practice of the Center under *Monell*; (3) the § 1985 claim fails because the complaint does not allege state involvement in the alleged conspiracy; and (4) the § 1985 claim fails because § 1985 does not reach conspiracies motivated by political or religious animus.

The same day, the City moved for summary judgment, *see* Fed. R. Civ. P. 56, arguing that the City cannot be liable under § 1983 because the Club cannot establish that any constitutional violation was caused by an official policy or custom of the City.[7] ECF 27.

## LEGAL STANDARD

A motion under Rule 12(b)(6) asserts a "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "In evaluating a 12(b)(6) motion, we accept 'as true all well-pleaded allegations of fact in the complaint' and construe them in the light most favorable to the non-moving party." *Cedar Point Nursery v. Shiroma*, 923 F.3d 524, 530 (9th Cir. 2019) (quoting

[7] Both motions were orally argued on October 23, 2019.

*Corinthian Colls.*, 655 F.3d at 991). "To survive a motion to dismiss, the complaint 'must contain sufficient factual matter' that, taken as true, states 'a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Under Rule 56, a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment will be denied if, "'viewing the evidence in the light most favorable to the non-moving party,' there are genuine issues of material fact." *Nolan v. Heald Coll.*, 551 F.3d 1148, 1154 (9th Cir. 2009) (quoting *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002)).

## DISCUSSION

### I. Motion to Dismiss

As noted, the motion to dismiss raises four arguments. The court addresses them seriatim.

#### A. *Whether the Complaint Plausibly Alleges that Chirlin and the Center Were Acting Under Color of State Law*

As discussed above, the complaint's first three causes of action arise under § 1983.[8] In their motion to

[8] 42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

dismiss, Chirlin and the Center challenge these claims on the ground that the complaint fails to plausibly allege that Chirlin, a private person, and the Center, a private entity, were acting under color of state law. ECF 26 at 6-14.

To state a claim under § 1983, a plaintiff must allege not only the violation of a right secured by the Constitution and laws of the United States, but also that "the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). "Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)). When addressing whether a private party acted under color of state law, therefore, we "start with the presumption that private conduct does not constitute governmental action." *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999).

Courts have used four different tests to determine whether this presumption has been overcome: (1) the public function test; (2) the joint action or symbiotic

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> Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

relationship test; (3) the governmental compulsion or coercion test; and (4) the governmental nexus test. *See id.* at 835-36 (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982)). There is, however, "no specific formula for defining state action." *Id.* at 836 (quoting *Howerton v. Gabica*, 708 F.2d 380, 383 (9th Cir. 1983)). "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." *Burton*, 365 U.S. at 722.

Here, the only basis relied on by the Club to support its under-color-of-state-law allegation is the joint action test. "Under the joint action test, we consider whether 'the state has so far insinuated itself into a position of interdependence with the private entity that it must be recognized as a joint participant in the challenged activity. This occurs when the state knowingly accepts the benefits derived from unconstitutional behavior.'" *Id.* (quoting *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1486 (9th Cir. 1995)). The Ninth Circuit has noted that "[a] plaintiff may demonstrate joint action by proving the existence of a conspiracy or by showing that the private party was 'a willful participant in joint action with the State or its agents.'" *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002) (quoting *Collins v. Womancare*, 878 F.2d 1145, 1148 (9th Cir. 1989)).

The Club argues that this case is controlled by *Burton*, which involved a restaurant – the Eagle Coffee Shoppe, Inc. – that refused to serve the plaintiff on account of his race. *See Burton*, 365 U.S. at 716. The

restaurant was located in a public parking building in Wilmington, Delaware, and the question presented was whether, given the symbiotic relationship between the state and the restaurant, the restaurant's actions constituted "state action" for purposes of the Equal Protection Clause of the Fourteenth Amendment. *See id.* at 716-17.[9]

The Wilmington Parking Authority, in *Burton*, was a state agency created by the City of Wilmington, and this particular parking building was the parking authority's first project. *See id.* at 716-18. Before construction began, the parking authority learned that it would be necessary to lease out a portion of the parking building in order to make the project financially viable. *See id.* at 719. Accordingly, the parking authority entered into several long-term commercial leases with private entities to finance the project. *See id.* These commercial tenants included a bookstore, a retail jeweler, a food store, and the Eagle Coffee Shoppe. *See id.* at 719-20. The parking authority and the restaurant entered into a 20-year lease, renewable for an additional 10 years, under which Eagle paid the parking authority $28,700 in annual rent -about $250,000 in today's dollars. *See id.*

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[9] Although *Burton* involved the "state action" requirement under the Fourteenth Amendment rather than the "under color of law" requirement under § 1983, the Supreme Court has held that "conduct satisfying the state-action requirement of the Fourteenth Amendment satisfies the statutory requirement of action under color of state law."

The Supreme Court concluded that "[t]he State has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." *Id.* at 725. The Court explained:

> The land and building were publicly owned. As an entity, the building was dedicated to "public uses" in performance of the Authority's "essential governmental functions." The costs of land acquisition, construction, and maintenance are defrayed entirely from donations by the City of Wilmington, from loans and revenue bonds and from the proceeds of rentals and parking services out of which the loans and bonds were payable. Assuming that the distinction would be significant, the commercially leased areas were not surplus state property, but constituted a physically and financially integral and, indeed, indispensable part of the State's plan to operate its project as a self-sustaining unit. Upkeep and maintenance of the building, including necessary repairs, were responsibilities of the Authority and were payable out of public funds. It cannot be doubted that the peculiar relationship of the restaurant to the parking facility in which it is located confers on each an incidental variety of mutual benefits. Guests of the restaurant are afforded a convenient place to park their automobiles, even if they cannot enter the restaurant directly from the parking area. Similarly, its convenience for diners may

> well provide additional demand for the Authority's parking facilities. Should any improvements effected in the leasehold by Eagle become part of the realty, there is no possibility of increased taxes being passed on to it since the fee is held by a tax-exempt government agency. Neither can it be ignored, especially in view of Eagle's affirmative allegation that for it to serve Negroes would injure its business, that profits earned by discrimination not only contribute to, but also are indispensable elements in, the financial success of a governmental agency.

*Id.* at 723-24 (citations omitted). The Court emphasized, however, that "readily applicable formulae may not be fashioned," and thus that "the conclusions drawn from the facts and circumstances of this record are by no means declared as universal truths on the basis of which every state leasing agreement is to be tested." *Id.* at 725.

To support its contention that *Burton* is controlling here, ECF 35 at 6-11, the Club argues that the Center and Chirlin were state actors with regard to their operation of the subject property because: (1) the City purchased the property for the public purposes of the City; (2) the City relied entirely on funds provided by the Center to purchase the property; (3) the City borrowed money to finance the repair and restoration of the property and relied entirely on the Center for the repayment of the City's creditors; and, thus, (4) the "Center was indispensable to the financial success of the City's project to acquire and restore this property

and to operate it for the public purposes of the City." ECF 35 at 1.[10]

In the Club's view, "[t]he facts in this case are very similar to the facts in *Burton* with two differences," both of which serve only to strengthen the case for finding joint action. ECF 35 at 7. "First, rather than relying on the Western Justice Center for only part of the cost of the acquisition [and] construction of the property as was the case in *Burton*, the City of Pasadena relied entirely on the Western Justice Center." ECF 35 at 7. Thus, "the Western Justice Center's financial participation in this project was even more critical than the restaurant's participation in the Wilmington Parking Authority's construction of the parking structure at issue in *Burton*." ECF 35 at 7. "Second, the City relied on the Western Justice Center to accomplish the City's public purposes in acquiring this property" – namely, "creat[ing] a center for the study of dispute resolution and the administration of justice" and "preserv[ing]

[10] In its briefing and evidentiary objections (ECF 40 at 3; ECF 40-1 at 2-5), the City notes that many of these actions – those occurring between 1989 and 1994 – involved the Pasadena Surplus Property Authority, not the City itself. The City faults the Club for "conflating the Pasadena Surplus Property Authority and the City of Pasadena, with no legal or factual grounds for doing so." ECF 40 at 3. The allegations of the complaint, however, plausibly allege that the Pasadena Surplus Property Authority was an arm or instrumentality of the City, and the evidence in the summary judgment record likewise establishes, at the least, a triable issue on that question. Thus, although not barring the City from pursuing its incipient objection, if necessary, on any future motion, for the purpose of the pending motions, the court assumes that the actions of the Pasadena Surplus Property Authority are attributable to the City.

and restor[ing] . . . historic structures in the City." ECF 35 at 7-8.

The court agrees with the Club that there was *a degree* of joint action here. The City owns the property, purchased the property from the federal government because the Center was ineligible to do so on its own and used its borrowing authority to help finance improvements to the property, albeit at no cost to the City. The Center, in turn, has paid for all aspects of the purchase, improvement and maintenance of the property, and it has used the property in a manner that, in the City's view, benefits the citizens of the City. The mutual benefits that the arrangement confers on the City and the Center plainly establish a symbiotic relationship between them, at least *to some degree.*

Not every "exchange of 'mutual benefits,'" however, "creat[es] the substantial interdependence legally required to create a symbiotic relationship." *Brunette v. Humane Soc'y of Ventura Cty.*, 294 F.3d 1205, 1214 (9th Cir. 2002) (as amended); *see DeBauche v. Trani*, 191 F.3d 499, 507 (4th Cir. 1999) (explaining that *Burton* "certainly does not stand for the proposition that all public and private joint activity subjects the private actors to the requirements of the Fourteenth Amendment"). Here, although the allegations of the complaint demonstrate a degree of interdependence, several countervailing considerations lead the court to conclude that "[t]he interdependence found in *Burton* was more extensive." *Scott v. Eversole Mortuary*, 522 F.2d 1110, 1114 (9th Cir. 1975).

*First*, the Supreme Court has noted that, "in determining whether a particular action or course of conduct is governmental in character, it is relevant to examine . . . the extent to which the [private] actor relies on governmental assistance and benefits." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 621 (1991) (citing *Burton*, 365 U.S. 715); *see also Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1942 n.11 (2019) (Sotomayor, J., dissenting) (emphasizing that in *Burton* the restaurant was "partly maintained" by the parking authority). In *Burton*, the parking authority provided significant financial support to the restaurant, and the finances of the two were significantly integrated. The parking authority, for example, "covenanted to complete construction expeditiously, including completion of 'the decorative finishing of the leased premises and utilities therefor, without cost to Lessee,' including necessary utility connections, toilets, hung acoustical tile and plaster ceilings; vinyl asbestos, ceramic tile and concrete floors; connecting stairs and wrought iron railings; and wood-floored show windows." *Burton*, 365 U.S. at 719. It also "agreed to furnish heat for Eagle's premises, gas service for the boiler room, and to make, at its own expense, all necessary structural repairs, all repairs to exterior surfaces except store fronts and any repairs caused by lessee's own act or neglect." *Id.* at 720. In *Burton*, moreover, "[t]he costs of land acquisition, construction, and maintenance [we]re defrayed entirely from" public funds, and "[u]pkeep and maintenance of the building, including necessary repairs, were responsibilities of

the Authority and were payable out of public funds." *Id.* at 723-24.

Here, by contrast, the Club does not allege that the Center relies in any significant respect on "governmental assistance and benefits." *Edmonson*, 500 U.S. at 621. On the contrary, the Club acknowledges that, "[i]n making this purchase, the City relied entirely on funds provided by the Western Justice Center as part of a lease agreement for the property" and that "the City relied entirely on the Western Justice Center for the repayment of the City's creditors." ECF 35 at 1. Whereas in *Burton* the restaurant was partly maintained by the City, here the lease provides that the City has "no obligation, in any manner whatsoever, to repair and maintain the Premises nor the buildings located thereon nor the equipment therein, whether structural or non-structural, all of which obligations are intended to be that of Tenant." Lease Agreement ¶ 7.3. This case, therefore, lacks the "significant financial integration" present in *Burton*. *Brunette*, 294 F.3d at 1213.

*Second*, the Supreme Court has emphasized that joint action exists under *Burton* when a public entity "knowingly accepts the benefits derived from unconstitutional behavior." *NCAA v. Tarkanian*, 488 U.S. 179, 192 (1988); *see Gorenc v. Salt River Project Agr. Imp. & Power Dist.*, 869 F.2d 503, 507 (9th Cir. 1989) ("[I]f the state 'knowingly accepts the benefits derived from unconstitutional behavior,' as the city did in *Burton*, then the conduct can be treated as state action." (quoting *Tarkanian*, 488 U.S. at 192)).

Here, however, the Club does not allege that the City knowingly accepted any benefits derived from the Center's challenged behavior. First, the complaint does not allege that the City was involved in – or had any knowledge of – the Center's decisions regarding the rental of the premises to outside groups during non-business hours. The City, therefore, could not have *knowingly* accepted any benefits from those decisions. Second, the complaint does not allege that the City *benefited* in any significant way from the Center's rental decisions. The City does not receive a portion of the rental fees the Center collects from outside groups, and the Center's rental payments to the City are just $1 per month. FAC ¶ 15.

The Club contends that the Center benefited from the Center's decision to cancel the April 20 contract because the cancellation preserved the Center's reputation in the community, which in turn allowed the Center to better perform its mission – a mission that benefits the citizens of the City. According to the Club:

> In cancelling the Pasadena Republican Club's contract to use the Maxwell House property, the Western Justice Center and Judith Chirlin stated that they were acting to preserve the reputation of the Western Justice Center and its ability to carry out its mission of dispute resolution. Thus, the anti-religious bigotry evidenced by the action of the Western Justice Center's executive committee and Ms. Chirlin's email was necessary for the Center's dispute resolution activities. The City profits by this anti-religious bigotry because the

> discrimination is claimed to be necessary for dispute resolution which was the public purpose of the City in placing Western Justice Center in control of the city-owned Maxwell House property. This is no different than the restaurant's claim in *Burton* that racial discrimination was necessary to provide the monetary profits that the restaurant would share with the parking authority.

ECF 35 at 9-10. Whatever merit there may be to this attenuated theory of "benefit," *see Benn v. Universal Health Sys., Inc.*, 371 F. 3d 165, 173 (3d Cir. 2004) ("[T]here certainly is no evidence that the government received any tangible benefit from [the private entity], save a possible increase in the general welfare."), the alleged benefit in this case cannot be compared to the direct financial benefit the parking authority in *Burton* received – $28,700 in annual rent from the segregated restaurant – that was indispensable to the parking authority's financial success. *Burton*, 365 U.S. at 720, 724. In *Burton*, the parking authority both contributed financially to the operation of the restaurant and derived a significant share of the profits. Here, by contrast, the City neither contributes to the Center's costs, nor profits in any significant way from Center's activities. Nor did the City have notice of, and acquiesce in, the Center's allegedly discriminatory actions, as was the case in *Burton*.

*Third*, in the Ninth Circuit, an "element of financial indispensability . . . is 'at the core of the joint participation found in *Burton*.'" *Vincent v. Trend W. Tech.*

*Corp.*, 828 F.2d 563, 569 (9th Cir. 1987) (alteration omitted) (quoting *Frazier v. Bd. of Trustees of Nw. Miss. Reg'l Med. Ctr.*, 765 F.2d 1278, 1288 (5th Cir. 1985) (as amended)). "[I]f a private entity, like the restaurant in *Burton*, confers significant financial benefits *indispensable to the government's 'financial success,'* then a symbiotic relationship may exist." *Brunette*, 294 F.3d at 1213 (emphasis added) (quoting *Vincent*, 828 F.2d at 569).

The Club suggests that this indispensability element is satisfied here because the Center was indispensable to the financial success *of this project*:

> Without the financial participation of the Western Justice Center, there is no showing that the City could have purchased or repaired and refurbished the property. In short, the Western Justice Center's financial participation in this project was even more critical than the restaurant's participation in the Wilmington Parking Authority's construction of the parking structure at issue in *Burton.*

ECF 35 at 1, 7. In *Burton*, however, the restaurant's profits were indispensable not only to "the State's plan to operate its project as a self-sustaining unit" but also to "the financial success of a governmental agency" – i.e., to the financial success of the parking authority generally. *Burton*, 365 U.S. at 723-24. And in applying the indispensability element, the Ninth Circuit has consistently looked to whether a private actor was indispensable to the financial success of *the public entity as a whole*, not merely to a particular project. *See*

*Brunette*, 294 F.3d at 1214 (holding that there was no joint action where the plaintiff did not "allege the Media rendered any service indispensable to *the Humane Society's* continued financial viability" or allege that the private actors were "indispensable, in any way," to the *Humane Society's* "continued . . . financial success" (emphasis added)); *Vincent*, 828 F.2d at 569 ("While Trend may have been dependent economically on its contract with the Air Force, Trend was most certainly not an indispensable element in *the Air Force's* financial success." (emphasis added)); *Scott*, 522 F.2d at 1115 ("The interdependence found in *Burton* was more extensive. Because the financial self-sufficiency *of the state agency* depended upon the profitability of the segregated restaurant, the state agency became a joint venturer in the latter's affairs." (emphasis added)).

The Club emphasizes the fact that the City purchased the property for public use – that is, to benefit the citizens of the City and its environs. ECF 35 at 1, 7; Lease Agreement ¶ 1.2. Standing alone, however, "public benefit is not enough to confer state action." *Gorenc*, 869 F.2d at 508 (citing *Jackson*, 419 U.S. at 352-53). The fact that the City believes the Center's operations benefit the citizens of the City is relevant to but not dispositive of the state action inquiry. Furthermore, although the Club argues that the Center performs a public purpose, it does not argue that the public function test for state action is satisfied here. Any such argument would fail, because the functions at issue here – operating a center for the study of dispute resolution and the administration of justice and

preserving historic properties -are not "traditionally and exclusively governmental." *Lee v. Katz*, 276 F.3d 550, 555 (9th Cir. 2002) (citing *Rendell-Baker*, 457 U.S. at 842). Nor does the Club contend that the Center "is an agency or instrumentality" of the City, *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 394 (1995), or that the City "intended either overtly or covertly to encourage discrimination," *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 173 (1972). The Center's operations are not a *City* program managed by the Center on the City's behalf; they are *the Center's* program, independently operated by the Center with the City's limited, albeit not insubstantial, support.

In sum, the specific facts and circumstances favoring a finding of joint action in this case do not come close to approaching those present in *Burton*. The facts here, simply, are not as supportive of joint action as those in *Burton*.[11] The court therefore concludes that

[11] The court recognizes that the City could have negotiated for a term in the lease agreement prohibiting the Center from discriminating in the rental of the premises during non-business hours. *Cf. Burton*, 365 U.S. at 715 ("[I]n its lease with Eagle the Authority could have affirmatively required Eagle to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation."). This is true, however, of every contractual relationship between a governmental entity and a private party. No court has ever held that every government contractor is a state actor merely because its contract with the government does not prohibit it from engaging in a particular type of discrimination. *Cf. Manhattan Cmty. Access Corp.*, 139 S. Ct. at 1931 ("[A]s the Court has long held, the fact that the government licenses, contracts with, or grants a monopoly to a private entity does not convert the private

the allegations of the FAC do not plausibly allege joint action, or a symbiotic relationship, between the Center and Chirlin on the one hand, and the City on the other.

In essence, given the distance between the facts in this case and those present in *Burton*, the Club is not asking the court to apply *Burton* to comparable facts, but to extend *Burton* to a weaker set of facts. The court declines the invitation to extend *Burton* because doing so would require reading *Burton* expansively, contrary to the narrow reading courts have consistently given the case.

As the Court itself said in 1999, the last time it discussed *Burton* at any length:

> *Burton* was one of our early cases dealing with "state action" under the Fourteenth Amendment, and later cases have refined the vague "joint participation" test embodied in that case. *Blum* and *Jackson*, in particular, have established that "privately owned enterprises providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of *Burton*."

*Am. Mfrs. Mut. Ins. Co.*, 526 U.S. at 57 (quoting *Blum*, 457 U.S. at 1011); *see also Lebron*, 513 U.S. at 409 (O'Connor, J., dissenting) ("Our decision in *Burton* . . . was quite narrow. We recognized 'the limits of our inquiry' and emphasized that our decision depended on

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entity into a state actor – unless the private entity is performing a traditional, exclusive public function.").

the 'peculiar facts [and] circumstances present' . . . and our recent decisions in this area have led commentators to doubt its continuing vitality" (alteration in original)); *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1451 (10th Cir. 1995) ("Subsequent Supreme Court decisions have read *Burton* narrowly." (citation omitted)); 1 Martin A. Schwartz, *Section 1983 Litigation: Claims and Defenses* § 5.13[A], at 5-102, 5-105 (4th ed. 2019-2 Supp.) ("Although neither *Burton* nor the symbiotic relationship doctrine has been overruled, they have been severely narrowed in scope and diminished as precedent. Supreme Court decisional law has given *Burton* a very narrow interpretation. . . ."); Laurence H. Tribe, *American Constitutional Law* § 18-3, at 1701 n.13 (2d ed. 1988) (noting "*Burton's* dwindling precedential power" and suggesting that "[t]he only surviving explanation of the result in *Burton* may be that found in Justice Stewart's concurrence"); Erwin Chemerinsky, *Constitutional Law* § 6.4, at 581 (6th ed. 2019) ("*Burton* never has been overruled. Yet practically speaking, it may be a relic of an era, before the Civil Rights Act of 1964, when the Supreme Court tried to find ways to apply the Constitution to forbid private discrimination.").

The court concludes that the FAC does not plausibly allege that Chirlin or the Center acted under color of state law, as § 1983 requires. Chirlin and the Center, therefore, are entitled to dismissal of the complaint's first three causes of action.

### B. *Whether the Complaint Plausibly Alleges the Center's Liability Under Monell*

The Center seeks dismissal of the first three causes of action on the alternative ground that the complaint does not plausibly allege its liability under *Monell*.

Under *Monell*, "[i]t is only when the execution of the government's policy or custom inflicts the injury that the municipality may be held liable under § 1983." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989) (alterations and internal quotation marks omitted). A § 1983 plaintiff may establish municipal liability in one of three ways:

> First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity. Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with final policy-making authority and that the challenged action itself thus constituted an act of official governmental policy. . . . Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it.

*Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992) (citations and internal quotation marks omitted).

As a threshold matter, the Club contends that *Monell* does not apply to private entities "that are state actors" under *Burton.* ECF 35 at 11-12. The Club, argues, therefore, that it need not satisfy *Monell's* policy or custom requirement. In *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138-39 (9th Cir. 2012), however, the Ninth Circuit squarely held that *Monell* "applies to suits against private entities under § 1983." The Club's briefing does not discuss *Tsao*, let alone distinguish it. Thus, the court concludes that, to make out a claim against the Center, the Club must show that any constitutional violation "was caused by an official policy or custom" of the Center. *Id.* at 1139.

The Club next contends that this requirement is satisfied because the complaint "alleges that the discriminatory actions in this case were taken by the executive director and the executive committee of the Western Justice Center," and "[t]hese are the individuals and committees through whom the Western Justice Center acts." ECF 35 at 12.

Under *Monell*, however, the question is not whether the Center acts through these individuals. The question is whether these individuals possessed "final policy-making authority" with respect to the rental of the premises to outside groups during non-business hours. *Gillette*, 979 F.2d at 1346. Although it may be that these individuals possessed final policy-making authority, it is also possible – perhaps even probable – that they possessed only decisionmaking authority or discretion to act; final policymaking authority may have rested with the Center's board of

directors. FAC ¶ 6. As the Ninth Circuit explained in *Gillette,*

> a municipality may be held liable for a single decision by a municipal policymaker. Municipal liability does not attach, however, unless the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official – even a policy-making official – has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion.

*Id.* at 1349 (citations and internal quotation marks omitted). In *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), for instance, "the personnel decisions of a County Sheriff, who ha[d] discretion to hire and fire employees but [wa]s not the county official responsible for establishing county employment policy, could not be attributed to the municipality." *Gillette*, 979 F.2d at 1349 (citing *Pembaur*, 475 U.S. at 484 n.12).

Because the court dismisses the claims against the Center on a different ground (the under-color-of-state-law requirement), it need not address whether the complaint adequately alleges the Center's liability under *Monell.* The Club is advised, however, that, should it elect to file a second amended complaint, it should more fully and clearly allege – to the extent feasible – facts supporting the inference that any constitutional violation was caused by an official policy or custom of the Center, as required by *Tsao.*

### C. *Whether the Complaint Fails to State a Claim Under 1985, Given the Absence of the City's Involvement*

As noted, the Club's fourth cause of action alleges that Chirlin conspired with others to deprive the Club and its members of their rights under the First Amendment. FAC ¶¶ 56-60. Although the complaint alleges only that this claim arises under § 1985, the briefing makes clear that the claim arises under § 1985(3).[12] In the motion to dismiss, Chirlin contends that the complaint fails to state a claim under § 1985(3) because it does not allege that the City was involved in the alleged conspiracy. ECF 26 at 19. Chirlin relies on *United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 830 (1983), where the Supreme Court held that "an alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) unless it is proved that the state is involved

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[12] 42 U.S.C. § 1985(3) states:

> If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

in the conspiracy or that the aim of the conspiracy is to influence the activity of the state."

The Club argues that the state involvement requirement is satisfied because, "[u]nder *Burton*, the Western Justice Center and the City of Pasadena are joint participants in the discrimination." ECF 35 at 13. As discussed above, however, the complaint does not plausibly allege joint action under *Burton*. The complaint, moreover, does not allege that the City was involved in any way with the decisions of the Center challenged in this action. Accordingly, the court concludes that the complaint fails to state a claim under § 1985(3).

### D. *Whether the Complaint Fails to State a Claim Under 1985 Because § 1985(3) Does Not Apply to Conspiracies Motivated by Political or Religious Animus*

Chirlin argues in the alternative that the complaint fails to state a claim under § 1985(3) because "it alleges, at most, a politically motivated conspiracy, which Section 1985(3) does not reach." ECF 26 at 19-20.

Under Ninth Circuit case law, § 1985(3) – which was adopted to address racially motivated conspiracies – applies to other types of class-based animus where there has been a "governmental determination that such a class merits special protection." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985). This "require[s] either that the courts have designated the

class in question a suspect or quasi-suspect classification requiring more exacting scrutiny or that Congress has indicated through legislation that the class required special protection." *Id.*

It does not appear that the Ninth Circuit has addressed whether § 1985(3) reaches conspiracies motivated by political or religious animus, *see Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 524 (9th Cir. 1994) ("We do not decide whether . . . Establishment Clause rights[] fall within the protection of section 1985(3)."), and other circuits are divided on these questions. *Compare Colombrito v. Kelly*, 764 F.2d 122, 130-31 (2d Cir. 1985) (religiously motivated animus covered), *Taylor v. Gilmartin*, 686 F.2d 1346, 1357-58 (10th Cir. 1982) (same), *and Ward v. Connor*, 657 F.2d 45, 48 (4th Cir. 1981) (same), *with Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 124 (5th Cir. 1996) (religion not covered); *also compare Cameron v. Brock*, 473 F.2d 608, 610 (6th Cir. 1973) (politically motivated animus covered), *with Perez-Sanchez v. Pub. Bldg. Auth.*, 531 F.3d 104, 108-09 (1st Cir. 2008) (O'Connor, J.) (political animus not covered).

Because the court dismisses the § 1985(3) claim on the alternative ground that the complaint does not plausibly allege state involvement, it need not reach this question, and it declines to do so.

## II. Summary Judgment

As noted above, the complaint asserts three causes of action against the City, each of which arises under

§ 1983.[13] The City's summary judgment motion argues that the City is entitled to judgment as a matter of law on these claims because the Club has not identified any City "policy or custom" that was the moving force behind any alleged violation of the Club's constitutional rights, as required under *Monell*. ECF 27. In response, the Club argues, first, that *Monell's* policy or custom requirement does not apply here and, in the alternative, that *Monell* is satisfied because the City has delegated policymaking authority to the Center. ECF 34. The court addresses these arguments seriatim.

### A. *Whether Monell's Custom or Policy Requirement Applies*

The Club contends that it need not satisfy *Monell's* policy or custom requirement; that, so long as it can establish joint action under *Burton*, the City is liable for any constitutional violation committed by the Center, irrespective of any showing that the violation was caused by an official policy or custom of the City. In the Club's view, *Burton* "held that when a city leases property to a private entity in such a manner, for the purpose of helping to pay for the construction of the public property, both the private entity *and the city* are bound by the requirements of the Fourteenth Amendment."

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[13] The City's summary judgment motion is also directed against the fourth cause of action, which is predicated on a violation of § 1985(3). But that cause of action is alleged only against defendant Chirlin. Thus, the court treats that portion of the City's summary judgment motion as surplusage and need not address it.

ECF 34 at 7 (emphasis added) (citing *Burton*, 365 U.S. at 726). According to the Club, to apply the policy or custom requirement here, the court would have to hold that "*Burton* was somehow impliedly overruled by *Monell*." ECF 34 at 12.

This argument misapprehends *Burton* in several significant respects. First, *Burton* was decided 17 years before *Monell*. It is therefore unremarkable that *Burton* did not discuss *Monell's* policy or custom requirement. Second, *Burton* was not a § 1983 case, and it did not involve a municipal entity: the governmental actor in *Burton* – the Wilmington Parking Authority – was a *state* agency. *See Burton*, 365 U.S. at 716 ("The parking building is owned and operated by the Wilmington Parking Authority, an agency of the State of Delaware. . . ."); *id.* at 717, 724, 725, 726 (same). Thus, even if *Monell* had been on the books in 1961, it would have had no application to the case. Third, even if the parking authority had been a municipal entity, *Burton* did not address the liability of the parking authority. The only issue the Court decided was whether *the restaurant* could be held liable. *See id.* at 726 ("[W]hat we hold today is that when a State leases public property in the manner and for the purpose shown to have been the case here, the proscriptions of the Fourteenth Amendment must be complied with *by the lessee* as certainly as though they were binding covenants written into the agreement itself." (emphasis added)).

For all of these reasons, the Club errs by arguing that *Burton* provides a way to establish municipal liability under § 1983 without having to demonstrate

that the alleged constitutional violation was caused by a municipal policy or custom. *Burton* did not address municipal liability or § 1983. Accordingly, the court does not read *Burton* as establishing an exception to *Monell*.

Even assuming, however, that *Burton's* joint action test provides an alternative path for establishing municipal liability under § 1983, the court is not persuaded that such an exception to *Monell* would apply here. In addressing Chirlin and the Center's motion to dismiss, the court explained why, based on the Club's allegations, the complaint does not establish joint action or a symbiotic relationship between the City and the Center under *Burton*. The court reaches the same conclusion upon its review of the evidence in the summary judgment record. The material facts in the summary judgment record – which are materially indistinguishable from the allegations in the complaint – are undisputed. ECF 27-1; 34-1. Accordingly, the court may determine as a matter of law whether the Center and the City were joint actors under *Burton*. *See Han v. Mobil Oil Corp.*, 73 F.3d 872, 875 (9th Cir. 1995) ("When a mixed question of fact and law involves undisputed underlying facts, summary judgment is appropriately granted."). For the reasons discussed in addressing the motion to dismiss, the court concludes as a matter of law that the Center and the City were not joint actors under *Burton*. The facts and circumstances supporting a finding of joint action here simply are not as compelling as those in *Burton*, and the court is not prepared to read *Burton* expansively – extending it to

a weaker set of facts – when the Supreme Court and the Ninth Circuit have consistently read the case narrowly.

In sum, the court concludes that *Monell* applies here because, first, *Burton* does not establish an exception to *Monell's* policy or custom requirement and, second, even if such an exception existed, it would not be satisfied here because the summary judgment record does not support a finding of joint action under *Burton*. The Club, therefore, must show that any alleged constitutional violation was caused by an official policy or custom of the City.

### B. *Whether the Policy or Custom Requirement Is Satisfied Here*

As noted, a § 1983 plaintiff can satisfy *Monell's* policy or custom requirement in one of three ways, including, as relevant here, by proving "that the individual who committed the constitutional tort was an official with 'final policymaking authority' and that the challenged action itself thus constituted an act of official governmental policy." *Gillette*, 979 F.2d at 1346. Final policymaking authority, moreover, may be "delegated by an official who possesses such authority." *Christie v. Iopa*, 176 F.3d 1231, 1236 (9th Cir. 1999) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) (plurality opinion)).

The Club relies on this delegation theory here, arguing that the alleged constitutional violations were caused by a City policy because "[t]he City delegated to

the Western Justice Center the authority to make final policy regarding rental of the City-owned Maxwell House property during nonbusiness hours." ECF 34 at 15. The Club contends that the City delegated this authority to the Club because the lease agreement "gave the Western Justice Center total discretion over whether and to whom the property could be rented during nonbusiness hours." ECF 34 at 15.

The Court agrees with the Club that the Center, and not the City, possesses final policymaking authority regarding whether and to whom the Maxwell House may be rented during non-business hours. The Center's policies with respect to these rentals are not constrained by City policies or subject to the City's review. *See Christie*, 176 F.3d at 1236-37 (citing *Praprotnik*, 485 U.S. at 127). The Center, therefore, is the final policymaker with respect to this rental policy.

That, however, is not the end of the inquiry. To satisfy *Monell*, the Club also must establish that the Center's policies are those of the City – i.e., that when the Center establishes policy governing the rental of the premises, it is exercising policymaking authority that the City has *delegated* to the Center and that it is therefore establishing policy *on behalf of* the City. The court is not persuaded that the Club has made this showing.

There is no question that, when the City acquired this property and leased it to the Center, it *conveyed* to the Center the right and authority to rent the premises to outside groups. The record does

not suggest, however, that this was anything other than a conveyance of a property interest, rather than the delegation of City policymaking authority. *Compare Delegate*, Black's Law Dictionary (11th ed. 2019) ("To send as a representative with authority to act; to depute"; "To give part of one's power or work to someone in a lower position within one's organization <delegated legislative functions>."), *with Conveyance*, Black's Law Dictionary ("The voluntary transfer of a right or of property."), *and Lease*, Black's Law Dictionary ("A contract by which a rightful possessor of real property *conveys* the right to use and occupy the property in exchange for consideration, usu. rent." (emphases added)).

Case law explains that delegation occurs when a city delegates *a city function* to a private party, something that did not occur here: "for an official's acts to constitute municipal policy, it must be demonstrated that policymaking authority *for a particular city function* was delegated to that official." *Hammond v. County of Madera*, 859 F.2d 797, 802 (9th Cir. 1988) (emphasis added), *abrogated on other grounds as stated in L.W. v. Grubbs*, 92 F.3d 894, 898 (9th Cir. 1996). In *King v. Kramer*, 680 F.3d 1013, 1020 (7th Cir. 2012), and *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 704-05 & n.9 (11th Cir. 1985), for example, the delegation doctrine applied where counties delegated to private entities their duty to provide medical care to county jail inmates. Similarly, in *Herrera v. County of Santa Fe*, 213 F. Supp. 2d 1288, 1292 (D.N.M. 2002), the delegation doctrine applied where

the county delegated operation of the county detention center to a private entity. Alternatively, delegation may occur when a municipality contracts with a private party to manage municipal property. *Cf. Manhattan Cmty. Access Corp.*, 139 S. Ct. at 1933 (suggesting that state action would exist if a private entity was "simply managing government property on behalf of" a city).

Here, the evidence establishes only that the City conveyed a property interest to the Center. Under the lease, the Center acquired the right to rent the premises to outside groups during non-business hours. Thus, when the Center rents the premises to outside groups, it is exercising its own authority as the holder of a possessory interest in the property, and it is renting out the premises on its own behalf. There is no evidence that policymaking authority for a particular city function was delegated to the Center, that the Center is exercising City authority when it rents out the premises, or that the Center is renting out the premises on the City's behalf. As noted earlier, the Center's activities are not *City* programs managed by the Center on the City's behalf; they are the Center's own programs, operated by the Center on its own behalf, with the limited, albeit not insubstantial, support of the City.

In sum, because the undisputed facts show that the Center was not delegated final policymaking authority by the City, the Club cannot establish that the alleged constitutional violations were caused by an official policy or custom of the City, as required under

*Monell*. The City, therefore, is entitled to summary judgment on the Club's § 1983 claims.

## CONCLUSION

Chirlin and the Center's motion to dismiss the first amended complaint (ECF 26) is granted. The Club is granted 30 days' leave to file a second amended complaint as against these defendants. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[I]n dismissing for failure to state a claim under Rule 12(b)(6), 'a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.' " (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).[14] Alternatively, the Club may notify the court that it does not intend to amend, or if the Club fails to file a second amended complaint within the time allowed, judgment shall be entered in favor of Chirlin and the Center in accordance herewith.

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[14] The Ninth Circuit recently held that the plaintiff-appellant had "waived its right to amend" its complaint because "it never asked the district court for such relief." *City of San Juan Capistrano v. Cal. Pub. Util. Comm'n*, 937 F.3d 1278, 1282 (9th Cir. 2019). That case involved waiver of the right when it is raised for the first time on appeal. Waiver has not been raised in this case and it remains to be seen to what extent *San Juan Capistrano* affects, in district court, a party's right to amend recognized in *Smith v. Lopez*.

The City's motion for summary judgment (ECF 27) is granted.[15] Partial judgment in favor of the City shall be entered.

Dated: December 30, 2019.

/s/ *A. Wallace Tashima*
A. WALLACE TASHIMA
United States Circuit Judge
Sitting by Designation

[15] Although, in limited circumstances, the Court has the discretion to permit a complaint to be amended after the grant of summary judgment, *see Nguyen v. United States*, 792 F.2d 1500, 1503 (9th Cir. 1986) ("Granting leave to amend after summary judgment is . . . allowed at the discretion of the trial court"), the Club has not sought further leave to amend. Moreover, it appears that further amendment with respect to the City would be futile.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| PASADENA REPUBLICAN CLUB, a General Purpose Political Committee, on behalf of itself and its members<br><br>Plaintiffs,<br><br>v.<br><br>WESTERN JUSTICE CENTER, a California nonprofit corporation, JUDITH CHIRLIN, and CITY OF PASADENA,<br><br>Defendants. | Case No. 2:18-cv-09933 SJO (AFMx)<br><br>**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES (42 U.S.C. §§1983, 1985) DEMAND FOR JURY TRIAL**<br><br>(Filed Feb. 5, 2019) |

## JURISDICTION

1. This Court has jurisdiction to hear this claim pursuant to 28 U.S.C. §1331 (federal question) since

the claims asserted herein arise out of the laws of the United States (42 U.S.C. §§1983, 1985) and the Speech and Religion Clauses of the First Amendment to the United States Constitution.

## VENUE

2. Venue is proper in this district pursuant to 13 U.S.C. §1391(c)(1) because all defendants are entities that are subject to this Court's personal jurisdiction. The CITY OF PASADENA is a government body that is located within this district. The WESTERN JUSTICE CENTER is a nonprofit corporation that is physically located in the CITY OF PASADENA. JUDITH CHIRLIN served as Executive Director of the WESTERN JUSTICE CENTER at the time of the events giving rise to this litigation and, on information at belief, continues to maintain an office address in the City of Los Angeles, California. At the time of the events giving rise to these events, CHIRLIN maintained an office at the WESTERN JUSTICE CENTER in Pasadena, California.

## INTRODUCTION

3. This is civil rights claim pursuant to 42 U.S.C. §§ 1983 and 1985 for declaratory and injunctive relief and money damages. The WESTERN JUSTICE CENTER, managing property owned by the CITY OF PASADENA, canceled an event that was to be held at that property because JUDITH CHIRLIN, executive director of WESTERN JUSTICE CENTER, and members of

the Center's executive committee disagreed with the viewpoint of a religious organization with which the speaker was affiliated. However, as state actor, managing the public property of the CITY OF PASADENA for public purposes of the CITY, WESTERN JUSTICE CENTER "was obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of . . . [the] religious beliefs" of the speaker chosen by the PASADENA REPUBLICAN CLUB. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 135 S.Ct. 1719, 1731 (2018). Further, when it opens a public facility for community meetings, even on a limited basis, neither the CITY OF PASADENA nor THE WESTERN JUSTICE CENTER may discriminate against groups based on the viewpoint of the speaker or the group. Access to even nonpublic forums cannot be limited based a public officials' opposition to the views of the speaker or the organization. *Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 800 (1985); *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 (1983). The cancellation of this event based on the speaker's viewpoint and religious views is a clear violation of well-settled law concerning the Freedom of Speech and Free Exercise of Religion guaranteed by the First Amendment of the United States Constitution. Further, the adopted policy of the WESTERN JUSTICE CENTER to discriminate among groups based on political viewpoint regarding rental of the property is also a clear violation of well-settled law concerning the Freedom of Speech guaranteed by the First Amendment of the United States Constitution. JUDITH CHIRLIN and members of the staff

and executive committee of the WESTERN JUSTICE CENTER conspired to deprive the PASADENA REPUBLICAN CLUB and its members of their civil rights to be free from religious and political viewpoint discrimination when they cancelled the contract for the Club to hold an event just hours before the event was to take place, and refused to rent to the Club for future events.

**PARTIES**

4. The PASADENA REPUBLICAN CLUB is the oldest continuously active Republican Club in America. It is a voluntary membership organization that was founded in 1884 by Colonel Jabez Banbury, one of the early settlers of Pasadena and a veteran of the Civil War. The club exists to allow its members to join together to elect candidates to federal, state, and local office and to provide a medium for the expression of political ideals and principles of the membership. This includes joining together to support the election of President Trump as the republican candidate for President of the United States and to support the election of other republican candidates to local, state, and national office. To this end, the club invites speakers to its meetings to educate members on the issues of the day. It is affiliated with the California Republican Party and the Republican Party of Los Angeles and it independently files reports with the California Fair Political Practices Commission as a General Purpose Committee with the sub-designation or Political

Committee/Central Committee. It brings this action on behalf of itself and its members.

5. The CITY OF PASADENA is a city in the State of California that exercises government powers within the city limits. The City owns the property located at 55-85 South Grand Avenue, Pasadena, which includes the Maxwell House where the events that are the subject of this dispute were scheduled to take place.

6. The WESTERN JUSTICE CENTER is a 501(c)(3) nonprofit corporation. It was formed by state and federal judges and prominent attorneys. It continues to name as officers and members of its board judges that sit on the Los Angeles Superior Court, United States Bankruptcy Court, the United States Federal District Court for the Central District of California, and the United States Court of Appeals for the Ninth Circuit. The WESTERN JUSTICE CENTER leases, from the CITY OF PASADENA, property located within the City located at 55-85 South Grand Avenue, Pasadena, California.

7. JUDITH CHIRLIN was the executive director of the WESTERN JUSTICE CENTER at the time of the events at issue in this action.

## FACTS

## WESTERN JUSTICE CENTER AND THE CITY OF PASADENA

8. On or about April 4, 1989, WESTERN JUSTICE CENTER and the Pasadena Surplus Property Authority entered into a 55-year lease for the WESTERN JUSTICE CENTER to occupy property owned by the Authority that includes the Maxwell House in the City of Pasadena. The properties are identified in the lease as 55-85 South Grand Avenue, Pasadena. WESTERN JUSTICE CENTER has an option under the lease to extend the lease for an additional 44 years.

9. The Surplus Property Authority was a public corporation formed by action of the CITY OF PASADENA pursuant to state law for the purpose of acquiring surplus property of the United States for the benefit of the people of the CITY OF PASADENA. The City Council of the CITY OF PASADENA was the governing body of this Surplus Property Authority and the Mayor of the CITY OF PASADENA was the presiding officer.

10. The purpose of the lease, as stated in that document, was to benefit the citizens of Pasadena through "a center for the study of dispute resolution and the administration of justice, to provide additional employment and revenues to the local economy, to provide for improvements in both local, regional, national, and international components of the legal system, to provide a forum for educational research, and for the purpose of insuring the restoration and historical

perseveration of the premises." An additional purpose of the lease was to insure the restoration and historic preservation of the property.

11. The lease expressly stated that it was not for commercial purposes and imposed limits on the types of entities that could occupy the premises. Paragraph 5.1 of the lease specified that the property could only be used "for the purposes described in the Plan of Public Use for Surplus Property." The lease expressly prohibited subletting to lawyers offering services for profit.

12. The Plan of Public Use for Surplus Property referred to in the lease limited the subletting of the property to "nonprofits with law-related purposes" particularly regarding judicial administration, alternative dispute resolution, continuing education of the bar, and justice reform. The lease required WESTERN JUSTICE CENTER to notify the CITY OF PASADENA of any sublease and expressly prohibited any sublessee to use the property for any use not authorized in the lease between WESTERN JUSTICE CENTER and the CITY OF PASADENA.

13. The lease also authorized the WESTERN JUSTICE CENTER to use the premises for "community meetings and other purposes during non-business hours."

14. The lease was amended in 1990 and again in 1993 by the Surplus Property Authority to alter the improvement schedule for the property. On July 16, 1994, the property was transferred to the City of

Pasadena subject to the lease. The City executed a third amendment to the lease on July 18, 1994 to provide up to $458,000 to WESTERN JUSTICE CENTER for tenant improvements on the property and fixing the rent at a rate to repay the amount used for tenant improvements. None of the restrictions on use of the property were altered in the amendments to the lease, nor did the amendments disclaim the public purpose of the lease.

15. The CITY OF PASADENA used its government authority to borrow money that was provided to WESTERN JUSTICE CENTER to complete improvements on the property. WESTERN JUSTICE CENTER's rent payments to the CITY OF PASADENA were calculated to repay the loans. All of these loans have now been repaid and the current rent through the end of the lease is $1.00 per month.

**THE CONTRACT WITH THE PASADENA REPUBLICAN CLUB**

16. At the time of the events in question, the WESTERN JUSTICE CENTER rented the property in question for after-hours use to the PASADENA REPUBLICAN CLUB and other groups for meetings.

17. In January or February of 2017, Lynn Gabriel, president of the PASADENA REPUBLICAN CLUB, executed a contract with the WESTERN JUSTICE CENTER to rent the Maxwell House for an event on April 20, 2017, for a rental fee of $190. On or about

February 17, 2017, the PASADENA REPUBLICAN CLUB made the final payment for the rental.

18. After the contract for this rental was concluded, JUDITH CHIRLIN informed the PASADENA REPUBLICAN CLUB that the executive committee of the WESTERN JUSTICE CENTER would no longer rent the Maxwell House "to political groups – one side or the other" and thus the property would not be available for rental to the PASADENA REPUBLICAN CLUB in May. At the time JUDITH CHIRLIN and WESTERN JUSTICE CENTER announced this "policy," they were subleasing a portion of the CITY OF PASADENA property located at 55-85 South Grand Avenue to the League of Women Voters of Pasadena Area which describes itself as a "political organization and which opposes President Trump, the republican President supported by PASADENA REPUBLICAN CLUB. Subsequent to the adoption of this new "policy," WESTERN JUSTICE CENTER allowed League of Women Voters of Pasadena Area to use a portion of the Maxwell House property for an event at which the League discussed its opposition to President Trump. On information and belief, the CITY OF PASADENA was aware of the sublease of city property to the League of Women Voters of Pasadena Area by the WESTERN JUSTICE CENTER at the time of these events.

19. The rental contract for the April 20, 2017 event noted that the property was owned by the CITY OF PASADENA. The contract further required a disclaimer to be printed on any flyer or publicity for the

event with the words: "The Western Justice Center/ Maxwell House does not endorse the views expressed by this organization or its speakers." The contract was signed by Lynn Gabriel for the PASADENA REPUBLICAN CLUB and JUDITH CHIRLIN on behalf of the WESTERN JUSTICE CENTER. CHIRLIN was the Executive Director of the WESTERN JUSTICE CENTER at that time. The PASADENA REPUBLICAN CLUB advertisements for the April 20 event complied with this notice requirement.

20. At or before the time she executed this contract for the rental of Maxwell House from WESTERN JUSTICE CENTER, Lynn Gabriel, president of the PASADENA REPUBLICAN CLUB, notified JUDITH CHIRLIN, the then Executive Director of the WESTERN JUSTICE CENTER, that the planned speaker for the event was Dr. John Eastman.

21. Dr. Eastman is the former dean of the law school at Chapman University and a nationally recognized expert on Constitutional Law. He is currently the Henry Salvatori Professor of Law and Community Service at the Chapman University, Dale E. Fowler School of Law. He is also the Director of the Center for Constitutional Jurisprudence, a public interest law firm affiliated with The Claremont Institute, through which he has participated in more than 140 cases of constitutional significance before the Supreme Court of the United States. He has a Ph.D. in Government with fields of concentration in Political Philosophy, American Government, Constitutional Law, and International Relations from the Claremont Graduate School.

He speaks on issues of law and politics on national radio and television programs as well as to civic groups and law schools across the nation.

22. The PASADENA REPUBLICAN CLUB collects a fee from its members at meetings, and the speaker for the meeting is a draw to help the PASADENA REPUBLICAN CLUB to raise money and defer the cost of the rental of the venue for the meeting.

23. The PASADENA REPUBLICAN CLUB advertised the planned April 20, 2017 event listing Dr. Eastman as the speaker. The publicity noted that the cost to attend would be $10.00 for members. In accordance with the requirements of the contract, the publicity of the event contained the following disclaimer: "The Western Justice Center/Maxwell House does not endorse the views expressed by this organization or its speakers."

**THE WESTERN JUSTICE CENTER CANCELS THE CONTRACT AT THE LAST-MINUTE**

24. At 3:43 pm on the day of the event, the then Executive Director of WESTERN JUSTICE CENTER, JUDITH CHIRLIN, sent an email to Lynn Gabriel, the president of the PASADENA REPUBLICAN CLUB to state that WESTERN JUSTICE CENTER was cancelling the event that was scheduled to take place less than three hours from the time of the email. CHIRLIN explained that "While I knew that Prof Eastman was a professor and author, we learned just today that he is the President of the National Organization for

Marriage (NOM). NOM's positions on same-sex marriage, gay adoption, and transgender rights are antithetical to the values of the Western Justice Center. . . . WJC works to improve campus climates with a special focus on LGBT bias and bullying. We work to make sure that people recognize and stop LGBT bullying. Through these efforts we have built a valuable reputation in the community, and allowing your event in our facility would hurt our reputation in the community."

25. The National Organization for Marriage is a national organization that works to defend marriage and the faith communities that sustain it at the local, state, and national levels. The ideals of the organization are rooted in both social science and the religious beliefs of its members. The organization advocates for marriage as a relationship between one man and one woman in the courts and before the legislative bodies at the local, state, and national level. It does not advocate bias of any type and it does not engage in bullying.

26. Lynn Gabriel immediately placed a telephone call to JUDITH CHIRLIN in an attempt to reach an accommodation. Gabriel noted that since CHIRLIN had told Gabriel that the PASADENA REPUBLICAN CLUB would not be allowed to rent this space in the future that CENTER should allow this meeting to take place as planned. CHIRLIN responded that she and the executive committee had discussed the matter and the executive committee would not consent to allow the meeting to be held at the Maxwell House.

27. By waiting until 3:43 pm to cancel the event scheduled for 6:30 pm that evening, CHIRLIN, acting on behalf of WESTERN JUSTICE CENTER and the CITY OF PASADENA, sought to ensure that the event could not be held at all and to impose the maximum level of inconvenience for the PASADENA REPUBLICAN CLUB.

28. By canceling this event at the last minute solely because they disagreed with the political and religious beliefs of the speaker, CHIRLIN, the executive committee, and WESTERN JUSTICE CENTER acted with malice, oppression, intending to harm PASADENA REPUBLICAN CLUB and its members for harboring beliefs contrary to those promoted by WESTERN JUSTICE CENTER. These actions constitute willful and wanton misconduct. As a retired California Judge, CHIRLIN is presumably aware of the provisions of the United States Constitution and was therefore aware that the action she took on behalf of the WESTERN JUSTICE CENTER was unconstitutional. Further, the Board and, on information and belief, the executive committee of the WESTERN JUSTICE CENTER include judges of the United States District Court for the Central District of California and the United States Circuit Court of Appeals for the Ninth Circuit, who likewise are aware of the provisions of the United States Constitution and know that discrimination on the basis of political viewpoint and religious belief in the rental of public property violates the United States Constitution unless supported by a compelling governmental interest. JUDITH CHIRLIN's, the WESTERN

JUSTICE CENTER's, and its executive committee's hatred of contrary political viewpoints and religious beliefs is not a compelling governmental interest.

29. Because of the last-minute cancellation of the contract to use the Maxwell House property, PASADENA REPUBLICAN CLUB had trouble finding an alternate facility to hold its program. After a frantic search, PASADENA REPUBLICAN CLUB was able to book the University Club of Pasadena for the event that night, but at a cost of $500 – more than double the cost of the agreed rental price for the Maxwell House

30. After a substitute facility that could accommodate the meeting that evening was located and booked, there was no time to alert all the members of PASADENA REPUBLICAN CLUB about the change in meeting location. This required Lynn Gabriel, president of PASADENA REPUBLICAN CLUB, to stand outside the Maxwell House on the night of the event to redirect PASADENA REPUBLICAN CLUB members to the new venue, causing her to miss the event herself.

31. Not all of PASADENA REPUBLICAN CLUB members made it to the new venue. Attendance at the event at the University Club was one-third below average attendance. PASADENA REPUBLICAN CLUB was planning on a higher than average attendance because of Dr. Eastman's national reputation and frequent appearances on national television and radio programs.

**First Cause of Action**
**Viewpoint Discrimination in**
**violation of the First Amendment**
**and 42 U.S.C. §1983**
**(All Defendants)**

32. Plaintiffs restate the allegations of paragraphs 1-31, inclusive, as if fully restated in this Cause of Action.

33. Maxwell House, the property leased by the WESTERN JUSTICE CENTER, is owned by the CITY OF PASADENA and is included in the property identified as 55-85 South Grand Avenue, Pasadena. The property is leased to WESTERN JUSTICE CENTER to promote the government purposes of the CITY OF PASADENA. In operating and subletting the property, WESTERN JUSTICE CENTER and JUDITH CHIRLIN, its Executive Director at the time of the events giving rise to this complaint, are "state actors" for purposes of the United States Constitution and 42 U.S.C. §1983 and the CITY OF PASADENA is responsible for discrimination by the WESTERN JUSTICE CENTER in the operation of this property

34. Public property opened for lease by community groups must be available without regard to the viewpoint of the organization or the speaker.

35. PASADENA REPUBLICAN CLUB, and its members, had a right under the First Amendment to use the Maxwell House on the same basis as other organizations without regard to its viewpoint or the viewpoint of the speakers it chose for its event.

36. WESTERN JUSTICE CENTER, JUDITH CHIRLIN, and the CITY OF PASADENA discriminated against PASADENA REPUBLICAN CLUB based on the viewpoint of the speaker it chose for its event, thereby denying PASADENA REPUBLICAN CLUB and its members of their rights under the First Amendment.

37. The CITY OF PASADENA permitted WESTERN JUSTICE CENTER to engage in viewpoint discrimination in the rental of city owned property that was leased to WESTERN JUSTICE CENTER for government purposes.

38. WESTERN JUSTICE CENTER, JUDITH CHIRLIN, and the CITY OF PASADENA violated the rights of PASADENA REPUBLICAN CLUB and its members under 42 U.S.C. §1983.

39. WESTERN JUSTICE CENTER and JUDITH CHIRLIN acted with malice, oppression, and wanton and intentional disregard of the rights of PASADENA REPUBLICAN CLUB and its members when it cancelled this contract based on the political viewpoint of the scheduled speaker.

Wherefore, plaintiff prays for judgment as follows.

**Second Cause of Action**
**Religious Belief Discrimination in violation of the First Amendment And 42 U.S.C. §1983**
**(All defendants)**

40. Plaintiffs restate the allegations of paragraphs 1-39, inclusive, as if fully restated in this Cause of Action.

41. Maxwell House, the property leased by the WESTERN JUSTICE CENTER, is owned by the CITY OF PASADENA and is included in the property identified as 55-85 South Grand Avenue, Pasadena. The property is leased to WESTERN JUSTICE CENTER to promote the government purposes of the CITY OF PASADENA. In operating and subletting the property, WESTERN JUSTICE CENTER and JUDITH CHIRLIN, its Executive Director at the time of the events giving rise to this complaint, are "state actors" for purposes of the United States Constitution and 42 U.S.C. §1983 and the CITY OF PASADENA is responsible for discrimination by the WESTERN JUSTICE CENTER in the operation of this property

42. Public property opened for rental or lease by community groups must be available without regard to the viewpoint of the organization.

43. PASADENA REPUBLICAN CLUB, and its members, had a right under the First Amendment to use the Maxwell House on the same basis as other organizations without regard to its viewpoint.

44. In adopting a policy that was applied only to PASADENA REPUBLICAN CLUB and not other political organizations subleasing city property from the WESTERN JUSTICE CENTER, JUDITH CHIRLIN, and the CITY OF PASADENA discriminated against PASADENA REPUBLICAN CLUB based on the viewpoint of the CLUB and its members, thereby denying PASADENA REPUBLICAN CLUB and its members of their rights under the First Amendment.

45. The CITY OF PASADENA permitted WESTERN JUSTICE CENTER to engage in viewpoint discrimination in the rental of city owned property that was leased to WESTERN JUSTICE CENTER for government purposes.

46. WESTERN JUSTICE CENTER, JUDITH CHIRLIN, and the CITY OF PASADENA violated the rights of PASADENA REPUBLICAN CLUB and its members under 42 U.S.C. §1983.

47. WESTERN JUSTICE CENTER and JUDITH CHIRLIN acted with malice, oppression, and wanton and intentional disregard of the rights of PASADENA REPUBLICAN CLUB and its members when it adopted a policy prohibiting the PASADENA REPUBLICAN CLUB from renting the property while the WESTERN JUSTICE CENTER continued to sublease a portion of the property to a political organization with a different viewpoint.

Wherefore, plaintiff prays for judgment as follows.

**Third Cause of Action**
**Religious Belief Discrimination in violation of the First Amendment and 42 U.S.C. §1983**
**(All defendants)**

48. Plaintiffs restate the allegations of paragraphs 1-47, inclusive, as if fully restated in this Cause of Action.

49. Maxwell House, the property leased by the WESTERN JUSTICE CENTER, is owned by the CITY OF PASADENA. The property is leased to WESTERN JUSTICE CENTER to promote the government purposes of the CITY OF PASADENA. In operating and subletting the property, WESTERN JUSTICE CENTER and JUDITH CHIRLIN, its Executive Director at the time of the events giving rise to this action, are "state actors" for purposes of the First Amendment and 42 U.S.C. §1983 and the CITY OF PASADENA is responsible for discrimination by WESTERN JUSTICE CENTER in the operation of the property

50. Public property opened for rental or lease by community groups must be available without regard to the religious viewpoint of the organization or the speaker. The CITY OF PASADENA may not discriminate against community groups based on the religious beliefs of speakers.

51. PASADENA REPUBLICAN CLUB, and its members, had a right under the Free Exercise Clause of the First Amendment to use the Maxwell House on the same basis as other organizations without regard

to the religious viewpoint of the speakers it chose for its event.

52. WESTERN JUSTICE CENTER, JUDITH CHIRLIN, and the CITY OF PASADENA discriminated against PASADENA REPUBLICAN CLUB, and its members, based on the religious viewpoint of the speaker it chose for its event, thereby denying PASADENA REPUBLICAN CLUB and its members of their rights under the Free Exercise Clause of the First Amendment.

53. The CITY OF PASADENA permitted WESTERN JUSTICE CENTER to engage in religious viewpoint discrimination in the subletting of city owned property that was leased to WESTERN JUSTICE CENTER for government purposes and is responsible for discrimination by WESTERN JUSTICE CENTER in the operation of the property

54. WESTERN JUSTICE CENTER, JUDITH CHIRLIN, and the CITY OF PASADENA violated the rights of PASADENA REPUBLICAN CLUB and its members under 42 U.S.C. §1983.

55. WESTERN JUSTICE CENTER and JUDITH CHIRLIN acted with malice, oppression, and wanton and intentional disregard of the rights of PASADENA REPUBLICAN CLUB and its members when it cancelled this contract based on the political viewpoint of the scheduled speaker.

Wherefore, plaintiff prays for judgment as follows.

**Fourth Cause of Action**
**Conspiracy to Deny Civil Rights to Freedom from Political Viewpoint and Religious Belief Discrimination pursuant to 42 U.S.C. §1985**
**(Judith Chirlin)**

56. Plaintiffs restate the allegations of paragraphs 1-55, inclusive, as if fully restated in this Cause of Action.

57. On information and belief, JUDITH CHIRLIN conspired with members of the staff and executive committee of the WESTERN JUSTICE CENTER to deprive PASADENA REPUBLICAN CLUB and its members of civil rights – specifically to hear from a speaker affiliated with a religious organization that opposed same-sex marriage and the right to be treated equally with other political organizations seeking rent facilities leased by the CITY OF PASADENA to the WESTERN JUSTICE CENTER.

58. Through enactment of the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act, Congress has recognized that state governments infringe on religious liberties of individuals with unpopular religious views. The United States Supreme Court has also recognized that individuals with religiously-based opposition to same-sex marriages are the target of state actions seeking to suppress that opposition. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S.Ct. 1719, 1732 (2018); *Obergefell v. Hodges*, 135 S.Ct. 2584, 2607

(2015). This religious discrimination is seen in numerous cases across the country including *Masterpiece Cakeshop*, *supra*, *Arlene's Flowers, Inc. v. Washington*, 138 S.Ct. 2671 (2018) (granting certiorari and remanding case for further consideration), *Klein v. Oregon Bureau of Labor and Industries*, Supreme Court No. 18-547 (petition for writ of certiorari pending), to name just a few.

59. The federal courts have long recognized that individuals exercising state and local power infringe on the rights of individuals and groups who profess political beliefs contrary to the beliefs of those in power. *E.g.*, *Hefferman v. City of Paterson, N.J.*, 136 S.Ct. 1412, 1416 (2016); *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 79 (1990); *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Thus, the courts have recognized the need to protect individuals and groups from discrimination because of their political beliefs. This problem is especially acute in California where more than three-fourths of the state legislative seats are held by Democrats and where the Democratic Attorney General and the current and immediate past Democratic Governors have announced opposition to the Republican President of the United States as a policies of their administrations.

60. By taking the actions alleged herein, JUDITH CHIRLIN, the executive committee, members of the staff, and WESTERN JUSTICE CENTER conspired in violation of 42 U.S.C. §1985 to deny civil liberties guaranteed by the First Amendment to the

United States Constitution to PASADENA REPUBLICAN CLUB and its members.

Wherefore, plaintiff prays for judgment as follows.

**PRAYER FOR RELIEF**

WHEREFORE, PASADENA REPUBLICAN CLUB prays for relief as follows

1. A declaration that the CITY OF PASADENA violated the rights of the PASADENA REPUBLICAN CLUB and its members to Freedom of Speech under the First Amendment and 42 U.S.C. §1983 when JUDITH CHIRLIN and WESTERN JUSTICE CENTER cancelled a facility use contract based on the viewpoint of the speaker chosen for the event.

2. A declaration that JUDITH CHIRLIN and WESTERN JUSTICE CENTER violated the rights of the PASADENA REPUBLICAN CLUB and its members to Freedom of Speech under the First Amendment and 42 U.S.C. §1983 when it cancelled a facility use contract based on the viewpoint of the speaker chosen for the event.

3. A declaration that JUDITH CHIRLIN and WESTERN JUSTICE CENTER acted with malice, oppression, and wanton and intentional disregard for the law when it cancelled the facility use contract PASADENA REPUBLICAN CLUB based on the viewpoint of the speaker chosen for the event.

4. A declaration that the CITY OF PASADENA violated the rights of the PASADENA REPUBLICAN CLUB and its members to Free Exercise of Religion under the First Amendment and 42 U.S.C. §1983 when JUDITH CHIRLIN and WESTERN JUSTICE CENTER cancelled a facility use contract based on the religious viewpoint of the speaker chosen for the event.

5. A declaration that JUDITH CHIRLIN and WESTERN JUSTICE CENTER violated the rights of the PASADENA REPUBLICAN CLUB and its members to Free Exercise of Religion under the First Amendment and 42 U.S.C. §1983 when it cancelled a facility use contract based on the religious viewpoint of the speaker chosen for the event.

6. A declaration that JUDITH CHIRLIN and WESTERN JUSTICE CENTER acted with malice, oppression, and wanton and intentional disregard for the law when they cancelled the facility use contract with PASADENA REPUBLICAN CLUB based on the RELIGIOUS viewpoint and beliefs of the speaker chosen for the event.

7. A declaration that JUDITH CHIRLIN conspired in violation of 42 U.S.C. §1985 with the staff and executive committee and the WESTERN JUSTICE CENTER to deprive the PASADENA REPUBLICAN CLUB and its members of their civil rights specifically by barring events with speakers that are affiliated with religious groups opposing same-sex marriage.

8. An injunction prohibiting the CITY OF PASADENA from allowing WESTERN JUSTICE CENTER

to decide which organizations may or may not hold events at City-owned property leased to the WESTERN JUSTICE CENTER by the CITY OF PASADENA for public purposes.

9. An injunction prohibiting the WESTERN JUSTICE CENTER or any of its agents from discriminating against organizations in the use of city-owned facilities based on the viewpoint of the speaker or the religious viewpoint or affiliation of the speaker.

10. An injunction prohibiting the CITY OF PASADENA or any of its agents from discriminating against organizations in the use of city facilities based on the viewpoint of the speaker or the religious viewpoint or affiliation of the speaker.

11. For damages according to proof, including damages for emotional distress suffered by members of the PASADENA REPUBLICAN CLUB.

12. For punitive damages against JUDITH CHIRLIN, the executive committee of the WESTERN JUSTICE CENTER, and WESTERN JUSTICE CENTER for action with malice, oppression, and wanton disregard for the law in engaging political viewpoint and religious belief discrimination and conspiracy to deprive plaintiffs of their civil rights.

13. For costs of suit including attorneys' fees.

14. For such other relief as is just and proper.

DATED: February 5, 2019

ANTHONY T. CASO

/s/ Anthony T. Caso
BY ANTHONY T. CASO
Attorney for Plaintiff

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JURY TRIAL DEMAND

Plaintiff demands a trial by jury on the on all issues triable by jury in this complaint.

DATED: February 4, 2019

ANTHONY T. CASO

/s/ Anthony T. Caso
BY ANTHONY T. CASO
Attorney for Plaintiff

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[Declaration Of Service Omitted]

**EXHIBIT 2**

LEASE AGREEMENT NO. 13,753

THIS LEASE ("Lease") is made as of the 4th day of April, 1989, by and between the PASADENA SURPLUS PROPERTY AUTHORITY, a public body, corporate and politic ("Landlord"), and the WESTERN JUSTICE CENTER, a California non-profit corporation ("Tenant").

**1. Premises.**

1.1. **Demise of Premises.** Landlord hereby leases to Tenant, and Tenant leases from Landlord, for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Los Angeles, State of California, commonly known as 55-85 South Grand Avenue, Pasadena, California, which real property is more fully described in Exhibit A attached hereto and incorporated herein by this reference. Said real property, including the land and all improvements thereon, is herein called "the Premises."

1.2. **Relationship of the Parties.** Landlord is entering into this Lease as a means of benefiting the citizens of the City of Pasadena (the "City") and its environs through a center for the study of dispute resolution and the administration of justice, to provide additional employment and revenues to the local economy, to provide for improvements in both the local, regional, national, and international components of the legal system, and to provide a forum for educational

research. Landlord is also entering into this Lease for the purpose of insuring the restoration and historic preservation of the Premises. A detailed copy of Landlord's goals is attached in the Plan of Public Use for Surplus Property attached hereto as Exhibit B. Tenant is entering into this Lease, rather than directly purchasing the Premises, because the Tenant does not qualify as an organization eligible to purchase the Premises. It is the intent that neither Landlord nor the City of Pasadena shall be required to contribute general funds to the acquisition, restoration or renovation of the Premises, but nothing contained herein shall be construed as prohibiting or restricting the City against assisting Tenant in applying to third parties for grants of funds to be used for restoring the Premises. This Lease is not entered into as a commercial transaction by either party, but Landlord wants to ensure that its goals are met, that the operations of Tenant do not constitute a nuisance or otherwise disturb the neighborhood, and that the Premises are properly maintained and protected.

**2. Term.**

2.1. **Term.** The term of this Lease shall be for fifty-five (55) years, commencing on the date Landlord tenders possession of the Premises to Tenant pursuant to Exhibit C, attached hereto (the "Commencement Date"), and ending fifty-five (55) years thereafter, unless sooner terminated pursuant to any provision hereof.

2.2. **Delay.** It is acknowledged Landlord does not presently own the Premises, but Landlord is offering to purchase the Premises from the General Services Administration (the "GSA"). If Landlord is unable to deliver to Tenant possession of the Premises by December 31, 1989, Landlord shall not be liable for any damage caused thereby. In such event, this Lease shall not be void or voidable, provided that possession is tendered to Tenant December 31, 1989; subject to further extensions aggregating no more than ninety (90) days due to acts of God, war, labor strikes, and other occurrences beyond the control of Landlord, plus any period of time due to delays caused by Tenant. In the event of such late delivery of the Premises, the commencement of the term of this Lease shall be postponed by the length of such delay in delivering possession, and the liability of Tenant for rent (other than the initial payment under Section 3.1) shall be postponed until the newly determined Commencement Date. In the event that Landlord has not tendered possession to Tenant within the period in which such delay is excused as set forth herein, this Lease shall be voidable without further obligation at the option of either party upon written notice to the other party. In the event either party elects to void the Lease under this Section 2.2, the initial rental payment provided in Section 3 shall be returned to Tenant by the Landlord.

2.3. **Option to Extend Term.** Tenant shall have one (1) option to extend the term of this Lease for a period of forty-four (44) years. This extension option shall be personal to Tenant and may not be exercised

or be assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant unless Landlord specifically consents to such assignment; the option herein granted to Tenant shall not be assignable separate and apart from this Lease. Tenant may exercise this option by delivering written notice thereof to Landlord at least ten (10) days prior to the expiration of the initial 55 year term of this Lease.

**3. Rent.**

3.1. **Rent.** Tenant covenants to pay to Landlord during the term hereof, at Landlord's address set forth in Section 24 hereof or to such other persons or at such other places as directed from time to time by written notice to Tenant from Landlord, a rental sufficient to reimburse Landlord and pay all out-of-pocket costs and expenses (including the purchase price) arising from Landlord's acquisition of the Premises from the GSA. The Landlord is contemporaneously herewith entering into an agreement to purchase the Premises from the General Services Administration for the total purchase price of $412,000, payable by an initial down payment of $82,400.00, and the balance due in equal quarterly installments of principal and interest, over a term of ten (10) years, with interest at a rate thereon being equal to the yield rate on ten (10) year Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2 percentage points, rounded to the nearest 1/8%, as of the date of acceptance of the City's offer to purchase the Premises from the GSA. This latter sum shall be evidenced by a promissory note (the "Note") to the

GSA. Accordingly, Tenant shall pay the Landlord rent as follows:

3.1.1. Tenant shall deliver to Landlord upon execution of this Lease an initial payment of rent in the sum of $82,400, which is not to be attributable to any period of time for Tenant's use of the Premises, but is consideration for this Lease.

3.1.2. In addition, within 30 days after receipt of an invoice therefor, Tenant shall pay to Landlord as additional rent (i) all out-of-pocket costs and expenses (other than legal fees) incurred by Landlord in acquiring the Premises, obtaining the extension of credit described in Section 3.1 hereof for acquiring the Premises, and preparing and entering into this Lease, including but not limited to closing fees and costs, and (ii) all costs and expenses incurred by Landlord in holding the Premises for the period from the Landlord's acquisition of possession of the Premises through the Commencement Date, including but not limited to maintenance, utility and security costs, plus any additional sums paid to the GSA.

3.1.3. Tenant shall deliver additional payments of rent to the Landlord quarterly, within thirty (30) days prior to the due date of any installment of principal and interest on the Note to the GSA, in the amount of the next following payment due on the Note, until such time as the obligation to the GSA has been paid in full.

3.1.4. Tenant shall deliver to the Landlord from time to time, within thirty (30) days after receipt

of demand therefor, additional rent equal to all out-of-pocket costs and expenses incurred by Landlord in supervising this Lease and in monitoring the Premises, and all sums advanced by Landlord on behalf of Tenant where such sums are required hereunder to be expended by Tenant but Tenant failed to do so. No cost for general overhead or employee salaries of Landlord or City shall be included in such additional rent.

All rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing.

3.2. **Special Net Lease.** This Lease is what is commonly called a "Net, Net, Net Lease," it being understood that Landlord shall receive the rent set forth in Section 3.1 free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to the rent set forth in Section 3.1, Tenant shall pay to the respective entities entitled thereto all taxes, impositions, insurance premiums, operating charges, maintenance charges, construction costs, and any other charges, costs and expenses which arise in connection with the use or occupancy of the Premises or which may be contemplated under any provisions of this Lease during the term hereof. If any such charges, costs and expenses shall constitute a lien or charge against the Premises, or if any such fees, charges, costs or expenses are customary fees imposed from time to time on the general public by the City, then such fees, charges,

costs or expenses shall constitute additional rent, and upon the failure of Tenant to pay any of such fees, costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent. It is the intention of the parties hereto that Tenant shall not be entitled to any offset, abatement of, or reduction in any rent payable under this Lease, except as herein expressly provided. Any present or future law to the contrary shall not alter this agreement of the parties.

4. **Quiet Possession.** Upon Tenant paying the rent and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof subject to all of the provisions of this Lease.

**5. Use.**

5.1. **Use.** The Premises shall be used and occupied by Tenant and its sublessees only for the purposes described in the Plan of Public Use for Surplus Property, including but not limited to the following non-profit law related functions: (i) operation of a center for the study of the following matters: alternative dispute resolution, administration of justice, delivery of legal services, and other legally oriented issues; (ii) providing space to non-profit entities for legal seminars, meetings, conferences, hearing rooms, deposition rooms, arbitration rooms, law library, research space; (iii) residential and office facilities for legal researchers and scholars and ancillary services such as dining

facilities; and (iv) for subleasing portions of the Premises to tax exempt organizations providing law related services, and for no other purposes whatsoever. Tenant is expressly prohibited from leasing the Premises or any portion thereof to lawyers offering legal services for profit or allowing the Premises or any portion thereof to be used for any for profit activities. Tenant shall continuously during the term of this Lease following completion of all Tenant Improvements (as herein defined) use the Premises for these purposes during ordinary business hours. Nothing herein precludes Tenant from using the Premises for community meetings and other purposes during non-business hours.

5.2. **Compliance with Law.** Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements of any governmental authority in effect during the term hereof, regulating the use by Tenant of the Premises. If any bureau, department or official of the state, county or city government or any governmental authority having jurisdiction, requires in the exercise of its valid authority that any changes, modifications, replacements, alterations, or additional equipment be made or supplied in or to any portion of the Premises by reason of Tenant's use thereof, or the location of partitions, trade fixtures, or other contents of the Premises, Tenant shall, at Tenant's cost and expense, make and supply such changes, modifications, replacements, alterations or additional equipment. Tenant shall not

use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

**5.3. Condition of Premises.**

5.3.1. Tenant hereby accepts the Premises in their condition existing as of the Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants, conditions, or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that Landlord has not made any representation or warranty, express or implied, as to the condition of the Premises, their fitness for any purpose, the presence or absence of any hazardous substances at the Premises, or the present or future suitability of the Premises for Tenant's use thereof. Tenant has had a full, reasonable opportunity to study and investigate the Premises and Tenant accepts the Premises in their "as-is" condition. Tenant acknowledges that Landlord shall not be receiving any net cash flow from this Lease and Tenant understands and agrees that the rent is set at this level because Tenant shall be responsible for improving the Premises to a usable condition. Landlord shall have no obligation to correct any condition or alleged defects.

5.3.2. Landlord hereby notifies Tenant of the presence of certain toxic or hazardous substances or materials in, on or about the Premises. With the

exception of asbestos-containing materials, Landlord has no actual knowledge of the presence of any other hazardous substances located in, on, or under the Premises, but, because the definition of hazardous substance is vague and broad, Landlord also notifies Tenant of the possibility of the presence of other hazardous substances in, on or about the Premises. Tenant shall perform all actions required by law (including obligations of an owner of real property), to describe to any persons of the presences of hazardous or toxic substances materials at the Premises, including disclosures required to be made to subtenants, workers, and the general public. As set forth above, Landlord makes no warranty as to the absence of any type of toxic or hazardous substances or materials, and transfers any duty to clean-up, remove, or store any such substance directly to the Tenant. Further, Landlord shall have no obligation to compensate Tenant for such acts.

5.3.3. Tenant agrees to take all action required by any federal, state, or local law to clean-up, remove, abate, and/or store any toxic or hazardous substances or materials located in, on or about the Premises and to indemnify Landlord against and hold Landlord free and harmless from any liability arising out of Tenant's failure to do so.

5.3.4. Tenant shall remove from the Premises of all asbestos and asbestos-containing materials prior to opening the Premises for business. Tenant shall obtain the services of a licensed contractor registered with the State of California Division of Industrial Safety, to perform such abatement and any necessary

monitoring activities in accordance with all federal, state, and local health and safety regulations. Tenant shall insure that the contractor make proper notification to all appropriate regulatory agencies, including the Environmental Protection Agency ("EPA"), Air Quality Management Division ("AQMD"), California Department of Health Services ("DOHS"), Cal-OSHA, and State of California Division of Industrial Safety, to the extent required by law. Tenant shall also engage the services of a qualified firm to sample air quality and monitor work site activities during the period of asbestos abatement. Landlord will obtain an EPA Site Identification Number, and will provide performance standard criteria for selection of the contractor. Landlord retains the right of review and approval of Tenant's choice of its asbestos abatement contractor and environmental testing firms, prior to Landlord's awarding contracts.

6. **Rehabilitation of the Premises.** Tenant acknowledges and agrees that the Premises require extensive reconstruction and rehabilitation. Attached hereto as Exhibit C is a schedule (the "Improvement Schedule") under which Tenant shall submit plans and proceed with constructing improvements ("Tenant Improvements") for the reconstruction and rehabilitation of the Premises. To this end, Tenant agrees that it shall construct or cause to be constructed at its sole cost and expense all Tenant Improvements on the Premises in accordance with all plans and specifications submitted by Tenant to Landlord pursuant to this Lease. Tenant may reconstruct and rehabilitate the Premises in phases, provided the various elements are completed

within the times set forth in the Improvement Schedule. Notwithstanding the foregoing, Landlord's designated staff members may approve extensions of time in the Improvement Schedule, so long as the rehabilitation of the Premises is fully completed within thirty-six (36) months after the Commencement Date of this Lease. All plans submitted hereunder shall be submitted to Landlord's and City's review bodies as required by City ordinance. Landlord shall exercise the best efforts to cause City to expedite all governmental approvals relating to the renovation of the Premises.

**6.1. Historic Preservation Requirements.**

Tenant acknowledges that the Premises are listed in the National Register of Historic Places, and therefore, Tenant agrees that all Tenant Improvements and other modifications, alterations and additions to the Premises shall be performed in accordance with the regulations of the Advisory Council on Historic Preservation (the "Council"), "Protection of Historic and Cultural Properties" (36 C.F.R. Part 800), the California State Historic Preservation Officer ("SHPO"), and the National Historic Preservation Act of 1966, as amended (16 U.S.C. Sec. 470f). Tenant further agrees to the following covenants, and agrees to be bound to these covenants, restrictions and limitations.

(a) The structures on the Premises will be preserved and maintained in accordance with plans approved in writing by the California SHPO.

(b) No physical or structural changes or changes of color or surfacing will be made to the exterior of the structures on the Premises, or to

architecturally or historically significant interior features, as determined by the California SHPO, without the written approval of the California SHPO.

(c) in the event of a violation of the above restrictions, GSA or the California SHPO, as well as Landlord, may institute a suit against Tenant to enjoin such violation or for damages by reason of any breach thereof.

(d) The above restrictions shall be binding on the parties hereto, their heirs, successors, and assigns in perpetuity; however, the California SHPO may, for good cause, modify or cancel any or all of the foregoing restrictions upon written application of Tenant and Landlord.

6.2. **Plans, Permits and Entitlements for Use.** Tenant shall apply for and pursue in a timely and diligent manner all permits and other entitlements for use which may be required by the City, the California SHPO, the Council, or any other public entity or regulatory body, in connection with the construction of the Tenant Improvements in accordance with the Improvement Schedule.

6.3. **Basic Concept Drawings.** Tenant shall prepare and submit to the Landlord, the California SHPO, and the Council, for review and approval Basic Concept Drawings and related documents in accordance with the Improvement Schedule. The Basic Concept Drawings shall be subject to the review and approval of the Landlord, the California SHPO and the Council, and, to the extent required by local law, the

City, which review and approval shall include aesthetic considerations of the Landlord and the City. The construction of the Tenant Improvements shall be as generally established in the Basic Concept Drawings except for such changes as may be mutually agreed upon by Tenant, Landlord, the California SHPO, and the Council. Approved Basic Concept Drawings will be the basis for preparation of Preliminary Drawings to initiate further detail and design features on a larger scale.

6.4. **Preliminary Drawings.** Tenant shall prepare for Landlord's, the Council's and the California SHPO's review and approval Preliminary Drawings based upon the approved Basic Concept Drawings within the time period set forth in the Improvement Schedule.

6.5. **Landscaping.** Tenant shall prepare and submit to Landlord, for Landlord's review and approval, preliminary and final Landscaping Plans for the Premises at the times established in the Improvement Schedule.

6.6. **Final Construction Drawings and Related Documents.** At the time established in the Improvement Schedule, Tenant shall prepare and submit five sets of Final Construction Drawings, including complete construction documents, site elevations, final outline specifications, and final construction cost estimate summaries, together with one set of appropriate structural computations identical to those required by the Landlord's Building and Development Services

Division incident to issuance of building permits, to Landlord, for review by Landlord, the Council, the California SHPO, and other review bodies having legal authority over the Premises, for architectural review and written approval. Final Construction Drawings are hereby defined as those in sufficient detail to obtain necessary building permits. Tenant shall concurrently file duplicate copies thereof with the Landlord's Building and Development Services Division together with required applications for building permits.

6.7. **Approval of Plans.** Any items submitted to and approved by Landlord shall not be subject to subsequent disapproval. Landlord may designate any staff member of Landlord as having authority to approve or disapprove concepts, drawings and plans on behalf of Landlord. Following approval of the Basic Concept Drawings, approval of progressively more detailed drawings and specifications will granted by Landlord if developed as a logical evolution of the documents previously approved. Any disapproval by Landlord shall include in reasonable detail written reasons for disapproval. Tenant, upon receipt of a disapproval, shall revise such portions as are rejected and resubmit them to Landlord within thirty (30) days thereafter, and the time periods set out in the Improvement Schedule shall be tolled accordingly. Approvals shall not unreasonably be withheld.

6.8. **Changes in Construction Drawings.**

6.8.1. All construction of the Tenant Improvements shall in all respects be performed in

compliance with the approved Final Construction Drawings. If Tenant desires to make any changes in the Final Construction Drawings and related documents after their approval by the Landlord, Tenant shall submit the proposed change to the Landlord for its approval. If approved, Landlord shall notify Tenant of such approval in writing within thirty (30) days after submission to the Landlord. Tenant, upon receipt of a disapproval shall revise such portions as are rejected and resubmit revised plans to Landlord within thirty (30) after receipt of the disapproval notice within the time period set out in the Improvement Schedule. Nothing contained herein shall be construed as permitting Tenant to deviate from approved construction drawings.

6.9. **Statement of Final Construction Costs and "As-Built Plans.** Within sixty (60) days following completion of the Tenant Improvements on the Premises, Tenant shall furnish to Landlord a complete set of "As-Built" plans and an itemized statement of the actual construction costs of the Tenant Improvements.

6.10. **Construction Security.** Tenant shall furnish to Landlord either (i) a contractor's performance bond in an amount not less than 100% of the cost of the Tenant Improvements, and a payment bond guaranteeing the contractor's completion of the Tenant Improvements free from liens of materialmen, contractors, subcontractors, mechanics, laborers, and other similar liens; or (ii) other security acceptable to Landlord. Said bonds shall be issued by a responsible surety company, licensed to do business in California, with a

financial strength and credit rating acceptable to Landlord, and shall remain in effect until the entire costs for constructing the Tenant Improvements shall have been paid in full. Any such bonds shall be in a form satisfactory to Landlord's City Attorney.

**7. Maintenance, Repairs and Alterations.**

7.1. **Tenant's Obligations.** Tenant shall keep in good order, condition and repair, (with replacement, if necessary) the Premises and every part thereof, structural and nonstructural (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Tenant and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements, or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning, ventilating, ducting, electrical, lighting facilities and equipment within the Premises, fixtures, walls (interior and exterior), foundations, ceilings, roofs (interior and exterior), floors, windows, doors, plate glass and skylights located within the Premises, and all landscaping, driveways, fences and signs located on the Premises and sidewalks and parkways adjacent to the Premises.

7.2. **Surrender.** On the last day of the term hereof, or any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when the Tenant Improvements were completed, clean and free of debris, ordinary wear and tear and damage by casualty excepted. Tenant shall repair any damage

to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Notwithstanding anything to the contrary otherwise stated in this Lease, Tenant shall leave the ducting, power panels, electrical distribution systems, lighting fixtures, space heaters, heating and air conditioning systems, plumbing and fencing on the Premises in good operating condition.

7.3. **Landlord's Obligations.** Except for the obligations of Landlord set forth in Section 9 (relating to destruction) and Section 14 (relating to condemnation of the Premises) it is intended by the parties hereto that Landlord have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the buildings located thereon nor the equipment therein, whether structural or non-structural, all of which obligations are intended to be that of Tenant under Section 7.1 hereof. Tenant expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the premises in good order, condition and repair.

**7.4. Alterations and Additions.**

7.4.1. After the initial construction of the Tenant Improvements, Tenant shall not, without Landlord's prior written consent make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, except for repair or replacement of interior items which are not a part of the Premises' structure or systems and which cumulatively do not

cost in excess of $50,000.00 in any calendar year, which Tenant may make without Landlord's prior written consent provided Tenant furnishes Landlord with written notice of such repairs, replacements, alterations, additions or improvements. Tenant shall make no change or alteration to the exterior of any buildings on the Premises without Landlord's prior written consent. Notwithstanding anything provided herein to the contrary, Tenant shall not make any alterations, improvements, additions or Utility Installations whatsoever that may affect architecturally or historically significant interior features, as determined by the California SHPO, without Landlord's prior written approval. As used in this Section 7.4.1, the term "Utility Installation" shall mean carpeting, window coverings, HVAC ducting, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to 100% of the estimated cost of such improvements, to insure Landlord and the Premises against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Tenant make any alterations, improvements, additions or Utility Installations without the prior approval of Landlord, Landlord may require that Tenant immediately remove any or all of the same.

7.4.2. Any alterations, improvements, additions or Utility Installations in, on, or about the Premises that Tenant shall desire to make shall be

presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work, and the compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

7.4.3. All alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Tenant), which may be made on the Premises, shall be the property of Tenant until the expiration or sooner termination of this Lease, at which time all such alterations, improvements, additions, and Utility Installations shall then become the property of Landlord, and they shall remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Section 7.4, Tenant's furniture, fixture and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant (subject to the provisions of Section 7.2.)

7.4.4. Notwithstanding anything provided herein to the contrary, Tenant shall not make any alterations or additions that may violate the terms, covenants, and restrictions of Section 6.1 of this Agreement.

7.4.5. The amount of interior, non-structural, non-systemic changes that Tenant may make in each calendar year without obtaining Landlord's prior written consent shall be increased annually in accordance with the percentage increase in the Consumer Price Index for All Urban Consumers, Los Angeles-Anaheim-Riverside Area, 1982-84=100, as prepared by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI"); or if such agency shall cease to prepare such index, then any comparable index covering the Los Angeles County area prepared by any other federal or state agency which is approved by Landlord. The new amount of each calendar year shall be determined by multiplying the sum of $50,000.00 times a fraction, the numerator of which is the CPI for the month of January of the current calendar year, and the denominator of which is the CPI for the month of January, 1989.

**7.5. Mechanic's Liens**

7.5.1. Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Tenant further covenants and agrees that should any mechanic's lien be filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, said lien will be discharged by Tenant, by bond or otherwise, within ten (10) days after the filing thereof, at the cost and expense of Tenant. Tenant shall give Landlord not less

than ten (10) days' notice prior to the commencement of any work in the Premises, and Landlord shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Premises, upon the condition that if Landlord shall require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to such contested lien claim or demand indemnifying Landlord against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Landlord may require Tenant to pay Landlord's attorneys fees and costs in participating in such action if Landlord shall decide it is to its best interest to do so.

**8. Insurance and Indemnity.**

8.1. **Liability Insurance.**

8.1.1. Tenant shall procure at its sole cost and expense, and keep in effect from the date of this Lease and at all times until the end of the term Comprehensive Public Liability Insurance applying to the use and occupancy of the Premises, or any part thereof, and the business operated by Tenant, its sublessees, licensees, employees, agents, or any other occupant, on the Premises. Such insurance shall include Blanket Contractual Liability coverage. Such coverage shall

have a minimum combined single limit of liability of at least One Million Dollars ($1,000,000). All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add Landlord and the City, their members, officers, directors, employees and agents as additional insureds, and to provide that such coverage shall be primary and that any insurance maintained by Landlord shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against Landlord.

8.1.2. The Comprehensive Public Liability insurance shall be in force the first day of the term of this Lease.

8.1.3. Tenant shall also maintain Workers' Compensation insurance in accordance with California law, and an employer's liability insurance endorsement with customary limits. Any policy shall be endorsed with a waiver of subrogation clause for Landlord and the City and their directors, officers, employees, and agents.

8.1.4. All insurance described in this Section shall be endorsed to provide Landlord with 15 days' advance notice of cancellation or change in its terms.

8.1.5. If at any time during the term the amount or coverage of insurance which Tenant is required to carry under this Section is, in Landlord's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners

or lessees of properties located in Pasadena, California, which are similar to and operated for similar purposes as the Premises, Landlord shall have the right to require Tenant to increase the amount or change the types of insurance coverage required under this Section. Such requirements shall be reasonable and economically feasible and shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required, provided that in no event shall Tenant be required to provide insurance which exceeds the product of $1,000,000 times a fraction, the numerator of which is the CPI for the month of January for the then current calendar year, and the denominator of which is the CPI for the month of January, 1989.

8.1.6. Landlord shall notify Tenant in writing of changes in insurance requirements and, if Tenant does not deposit certificates evidencing acceptable insurance policies with Landlord incorporating such changes within sixty (60) calendar days of receipt of such notice, this Tenant shall be in default under this Lease without the requirement of further notice to Tenant, and landlord shall be entitled to exercise all legal remedies.

8.1.7. If Tenant fails or refuses to maintain insurance as required hereunder, or fails to provide the proof of insurance, Landlord shall have the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all legal remedies for breach of this Lease.

8.1.8. The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said insurance policies, Tenant shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease or with the use or occupance of the Premises.

8.2. **Property Insurance**.

8.2.1. Tenant shall obtain and keep in force during the term of this Lease a policy of insurance covering loss or damage to the Premises, including the Tenant Improvements and all subsequent and additional improvements thereon, and all personal property of Tenant, in the amount of the full replacement value thereof, as the same may exist from time to time, but in no event less than the total amount required by lenders having liens on the Premises, against all perils included within the classification of fire, extended coverage, builder's risk, vandalism, malicious mischief. In addition, during the period from the Commencement Date until Landlord's final payment on its obligation to the GSA arising from Landlord's acquisition of the Premises, and the release of any lien in favor of the GSA, Tenant shall obtain an endorsement for earthquake and special extended perils ("all risk" as the term is used in the insurance industry), if such endorsement is available at commercially reasonable rates. Tenant shall, in addition, obtain and keep in force during the term of this Lease a policy of rental

value insurance covering a period of one year, with loss payable to Landlord, which insurance shall also cover all real estate taxes and insurance costs for said period. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $10,000 per occurrence, and Tenant shall be liable for such deductible amount. The maximum deductible amount may be increased annually to an amount determined by multiplying the original deductible (viz., $10,000) by a fraction, the numerator of which is the CPI for the month of January for the then current calendar year, and the denominator of which is the CPI for the month of January, 1989.

8.2.2. In addition to the foregoing, Tenant shall insure its furniture, fixtures, and equipment in their full replacement value.

8.2.3. Not less often than every two and one-half (2-1/2) years during the term of this Lase, Tenant and Landlord shall agree in writing on the full replacement cost of the Premises and all improvements thereon. If, in the opinion of Landlord, the amount or type of property damage insurance coverage, or another amount or type of insurance at that time is not adequate or not provided for herein, Tenant shall either acquire or increase the insurance coverage as required by Landlord so long as the increased or new coverage is available at commercially reasonable rates.

8.2.4. If Tenant is unable to obtain any fire and extended coverage insurance at commercially reasonable rates between the period from the

Commencement Date through the date which is one (1) year thereafter, Landlord shall arrange to insure the Premises through Landlord's umbrella fire and extended coverage insurance policy during such period until the time Tenant is able to acquire its own insurance for the Premises. During the period that Landlord is making available for such insurance, Tenant shall pay to Landlord upon demand the amount of any increase in Landlord's insurance premium attributable solely to Landlord's insuring the Premises, and Tenant shall be responsible for any deductible at Tenant's sole cost and expense.

8.3. **Insurance Policies.**

8.3.1. If Tenant shall fail to obtain any insurance required hereunder, Landlord may, at its election, obtain such insurance and Tenant shall, as additional rent, reimburse Landlord for the cost thereof plus a ten percent (10%) handling charge, within five (5) days following demand therefor. Insurance required hereunder shall be issued by companies reasonably satisfactory to Landlord. Tenant shall deliver to Landlord copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required by this Section 8. No such policy shall be cancellable or subject to reduction of coverage or other modification except after fifteen (15) days' prior written notice to Landlord. Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies

referred to in this Section 8. If Tenant does or permits to be done anything which shall increase the cost of the insurance policies referred to in Section 8, then Tenant shall forthwith upon Landlord's demand reimburse Landlord for any additional premiums attributable to any act or omission or operation of Tenant causing such increase in the cost of insurance. All policies of insurance shall name Landlord, City, and, at Landlord's option, any additional parties designated by Landlord, as an additional insured, except that during the period from the Commencement Date until the date Landlord has paid in full its obligation to the GSA, the fire and extended coverage insurance shall name Landlord as loss payee. After issuance of the final certificate of occupancy, Tenant may be named as loss payee. All insurance required to be provided hereunder is in addition to, and not in lieu of, the indemnity provisions of Section 8.5 and 8.6 hereof.

8.3.2. Tenant shall not use the Premises in any manner, even if the use if for purposes permitted herein, that will result in the cancellation of any insurance which within five (5) calendar days cannot be renewed or replaced. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at Tenant's sole cost and expense, comply with any and all requirements, in regard to the Premises, of any insurance organization necessary for maintaining fire and extended coverage insurance.

8.4. **Waiver of Subrogation.** Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under Section 8.2, which perils occur in, on, or about the Premises, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors and/or invitees. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.5. **Indemnity.** Tenant shall indemnify, defend, protect, and hold harmless Landlord from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses, (including attorneys' fees) arising from or in connection with, or caused by (i) any act, omission or negligence of Tenant or any sublessee of Tenant, or their respective contractors, licensees, invitees, agents, servants or employees, wheresoever the same may occur; (ii) any use of the Premises, or any accident, injury, death or damage to any person or property occurring in, on or about the Premises, or any part thereof, or from the conduct of Tenant's business or from any activity, work or thing done, permitted or suffered by Tenant or its sublessees, contractors, employees, or invitees, in or about the Premises or elsewhere (other than arising as a result of Landlord's gross negligence or intentional misconduct); and (iii) any breach or default in the performance of any obligations on Tenant's part to be

performed under the terms of this Lease, or arising from any negligence of Tenant, or any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises arising from any cause other than Landlord's gross negligence or intentional acts, and Tenant hereby waives all claims in respect thereof against Landlord. These provisions are in addition to, and not in lieu of, the insurance required to be provided by Sections 8.1, 8.2 and 8.3 hereof.

8.6. **Exemption of Landlord from Liability.** Tenant hereby assumes all risks and liabilities of a landowner in the possession, use or operation of the Premises. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, contractors, workers, or any other person in or about the Premises, including any liability arising from the physical condition of the Premises or the presence of any hazardous or toxic materials or substances on the Premises, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from hazardous or toxic materials or substances, fire, steam,

electricity, gas, water, or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. These provisions are in addition to, and not in lieu of, the insurance required to be provided by Sections 8.1, 8.2 and 8.3 hereof. Nothing contained herein shall be construed as excusing Landlord from liability for its gross negligence or intentional misconduct.

**9. Damage or Destruction.**

9.1. **Obligation to Rebuild.** If some or all of the improvements constituting a part of the Premises or the Premises itself are damaged or destroyed, partially or totally, from any cause whatsoever, then Tenant shall repair, restore and rebuild the Premises, to the extent of available insurance proceeds plus the sum of the applicable deductible under any policy of insurance hereunder, to its condition and to the design standards existing immediately prior to such damage or destruction, and this Lease shall remain in full force and effect. Such repair, restoration and rebuilding (all of which are herein called "repair") shall be commenced within a reasonable time after such damage or destruction has occurred and shall be diligently pursued to completion.

9.2. **Total Destruction of the Premises.** Notwithstanding anything provided herein to the contrary, in the event the improvements constituting the Premises are damaged or destroyed by any casualty and the cost of repairing and restoring the Premises exceeds 50% of the replacement cost of the improvements constituting the Premises, or if the Premises cannot be repaired, restored or rebuilt to a usable condition with the available insurance proceeds plus the sum of the applicable deductible, then Tenant shall have the option of terminating this Lease as of the date of such damage. Any election to terminate this Lease under such circumstances must be made in writing, and delivered to Landlord within sixty (60) days after the date of occurrence of such damage or destruction. In the event of any such termination, all insurance proceeds shall be paid to Landlord and may be retained by Landlord, and Tenant shall have no further claim on such insurance proceeds, nor shall Landlord have any claim against Tenant for the repair, restoration or rebuilding of the Premises.

9.3. **Insurance Proceeds.** If Landlord has received the insurance proceeds, the proceeds of any insurance maintained under Section 8.2 hereof shall be made available to Tenant for payment of costs and expense of repair, provided however, that such proceeds may be made available to Tenant subject to reasonable conditions, including, but not limited to architect's certification of cost, retention of percentage of such proceeds pending recordation of a notice of completion, and a lien and completion bond to insure against

mechanic's or materialmen's liens arising out of the repair, and to insure completion of the repair, all at the expense of Tenant. Regardless of whether Landlord or Tenant is the loss payee, if the insurance proceeds are not made available to Tenant within 120 days after such damage or destruction, unless the amount of insurance coverage is in dispute with the insurance carrier, Tenant shall have the option for 30 days commencing on the expiration of such 120 day period, of cancelling this Lease. If Tenant shall exercise such option, Tenant shall have no further obligation hereunder and shall have no claim against Landlord. Tenant, in order to exercise said option, shall exercise said option by giving written notice to Landlord within said 30 day period, time being of the essence.

9.4. **Damage Near End of Term.** If at any time during the last twelve (12) months of the term of this Lease there is damage to the Premises of any amount, either party may cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to the other party of such party's election to do so within thirty (30) days after the date of occurrence of such damage; provided, however, this Lease shall not be terminated if the casualty occurs during the initial 55 year term hereof and if Tenant exercises its option to extend the term hereof prior to the expiration of such thirty (30) day period, provided Tenant is entitled to exercise such option pursuant to the provisions of Section 2.3 hereof.

9.5. **Abatement of Rent; Tenant's Remedies.** Notwithstanding the partial or total destruction of the

Premises and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of rent or of any other obligation of Tenant hereunder by reason of such damage or destruction unless the Lease is terminated by virtue of any other provision of this Lease.

9.6. **Waiver.** Landlord and Tenant waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

**10. Real Property Taxes.**

10.1. **Payment of Taxes.** Tenant shall pay the real property tax, if any, as defined in Section 10.2, applicable to the Premises during the term of this Lease. All such payments shall be made at least thirty (30) days prior to the delinquency date of such payment. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid. If any such taxes paid by Tenant shall cover any period of time prior to or after the expiration of the term hereof, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Landlord shall reimburse Tenant to the extent required. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord within ten (10) days after receipt of an invoice therefor.

10.2. **Definition of "Real Property Tax."** As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any possessory interest tax, license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Premises by an authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, or as against Landlord's right to rent or other income therefrom. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

10.3. **Joint Assessment.** If the Premises are not separately assessed, Tenant's liability shall be an

equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Landlord from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Landlord's reasonable determination thereof, in good faith, shall be conclusive.

10.4. **Personal Property Taxes.**

10.4.1. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

10.4.2. If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

11. **Utilities.** Tenant shall pay for all electricity, water, gas, heat, light, power, telephone, cable television, and other utilities and services supplied to the Premises, together with any taxes thereon.

**12. Assignment and Subletting.**

12.1. **Assignment.** Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Leese or any interest therein, or any right or privilege appurtenant thereto, without first obtaining the Written Consent of Landlord. A consent to one assignment, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment. Consent to any such assignment shall in no way relieve Tenant of any liability under this Lease. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. In the event of default by any assignee of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said assignee or sublessee. Landlord may consent to subsequent assignments of this Lease or amendments or modifications of this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining Tenant's or its successor's consent thereto and such action shall not relieve Tenant of liability under this Lease. Any dissolution, merger, consolidation, or other reorganization of Tenant, other than a transfer of the controlling interest to the Members of the immediate family of such controlling persons, or a transfer of the controlling interest to an inter vivos trust in which such controlling person is the trustee of the trust, or the sale or other transfer of substantially all of the assets of Tenant, shall be deemed

an assignment of this Lease. If any successor of Tenant is a partnership, a transfer of any interest of a general partner or a withdrawal of any general partner from the partnership which changes the controlling ownership of the partnership, or the dissolution of the partnership, shall be deemed to be an assignment of this Lease. Any such assignment without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease.

12.2. **Subletting.** Tenant may sublease portions of the Premises without obtaining Landlord's consent provided the sublease complies with the following terms:

12.2.1. The sublease executed by the sublessee shall be in a form of sublease agreement previously approved by Landlord; provided, however, after Landlord approves the sublease form, Landlord's designated staff and employees may approve modifications to the form;

12.2.2. No sublease of the Premises or portion thereof shall be for a period of less than one (1) year nor shall any sublease extend beyond the expiration date of the term hereof, except for subleases to visiting scholars or subleases for research project uses, in which event the sublease term may be for any reasonable period;

12.2.3. All subleases shall provide for the sublessee to purchase the same liability insurance in the same amounts as required in this Lease;

12.2.4. All subleases shall provide for the sublessees to release Landlord herein from all liability concerning the condition and use of the Premises, and to look solely to Tenant herein in the event of any claim or cause of action concerning the Premises;

12.2.5. All subleases shall include indemnification provisions by the sublessee in favor of Landlord hereunder, to the same extent as set forth in this Lease;

12.2.6. Each sublease shall contain a provision, satisfactory to Landlord, requiring the sublessee to attorn to Landlord and acknowledging that such attornment may be terminated by Landlord without cause upon 30 days' written notice given at any time after the date of termination of this Lease;

12.2.7. Each sublease shall contain an express acknowledgment and agreement by the sublessee that in the event the sublessee is required to attorn as provided above, or otherwise permitted to attorn, not more than two (2) months' rent (including security deposits) theretofore actually prepaid by the sublessee to Tenant will be recognized or allowed as a credit against any rent or other sums which the person to whom the sublessee attorns is entitled to receive or recover;

12.2.8. No Sublessee shall use the subleased premises for a purpose other than a use permitted by this Lease; and

12.2.9. Tenant shall, promptly after execution of each sublease or amendment thereto, notify Landlord of such execution and of the name and mailing address of the sublessee and shall provide Landlord with a copy of the sublease or amendment.

12.3. **Additional Terms.** The foregoing is not intended to imply any waiver or Landlord's reservation of the absolute right to disapprove assignments or subleases for uses that differ in any respect from the use expressly permitted in Section 5 of Lease. Landlord also agrees not to unreasonably withhold consent to a sublease of the entire Premises to a non-profit corporation that will issue tax-exempt Certificates of Participation that will be used to finance the payment of rent and construction of the Tenant Improvements. No assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting. No assignment shall be binding on Landlord unless such assignee shall deliver to Landlord a counterpart of such assignment (and any related collateral agreement) and an instrument in recordable form which contains a covenant of assumption by the assignee satisfactory in substance and form to Landlord. The failure or refusal of the assignee to execute such an instrument of assumption shall not waive, release or discharge the assignee from its liability.

**12.4. Assignment as a Result of Tenant's Bankruptcy.**

12.4.1. In the event this Lease is assigned to any person or entity pursuant to provisions of the Bankruptcy Code, 11 USC Section 101, et seq., (the "Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall remain the exclusive property of Landlord, and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and promptly be paid to or turned over to Landlord.

12.4.2. If Tenant, pursuant to this Lease, proposes to assign the same pursuant to the provisions of the Bankruptcy Code, to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Landlord, then notice of the proposed assignment setting forth (i) the name and address of such person (ii) all of the terms and conditions of such offer, and (iii) the assurances referred to in Section 365(b) and 365(f) of the Bankruptcy Code, shall be given to the Landlord by Tenant no later than twenty (20) days after receipt of such offer by Tenant, but in any event no later than ten (10) days prior to the date that Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to

Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which may be payable out of the consideration to be paid such person for the assignment of this Lease.

12.4.3. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

12.4.4. The following factors may be considered by the Landlord as necessary in order to determine whether or not the proposed assignee has furnished Landlord with adequate assurance of its ability to perform the obligations of this Lease:

12.4.4.1. The adequacy of a security deposit.

12.4.4.2. Net worth and other financial elements of the proposed assignee.

12.4.5. In the event Landlord rejects the proposed assignee, the rights and obligations of the parties hereto shall continue to be governed by the terms of this Lease, and Tenant shall have all the rights of a tenant under applicable state law.

12.5. **Assignment by Landlord.** During the term of this Lease, Landlord agrees not to encumber the Premises except as herein provided to the GSA, nor to assign its interest herein to any entity that is not affiliated with the City of Pasadena, without Tenant's prior written consent.

**13. Defaults and Remedies.**

13.1. **Default by Tenant.** The occurrence of any one or more the following events shall constitute a material default and breach of this Lease by Tenant:

13.1.1. The vacating or abandonment of the Premises by Tenant.

13.1.2. The failure by Tenant to make any payment of rent or any payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a three-day notice to pay rent or quit pursuant to California Code of Civil Procedure 1161, or any successor unlawful detainer statute, such notice to pay rent or quit shall also constitute the notice required by this subparagraph.

13.1.3. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph 3.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however that if the nature of Tenant's

default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

13.1.4. (i) The making by Tenant of any general arrangement or assignment for the benefit of creditor; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days. Provided, however, in the event that any provision of this Section 13.1.4. is contrary to any applicable law, such provision shall be of no force or effect.

13.1.5. The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligations hereunder, or any of them, was materially false.

13.2. **Remedies of Landlord.** In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice

or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

13.2.1. Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including reasonable attorney's fees, and any real estate commission actually paid in connection with such reletting; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could reasonably be avoided.

13.2.2. Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. For the purposes of this Section 13.2.2, Landlord shall not unreasonably withhold consent to a subletting of the Premises, under the terms set forth in Section 12.3 hereof. For purposes of this Section 13.2.2, the following acts by Landlord shall not constitute a termination of Tenant's right to

possession: (i) acts of maintenance or preservation or efforts to relet the Premises; or (ii) the appointment of a receiver under the initiative of Landlord to protect Landlord's interest under this Lease.

13.2.3. Pursue any other remedy now or hereafter available to Landlord under the laws of judicial decisions of the State of California. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

13.3. **Landlord's Right to Cure Tenant's Defaults.** All covenants and agreements to be performed by Tenant under any of the terms of the Lease shall be at Tenant's sole cost and expense and, except as otherwise specifically provided herein, without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving any rights of Landlord or releasing Tenant from any obligations of Tenant hereunder, make such payment or enter onto the Premises and perform such other act on Tenant's behalf and at Tenant's cost as Landlord deems necessary. All sums so paid by Landlord and all such necessary incidental costs together with interest thereon from the date of such payment by Landlord in connection with the performance of any such act by Landlord shall be

considered additional rent hereunder. Except as otherwise in this Lease expressly provided, such rent shall be payable to Landlord on demand, or at the option of Landlord, in such installments as Landlord may elect and may *be* added to any other rent then due or thereafter becoming due under this Lease, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of any other rent due hereunder.

13.4. **Default by Landlord.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion. However, until the date that Landlord's obligation to the GSA under the Note for the purchase price of the Premises has been paid in full, Tenant shall not be entitled to terminate this Lease by reason of Landlord's default and Tenant's remedies shall be limited to an action for monetary damages at law.

13.5. **Late Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rent

and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any note secured by a trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, then without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

13.6. **Impounds.** In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of Rent or any other monetary obligation of Tenant under the terms of this Lease, Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, an advance installment, payable monthly, as estimated by Landlord, for real property tax and insurance expenses on the Premises which are payable by Tenant under the terms of this Lease. Such

fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this Section are insufficient to discharge the obligations of Tenant to pay such real property taxes and insurance premiums as the same become due, Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this Section may be intermingled with other moneys of Landlord and shall not bear interest. In the event of a default in the obligations of Tenant to perform under this Lease, then any balance remaining from funds paid to Landlord under the provisions of this Section may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of real property tax and insurance premiums.

14. **Condemnation.** If the Premises or any portion are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty-five percent (25%) of the rentable area of any building on the Premises, or such portion of the land area of the Premises which is not occupied by any building as would make use of the building unusable or undesirable for the uses described in Section 5, above, is taken

by condemnation, Landlord or Tenant may, at either party's option, to be exercised in writing only within ten (10) days after Landlord shall have given Tenant written notice of such taking or in the absence or such notice, within ten (10) days after the condemning authority shall have taken such possession) terminate this Lease as to the portion of the Premises so affected by such condemnation as of the date the condemning authority takes such possession. If neither party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, and there shall be no reduction in rent payable hereunder. Any award for, or payment attributable to, the bonus value of Tenant's leasehold interest shall be the property of Tenant; provided, however, one-half (1/2) of any award attributable to the bonus value of Tenant's leasehold interest in the Premises shall be payable to Landlord if (i) the condemning authority is an entity other than Landlord, the City, or an entity affiliated with the City, and (ii) Tenant relocates at a location other than within the City of Pasadena. Moreover, Tenant shall receive any award for the value of any improvements to the Premises constructed by Tenant. Any remaining award for the underlying fee interest shall be paid to Landlord. Notwithstanding anything provided herein to the contrary, if the award to Landlord is insufficient to pay the unpaid balance of Landlord's obligation to the GSA, Landlord shall receive at least such amount as is required for Landlord the pay the balance of any obligation to the GSA. In any event, Tenant shall be entitled to any award for loss of or damage to Tenant's trade

fixtures and removable personal property. If this Lease is not terminated by reason of such condemnation, then Tenant shall, to the extent of severance damages received by Tenant in connection with such condemnation, repair any damage to the Premises caused by such taking. Nothing contained herein shall be construed as waiving Landlord's right to acquire Tenant's interest in this lease by eminent domain.

15. **Brokers.** Landlord represents and warrants to Tenant that Landlord has used no broker, agent, finder or other person in connection with this Lease to whom a brokerage or other commission or fee may be payable. Tenant represents and warrants to Landlord that Tenant has used no broker, agent, finder or other person in connection with this Lease to whom a brokerage or other commission or fee may be payable. Each party indemnifies and agrees to defend and hold the other harmless from any claims resulting from any breach by the indemnifying party of the warranties, representations and covenants in this Section.

16. **Easements.** This Lease and all rights given hereunder are subject to all easements and rights-of-way of record prior to the date of Landlord's receipt of fee title to the Premises, and shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television, transmission, or other public facilities, as may be reasonably determined from time-to-time by Landlord. Landlord agrees that an effort shall be made or cause to be made so that such future easements and right-of-way shall be located and facilities installed as to

produce a minimum amount of interference to Tenant's use of the Premises. Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements from Landlord, except for damage directly resulting from actions on the Premises solely by Landlord which deny access to the Premises by Tenant's customers, and only those damages occurring during such denial of access.

17. **Estoppel Certificate and Financial Statements.**

17.1. Tenant or Landlord, as the case may be, shall from time to time upon not less than thirty (30) days' prior written notice from the other party, execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to the knowledge of the party issuing the certificate, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed, and (iii) certifying any other matters relating to the Lease, the Premises, or Tenant's business or financial condition which the requesting party may request. Any such statement may be conclusively relied upon by any prospective purchaser of the Premises.

17.2. At the option of the requesting party, failure to deliver such statement within such time shall be a material breach of this Lease, or shall be conclusive upon the party obligated to issue such certificate (i) that this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) that there are no uncured defaults in the requesting party's performance, and (iii) that not more than one installment of rent has been paid in advance.

17.3. From time to time, upon thirty (30) days notice from Landlord, Tenant shall deliver to Landlord the most recently compiled financial statement of Tenant, and, if requested by Landlord, the past three years' financial statements of Tenant. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

18. **Landlord's Liability.** The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and in the event of any transfer of such title or interest, Landlord herein named (and in case of any subsequent transfers, then the grantor) shall be relieved from and after the date of such transfer of all liability with respect to Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord, or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by

Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns only during their respective periods of ownership.

19. **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

20. **Interest on Past-due obligations.** Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at the maximum rate then allowable to be charged by non-exempt lenders under the usury laws of the State of California from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

21. **Time of Essence.** Time is of the essence.

22. **Additional Rent.** Any monetary obligations of Tenant to Landlord under the terms of this Lease shall be deemed to be rent.

23. **Force Majeure.** Whenever a day is appointed herein on which, or a period of time is appointed within which, either party or a period of time is appointed within which, either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lock-outs, embargoes, unavailability of labor or materials, wars, insurrections,

rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, and nothing contained in this Section shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder.

24. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that neither Landlord nor any employees or agents of any of said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of said Premises and Tenant acknowledges that Tenant assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease. Landlord agrees to review and consider in good faith modifications to this Lease as may be required by prospective lenders or donors as a condition to a loan or gift, but nothing shall be construed as obligating Landlord to accept any such request for modification.

25. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, return receipt requested, postage prepaid and if given personally or by mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the following address:

| | |
|---|---|
| If to Landlord: | City of Pasadena<br>100 North Garfield Avenue<br>Pasadena, CA 91109<br>Attn: City Manager |
| If to Tenant: | Western Justice Center<br>Federal Building, Suite 112<br>125 South Grand Avenue<br>Pasadena, California 91105<br>Attention: Judge Dorothy Nelson |
| With a copy to: | Latham & Watkins<br>555 S. Flower St.<br>45th Floor<br>Los Angeles, CA 90071<br>Attention: Don Baker, Esq. |

Either party may by notice to the other specify a different address for notice purposes except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for notice purposes. Any such notice shall be deemed delivered three (3) days after the deposit of same with the U.S. Postal Service. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

26. **Parking.** The Premises lack sufficient on-site parking. Prior to applying for a building permit for construction of the Tenant Improvements, Tenant shall make arrangements to satisfy off-street parking requirements of the City of Pasadena Municipal Code. It is acknowledged and agreed that the City of Pasadena shall not be required to issue a building permit for construction of the Tenant Improvements until Tenant has satisfied the off-street parking requirements of the City.

**27. Waivers.**

27.1. No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. No delay or omission in the exercise of any right or remedy by either party to this Lease on the occurrence of any default by the other party to this Lease shall impair such a right or remedy or be construed as a waiver. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises,

shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

27.2. No acceptance by Landlord of a lesser sum than the rent and any additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease provided.

28. **Recording.** Tenant shall not record this Lease or any memorandum thereof without Landlord's prior written consent.

29. **Holding Over.** If Tenant, with Landlord's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant.

30. **Inspection Of Books and Records.** Landlord shall have the right at all reasonable times to inspect

the books and records of Tenant relevant to the purposes of this Lease.

31. **Equal Employment Opportunity.** Tenant herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against any employee or applicant for employment with Tenant because of race, color, religion, sex, physical handicap, or national origin and that there shall be affirmative action undertaken to assure applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, physical handicap or national origin. Tenant, its successors and assigns, and all persons claiming under or though them, shall submit to Landlord for review and approval a written affirmative action program to attain improved employment for racial and ethnic minorities and women and during the term of this Lease shall further make available employment records to Landlord upon request. Tenant, its successors and assigns, and all persons claiming under or through them, shall certify in writing to Landlord that Tenant, its successors and assigns, and all persons claiming under or through them, are in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State, and local law, regulation and policy (including without limitation those adopted by Landlord) relating to equal opportunity and affirmative action programs, including any such law, regulation, and

policy hereinafter enacted. Compliance and performance by Tenant, its successors and assigns, and all persons claiming under or through them, of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Tenant to so comply and perform shall be a default as provided in said Lease and Landlord may exercise any right as provided therein and as otherwise provided by law.

32. **Affirmative Action in Contracting.** In carrying out this Lease, the Tenant shall establish and carry out an Affirmative Action Plan for equal employment opportunity and affirmative action in contracting satisfactory to Landlord consistent with the requirements of Chapter 4.09 of the Pasadena Municipal Code and the rules and regulations promulgated thereunder. Tenant shall also comply with the Equal Opportunity Employment Practices provisions attached hereto as Exhibit D. Prior to entering into construction contracts and subcontracts for the Tenant Improvements, Tenant shall prepare and submit to Landlord a plan for affirmative action in contracting which complies with said ordinance as determined by the City's Equal Employment Administrator. Tenant also shall require its contractors and subcontractors to comply with Chapter 4.09 of the Pasadena Municipal Code and the Affirmative Action Plan as approved by the Equal Employment Administrator.

33. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall,

wherever possible, be cumulative with all other remedies at law or in equity.

34. **Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

35. **Binding Effect; Choice of Law.** Subject to the provisions of Section 18, this Lease shall bind the parties, their personal representatives, heirs, successors and assigns. This Lease shall be governed by the laws of the State of California.

36. **Subordination.**

36.1. This Lease, at Landlord's option, shall be subordinate to the deed of trust securing the loan from the GSA to the Landlord the proceeds of which were used to acquire the real property of which the Premises are a part, and to any and all advances made on the security thereof and to all renewals, modifications consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If the GSA shall elect to have this Lease prior to the lien of its deed of trust, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such deed of trust, whether this Lease is dated prior or subsequent to the date of said deed of trust or the date of recording thereof.

36.2. Tenant agrees to execute any document required to effectuate an attornment, a subordination or to make this Lease inferior to the lien of GSA's deed of trust. Tenant's failure to execute such documents within five (5) days after written demand shall constitute a material default by Tenant hereunder, or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to execute such documents in accordance with this Section 35.

37. **Attorney's Fees.** If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such arbitration or action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court or arbitrators

38. **Landlord's Access.** Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building improved thereon as Landlord may deem necessary or desirable.

39. **Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Landlord's prior written consent.

40. **Signs.** Tenant shall not place any sign upon the Premises without Landlord's prior written consent.

41. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

42. **Security Measures.** Tenant hereby acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of Tenant, its agents and invitees from acts of third parties.

43. **Authority.** Each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity.

44. **Conflict.** Any conflict between the provisions of this Lease and any addendum hereto shall be controlled by the addendum hereto.

45. **Consents and Approvals.** Consents and approvals of Landlord and Tenant under this Lease shall not unreasonably be withheld.

46. **Limitation of Liability.** Landlord acknowledges that Tenant is a California non-profit corporation and that no officer, director, agent, employee or

member of Tenant shall be or be deemed to be a guarantor of the obligations of Tenant under this Lease or to be personally liable to Landlord under this Lease or for the performance or non-performance of Tenant hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

Pasadena Surplus Property
Authority

By: /s/ William E. Thomson, Jr.
William E. Thomson, Jr., President

Attest:

/s/ Pamela Swift
Pamela S. Smith, Clerk
4/5/89

Western Justice Center, a
California non-profit corporation

By: /s/ Richard Keatinge
Richard Keatinge, Pres.

By: /s/ Lucinda Stavett
Lucinda Stavett, Sec.

By: /s/ Donald F. McIntyre
Donald F. McIntyre
Executive Director

Exhibit A – Legal Description

Exhibit B – Plan of Public Use for Surplus Property

Exhibit C – Improvement Schedule

Exhibit D – Equal Opportunity Employment Practices

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EXHIBIT A

LEGAL DESCRIPTION

THAT PORTION OF LOTS 2 AND 3 OF BERRY AND ELLIOTT'S SUBDIVISION, DIVISION "D", OF SAN GABRIEL ORANGE GROVE ASSOCIATION LANDS, IN THE CITY OF PASADENA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 32 PAGE 55, AND IN BOOK 2 PAGE 600, ALL OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 OF VISTA CREST, AS PER MAP RECORDED IN BOOK 5, PAGE 34 OF MAPS, RECORDS OF SAID COUNTY, SAID CORNER BEING ON THE WESTERLY LINE OF GRAND AVENUE (70 FEET WIDE); THENCE NORTH 3 DEGREES 13 MINUTES 59 SECONDS EAST, 142.77 FEET ALONG THE WEST LINE OF GRAND AVENUE TO THE BEGINNING OF A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 250.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 86.18 FEET; THENCE LEAVING THE

WESTERLY LINE OF SAID GRAND AVENUE SOUTH 86 DEGREES 25 MINUTES 41 SECONDS WEST, 111.41 FEET; THENCE SOUTH 0 DEGREES 46 MINUTES 02 SECONDS WEST, 8.97 FEET; THENCE SOUTH 89 DEGREES 10 MINUTES 09 SECONDS WEST, 19.79 FEET; THENCE SOUTH 0 DEGREES 34 MINUTES 26 SECONDS EAST, 90.38 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 20 SECONDS EAST, 152.45 FEET TO THE WESTERLY LINE OF SAID GRAND AVENUE; THENCE NORTH 8 DEGREES 27 MINUTES 30 SECONDS EAST, 16.32 FEET TO THE POINT OF BEGINNING.

AREA COMPRISES 35,768.83 SQ. FT: 0.82 ACRES

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EXHIBIT B

PLAN OF PUBLIC USE FOR SURPLUS PROPERTY;

GRAND AVENUE, PASADENA, CALIFORNIA

The City of Pasadena's purchase of the site of four historic buildings in the Vista del Arroyo complex will make possible restoration of the buildings as offices for nonprofit groups dedicated to law reform. The complex, called the Western Justice Center, is intended to improve America's legal system.

Western Justice Center Concept: The historic buildings are listed in the National Register. They are adjacent to the Federal Building at 125 South Grand Avenue, which houses facilities of the Ninth Circuit Court of Appeals (the "Court"). After the successful

renovation of the Federal Building, Judges of the Court initiated the Western Justice Center as an appropriate use for these adjacent buildings. Tenant organizations, which must be nonprofits with law-related purposes, will occupy the buildings and thus interact in a campus setting.

The creation of a Western Justice Center campus will encourage collaborative work and research among these organizations which are presently dispersed all across the United States, primarily in the East. Organizations which stimulate research and development in judicial administration and education, alternative forms of dispute resolution, continuing education of the Bar, international legal issues and other area of justice reform will be eligible to lease space in the Center. Visiting scholars from the United States and abroad will engage in research, run pilot projects and test methods of dispute resolution. Seminars and conferences aimed at producing concrete proposals for improving the justice system will be based at the Center.

Center organizations will have access to the excellent library facilities of the Ninth Circuit Court of Appeals ae well as proximity to judges and court personnel. The Center site is close to more courts (state and federal) and law schools than any other location in the United States. The Center will bring great prestige not only to the Ninth Circuit and Pasadena but also to the United States.

Benefits to the City of Pasadena. The proposed site of the Western Justice Center is a site of important historic and architectural significance within a stable residential neighborhood of low and medium density. The neighborhood is a compatible mix of large homes on spacious lots, condominiums and institutional uses including the Court of Appeals building. The Center will be a welcome addition to this neighborhood and would be associated with the City's long tradition of harmoniously joining fine institutions with neighborhoods of architectural and environmental sensitivity. The Western Justice Center's stated commitment to high design quality and sensitive re-use of the historic buildings will maintain the historic integrity of the Vista del Arroyo complex within its neighborhood context.

The present condition of the site is extremely poor. The buildings have not been used or maintained for a period exceeding twenty years. The use of the site by the Western Justice Center will resolve the many problems associated with this neglect including its attraction to vagrants and other trespassers. Use by the Center will ensure that the property is upgraded in a manner consistent with precedent of high quality set by the General Services Administration in its rehabilitation of the Court of Appeals building. Because of their poor condition, it is important that improvements to these buildings take place as soon as possible while preservation is still feasible.

The Western Justice Center will provide important local services in addition to serving as a national and regional resource. It will serve as the home

of the Community Dispute Resolution Center. This institution has played an important role by providing alternatives to the use of our over-burdened court. system in solving many disputes. The Community Dispute Resolution Center is used to resolve over 450 conflicts per year. The City specifically contracts with the Center to mediate disputes between landlords and tenants. In addition to this City contract the Center handles all types of disputes for Pasadena residents for a very nominal fee. The current fee schedule for the Community Dispute Resolution Center is $10 for the filing fee and the actual hearing fee is based 'upon income with a sliding scale of $18 to $50 an hour to be shared by the disputants. Low income residents and retired persons on a fixed income do not pay any hearing fee. Mr. Frank Zupan, the Executive Director of the Center, projects that with the move to the Western Justice Center, the caseload can be nearly doubled to approximately 800 cases per year.

Pasadena is a City of great institutions including the California Institute of Technology, Art Center College of Design and Ambassador College. Each of these have found a hospitable home in Pasadena which has provided a full range of housing for employees, excellent accommodations for visitors and outstanding cultural resources for all. The City anticipates that the Western Justice Center will bring visiting scholars to its campus and that ancillary activities such as legal conferences will also result.

The City's Conference Center will probably be utilized to a greater degree and the direct and indirect

economic benefits of these activities will improve the City's revenue base. It is estimated that the average visitor to Pasadena generates $478 in direct and indirect activity in the City of Pasadena during an average stay of [illegible] days. The Western Justice Center anticipates an average of 1000 visitors per year in its initial start-up, generating approximately $478,000 a year to the Pasadena economy. This number will increase as such ancillary activities such as seminars, conferences and conventions are produced in association with the Center. In addition, the Western Justice Center projects a labor force of approximately 40-50 people, thus adding jobs and spending to the local economy.

Organizations Seeking to Locate at the Western Justice Center. The Department of Justice has expressed interest in this site as one of four sites for research and development into alternative forms of dispute resolution. The American Bar Association is also reviewing the site as its Western location. Others expected to locate at the Center include:

American Arbitration Association

Institute of Judical Administration (New York)

Institute of Judical Administration (Sydney, Australia)

ABA Committee on Alternative Dispute Resolution

Private Adjudication (Durham, North Carolina

Community Dispute Resolution Center (S.G. Valley)

The Los Angeles Center for International Commerical Arbitration

American Law Institute-American Bar Association Committee on continuing Professional Education (ALI-ABA)

California Commission on Lawyer Competence and Legal Education

The Foundation. The City will master lease the site to the Western Justice Center Foundation, a California nonprofit corporation formed by Ninth Circuit Court of Appeals judges and prominent Southern California lawyers. The Foundation will then sublease to the eligible organizations described above.

Summary. Purchase of the property by the City of Pasadena will provide increased and improved legal services to the citizens of Pasadena and its environs through an improved Dispute Resolution Center operation, provide additional employment and revenues to the local economy, provide for improvements in both the local, regional, national, and international components of the legal system, provide a forum for educational research, and bring prestige to the City of Pasadena.

EXHIBIT C

IMPROVEMENT SCHEDULE

| | Action | Date |
|---|---|---|
| 1. | Execution of Lease | April 4, 1989 |
| 2. | Landlord receives possession of the Premises ("Commencement Date") | Approximately 20 days after GSA's delivery to Landlord of possession of the Premises |
| 3. | Submission by Tenant to Landlord for Approval of: | |
| | a. Basic Concept Drawings | ___ days after Commencement Date |
| | b. Preliminary Drawings | ___ days after receipt of approval of Basic Concept Drawings |
| | c. Landscaping and Grading Plans | ___ days after receipt of approval of Preliminary Drawings |
| 4. | Submit Working Drawings/ Application for Building Permits to City | ___ days after receipt of approval of Preliminary Drawings |
| 5. | Issuance of Building Permits | 20 days after receipt of application (assuming drawings comply with code requirements) |
| 6. | Commencement of Construction | 30 days after receipt of Building permits |

| | | |
|---|---|---|
| 7. | Improvements Completed and Open for Business | 36 months after the Commencement Date |

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EXHIBIT F

RESOLUTION

A RESOLUTION OF THE PASADENA SURPLUS PROPERTY AUTHORITY COMMISSION AUTHORIZING THE PRESIDENT TO SUBMIT AN OFFER TO PURCHASE SURPLUS FEDERAL PROPERTY AT 55-85 GRAND AVE., PASADENA, CALIFORNIA

WHEREAS, the Pasadena Surplus Property Authority was formed pursuant to the authority of California Government Code §§40500 et seq. for the purpose of acquiring, owning, maintaining, operating, improving and disposing of surplus real properties of the United States which are located within, or contiguous to, the boundaries of the City of Pasadena; and

WHEREAS, the Pasadena Surplus Property Authority ("Authority") desires to purchase the Maxwell House and other associated federal surplus property generally located at 55-85 Grand Ave., and described in Exhibit A of the Offer to Purchase (the "property"); and

WHEREAS, the Authority has allocated and will allocate funds to acquire said property; and

WHEREAS, the Authority is required by the General Services Administration ("GSA") pursuant to 40 U.S.C. 484(e)(3)(H) to adopt this resolution.

NOW THEREFORE, the Commission of the Pasadena Surplus Property Authority does hereby resolve as follows:

Section 1. The Commission hereby empowers and authorized the President to sign and submit to GSA on behalf of the Authority an offer to purchase the property for $412,000.00. The President is also authorized to sign and submit such other documents as may be necessary to complete the transaction.

Section 2. The amount of $82,400.00 is hereby authorized to be paid to GSA as an earnest money deposit with the offer to purchase.

Section 3. The Authority will set aside the amount of $32,960.00 each year for ten years to fund the remaining purchase price of $329,600.00.

PASSED, APPROVED AND ADOPTED this 4th day of April, 1989.

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[SEAL] **Agenda Report**

TO: Surplus Property Authority Date: March 31, 1989

FROM: City Manager

SUBJECT: Approval of a lease between the Western Justice Center and the Pasadena Surplus

Property Authority and submission of an Offer to Purchase Property to G.S.A. for real estate located at 55-85 South Grand Avenue on behalf of the Western Justice Center.

**RECOMMENDATION:** It is recommended that the Pasadena Surplus Property Authority approve the attached lease with the Western Justice Center for the use of property located at 55-85 South Grand Avenue.

It is further recommended that the Surplus Property Authority submit the attached Offer to Purchase Real Estate to the United States of America, General Services Administration (G.S.A.), for real estate located at 55-85 South Grand Avenue.

**BACKGROUND:** On November 29, 1988 the Board of Directors authorized the City Manager to prepare and submit an Offer to Purchase Real Estate to G.S.A. for the acquisition of four bungalows located at 55-85 South Grand Avenue for a purchase price of $412,000. This authorization was made contingent upon the approval of a lease between the City and the Western Justice Center for the rehabilitation and use of the property. This report will provide the Surplus Property Authority with a summary of the proposed lease and explain the terms of purchase of the property from the G.S.A.

In giving its authorization to proceed, the Board of Directors established two important policy guidelines:

(1) That all monies are to be advanced by the Western Justice Center to the City before payments are made to G.S.A.

(2) That the Western Justice Center prepare and follow an expeditious schedule for the rehabilitation of the four bungalows.

I. The Proposed Lease

Negotiations between the City staff and representatives of the Western Justice Center began in December, 1988 and were successfully concluded on March 28, 1989. The proposed lease was approved by the Western Justice Center Board at a meeting on March 30. The lease was prepared by attorneys Steve Dorsey and Jeff Rabin of Richards, Watson and Gershon, on contract with the City. Donald Baker, an attorney with Latham & Watkins, represented the Western Justice Center.

The salient points of the lease are as follows:

- Parties – The lease is between the Pasadena Surplus Property Authority, as Landlord, and the Western Justice Center, as Tenant. The Surplus Property Authority was specifically established to facilitate the acquisition of the property. The Surplus Property Authority Ordinance was given second reading on March 28, 1989 and became effective upon publication (April 2, 1989).

- Term – The term shall be for fifty-five years commencing on the date on which the Surplus Property Authority has possession. The Western Justice Center shall

have one option to extend for a period of 44 years. (A Surplus Property Authority, under State law, is allowed to lease property for up to 99 years.)

- Schedule of Payments (Rent) – The Western Justice Center shall deliver the sum of $82,400 as an initial payment upon execution of the lease. Quarterly payments shall be due at least 30 days prior to the due date of the Surplus Property Authority's installment payment to G.S.A. (The terms with G.S.A. provide for standard credit terms of 10 years, with a down payment of $82,400, and the balance payable in equal quarterly installments of principal and interest, with the interest fixed at the Ten Year Treasury Security rate of interest at time of award, plus 1 1/2% rounded to the nearest 1/8%.)

- Reimbursement Of All City Carrying Costs – The Western Justice Center will pay to the Surplus Property Authority all out-of-pocket costs and expenses incurred by the Surplus Property Authority in holding the premises prior to possession, including, but not limited to, maintenance, utility and security costs.

- Covenants – The property has been zoned Public Space with a Historic District Overlay. The lease requires the Tenant to comply with historic preservation covenants on the property and that the structures will be preserved and

maintained in accordance with plans approved in writing by the California State Historic Preservation Officer.

- Schedule for Restoration – The lease requires that the design and restoration be completed within 36 months after possession of the premises is delivered to the Tenant. The Improvement Schedule is shown as Exhibit C to the lease and will be completed as soon G.S.A. accepts the Pasadena Surplus Property Authority's Offer to Purchase.

- Construction Security – The Western Justice Center will furnish the Surplus Property Authority with either (i) a contractor's performance bond equal to 100% of the cost of the rehabilitation and a payment bond guaranteeing all subcontractors will be paid and guaranteeing the contractor's completion or (ii) other security acceptable to the Surplus Property Authority. Any bonds posted must be in a form satisfactory to the City Attorney.

- Asbestos – The Western Justice Center is put on notice that the buildings contain asbestos and asbestos-containing materials. Copies of the asbestos report prepared by the G.S.A. were provided to representatives of the Western Justice Center along with cost estimates for removal provided by two contractors. The lease requires the removal of all asbestos

and asbestos containing materials prior to occupying the premises.

- Parking – The lease specifically notes that the property lacks sufficient on-site parking. Prior to applying for a building permit the Western Justice Center shall make arrangements to satisfy the requirements of the Zoning Code. (This requires a 10 year lease for the required number of spaces within 700 feet of the property for employee parking.)

- Use – The use is restricted to the purposes described in the Plan of Public Purpose for Surplus Property filed with the Federal Government. This requires operation of the Center for non-profit law-related functions. There is an express prohibition against leasing the premises for legal services for profit, or for any for-profit activities.

- Insurance – The liability and property insurance provisions have been reviewed and approved by the City's Risk Manager. The required liability coverage, to be carried by the Western Justice Center, is a combined single limit of $1 million.

- Affirmative Action – The Western Justice Center shall establish and carry out an Affirmative Action Plan for equal employment opportunity and contracting satisfactory to the City and in compliance with Chapter 4.09 of the P.M.C.

II. The Offer to Purchase Real Estate and Acceptance (Offer)

The attached Offer identifies the property as consisting of .82 fee acres located 55-85 South Grand Avenue in Pasadena. The purchase price is established at $412,000 with $82,400 payable as an "earnest money" deposit, and the balance payable in equal quarterly installments over a period of 10 years, plus at interest calculated at the yield rate of a 10 year Treasury note, plus 1 1/2% rounded to the nearest 1/8%.

The Surplus Property Authority will assume possession of the property within 15 calendar days after a written request given by the G.S.A. after acceptance of the Offer to Purchase. The G.S.A. is required to accept the Offer within 90 days from the date of receipt. (If the Offer is not accepted within 90 days it is considered rejected unless the G.S.A. specifically receives consent from the Pasadena Surplus Property Authority to extend the time.) G.S.A. must submit this Offer to Congress, through the House Government Operations Committee, in order to complete this transaction. Once the Offer is accepted, the $82,400 is applied to the purchase of the property. In the event the Offer were to be rejected the deposit will be returned without interest.

Conveyance of the property is accomplished by a quitclaim deed. Therefore, the City has had a title search done to confirm G.S.A. ownership. (In a previous G.S.A. transaction on the conveyance of Vista del Arroyo property to a private party, G.S.A.

quitclaimed property the Federal Government did not own.)

The Surplus Property Authority's Offer to Purchase must be accompanied by the earnest money deposit. To that end, the Western Justice Center has deposited $82,400 with the Pasadena Surplus Property Authority.

In the event of revocation of the Offer, or any default by the Pasadena Surplus Property Authority, the deposit and any subsequent payments may be forfeited.

The Surplus Property Authority may not resell this property and make a profit for a period of three years. If the Western Justice Center defaults on its lease or fails to complete the restoration work within the prescribed 36 months, the Surplus Property Authority could sell the property, provided the obligation to G.S.A. is not in default. If a sale takes place within the first three years any "excess profits" must be returned to the G.S.A. after the Surplus Property Authority's acquisition of the property. This "Excess Profits Covenant" will run with the land for a period of 3 years from the date of conveyance.

**FISCAL IMPACT:** All carrying costs associated with this project are to be reimbursed by the Western Justice Center and all monies due and payable to G.S.A. will be advanced by the Western Justice Center at least 30 days in advance.

In the event of a default by the Western Justice Center on the terms of the lease, the General Fund would be

responsible for maintenance and preservation of the site. The City has the option to resell the property in the event of default. However, should default occur within the first three years of the lease, the City can recoup only the purchase price of the property – plus direct costs actually incurred for improvements serving the property. Any excess over this amount would have to be returned to the Federal Government.

Staff time of the Assistant City Manager and the billings of the attorneys representing the City will be absorbed in the budget. Funds are available in the City Manager's budget Account #260012 and the City Attorney's budget, outside legal services, Account #261016-0110.

Respectfully submitted,

/s/ Donald F. McIntyre
DONALD F. MCINTYRE
City Manager

Prepared by:

/s/ Judith A. Weiss
JUDITH A. WIESS
Assistant City Manager

Concurrence:

/s/ Victor J. Kaleta
VICTOR J. KALETA
City Attorney

/s/ Mary J. Bradley
MARY J. BRADLEY
Finance Director

Attachments:
Executed Lease
Offer to Purchase
Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E
Exhibit F

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A RESOLUTION OF THE PASADENA SURPLUS PROPERTY AUTHORITY AUTHORIZING THE PRESIDENT TO SUBMIT AN OFFER TO PURCHASE SURPLUS FEDERAL PROPERTY AT 55-85 GRAND AVE., PASADENA, CALIFORNIA

WHEREAS, the Pasadena Surplus Property Authority was formed pursuant to the authority of California Government Code §§40500 et seq. for the purpose of acquiring, owning, maintaining operating improving and disposing of surplus real properties of the United States which are located within, or contiguous to, the boundaries of the City of Pasadena; and

WHEREAS, the Pasadena Surplus Property Authority ("Authority") desires to purchase the Maxwell House and other associated federal surplus property generally located at 55-85 Grand Ave., and described

in Exhibit A of the Offer to Purchase (the "property"); and

WHEREAS, the Authority has allocated and will allocate funds to acquire said property; and

WHEREAS, the Authority is required by the General Services Administration ("GSA") pursuant to 40 U.S.C. 484(a)(3)(H) to adopt this resolution.

NOW THEREFORE, the Commission of the Pasadena Surplus Property Authority does hereby resolve as follows:

Section 1. The Commission hereby empowers and authorize the President to sign and submit to GSA on behalf of the Authority an offer to purchase the property for $412,000.00. The President is also authorized to sign and submit such other documents as may be necessary to complete the transaction.

Section 2. The amount of $82,400.00 is hereby authorized to be paid to GSA as an earnest money deposit with the offer to purchase.

Section 3. The Authority will set aside the amount of $32,960.00 each year for ten years to fund the remaining purchase price of $329,600.00.

PASSED, APPROVED AND ADOPTED this 4th day of April, 1989 by the following vote:

Ayes: Commissioners Cole, Crowley, Hughston, Nack, Paparian, Thomson

Noes: None

Absent: Commissioner Glickman

APPROVED AS TO FORM:

/s/ Ted J. Reynolds
[Illegible] Attorney

DATE: APRIL 5, 1989

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FIRST AMENDMENT TO LEASE AGREEMENT
NO. 14,048

This First Amendment to Lease Agreement (hereinafter the "First Amendment") is entered into this 13th day of February, 1990, by and between the Pasadena Surplus Property Authority, a public body, corporate and politic ("Landlord"), and the Western Justice Center, a California non-profit corporation ("Tenant"), with reference to the following:

A. On April 4, 1989, the Landlord and Tenant entered into that certain Lease Agreement (Agreement No. 13,753) (hereinafter the "Agreement") for the lease to the Tenant of that certain real property situated in the City of Pasadena and commonly known as 55-85 South Grand Avenue (hereinafter the "Premises"), under which Agreement the Tenant agreed to rehabilitate and/or construct certain "Tenant Improvements" in accordance with certain plans and specifications and an "Improvement Schedule."

B. On September 17, 1989, Landlord acquired title to the Premises from the United States General Services Administration and the Agreement became fully effective.

B. The purpose of this First Amendment is to modify the terms and provisions of the Agreement in certain particulars as agreed upon between the parties and to set forth the terms and provisions of such modifications and amendments in order to reflect the commencement date and improvement schedule in light of the date on which title to the Premises was obtained by the Landlord.

NOW, THEREFORE, the Landlord and the Tenant hereby agree as follows:

1. The Purpose of this First Amendment. The purpose of this First Amendment is to implement the Agreement. Defined terms in this First Amendment shall have the same meaning as those terms have in the Agreement.

2. Revised Improvement Schedule. The Improvement Schedule, Exhibit "C" to the Agreement is hereby deleted in its entirety and the revised Improvement Schedule, attached hereto and incorporated herein by this reference, is hereby substituted in its place. All references to the Improvement Schedule or the revised Improvement Schedule herein and in the Agreement shall be to the revised Improvement Schedule.

3. Progress Reports. Paragraph "6. Rehabilitation of the Premises" of the Agreement is hereby

amended by the addition of the following new sentence, to read in full as follows:

> "Commencing on March 16, 1990 and continuing thereafter on a semi-annual basis during the period of rehabilitation and/or construction, the Tenant shall submit to the Executive Director of the Landlord a written report of the progress of the construction and/or rehabilitation of the Tenant Improvements."

4. Effect of this First Amendment. Except as specifically set forth in this First Amendment, all other provisions of the Agreement not inconsistent herewith shall remain in full force and effect.

WHEREFORE, the parties hereto have caused this First Amendment to be executed by their respective representatives thereunto duly authorized as of the date first written above.

ATTEST:

/s/ Marvell L. Herren
Marvell L. Herren
Authority Clerk

"LANDLORD"

PASADENA SURPLUS
PROPERTY AUTHORITY

By: /s/ Donald F. McIntyre
Donald F. McIntyre
Executive Director

APPROVED AS TO FORM:

VICTOR J. KALETA
Authority General Counsel

By: /s/ Ted J. Reynolds
Theodore J. Reynolds
Assistant General Counsel

"TENANT"

WESTERN JUSTICE CENTER

By: /s/ [Illegible]

Its: President

By: /s/ David K. Robinson

Its: Vice President

TJR:js
LEASWE:AGR

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[SEAL] **Agenda Report**

TO: Surplus Property Commission Date: December 5, 1989
BOARD OF DIRECTORS
Executive Director

FROM:

SUBJECT: Approval of First Amendment to Lease Agreement between the Pasadena Surplus Property Authority and the Western Justice Center

RECOMMENDATION: It is recommended that the Surplus Property Commission of the Pasadena

Surplus Property Authority adopt a resolution approving the attached First Amendment to Lease Agreement and authorize the Executive Director of the Authority to execute, and the Authority Clerk to attest, the First Amendment to Lease Agreement on behalf of the Authority.

BACKGROUND: On April 4, 1989, the Surplus Property Commission of the Pasadena Surplus Property Authority ("Authority") authorized the City Manager in his capacity as Executive Director of the Authority to purchase real property or South Grand Avenue on the grounds of the Vista del Arroyo. The property was acquired through a negotiated acquisition from the U.S. General Services Administration ("GSA") for the expressed purpose of leasing it to the Western Justice Center ("WJC"). The Authority received possession of the property from the Federal Government in June, 1989; however, escrow did not close until September, 1989. The quit-claim deed conveying the Federal Government's interest in the property to the Authority was recorded on October 10, 1989.

On April 4, 1989, the Authority executed a 55 year lease with the WJC effective upon the date on which the Authority tendered possession to WJC, The lease with the WJC provided that the WJC would make its rental payments to the Authority 30 days before the Authority's quarterly installment loan payments were due and payable to the GSA on the ten-year purchase money promissory note on the property. To date, the WJC has paid to the Authority its initial rental

payment in the amount of $82,400 and is current on its lease payments to the Authority.

When the Authority approved the purchase of the site and the lease with the WJC, it was with the understanding that a timetable for the rehabilitation of the structure would be negotiated and a schedule therefore' would be established not to exceed 36 months. This Improvement Schedule was to be incorporated into the lease itself as Exhibit C. It was agreed that Exhibit C would be brought back to the Authority for approval at a later date.

Representatives of the WJC requested documentation from the GSA on the structural assessment of the bungalows so that this information could be evaluated prior to agreeing to the rehabilitation schedule. G.S.A. refused to disclose these reports until escrow was closed and the quit-claim deed was recorded. Therefore, the staff and representatives of the WJC postponed discussions on the rehabilitation schedule until the project architect had an opportunity to review this information. On November 15, 1989 the attached schedule was agreed upon between the WJC and the Assistant City Manager and is now before the Authority for approval.

As you will note, the time-table is a conservative one and presumes that the entire 36 months will be required. The "clock" starts September 17, 1989, the date on which the Deed of Trust was executed between the City and GSA. This seemed to be the best start date. Although the Authority had technical possession in

June, 1989, until escrow closed, entry and access to the property was cumbersome. It could only be accomplished at the behest of GSA.

Mr. Rudy Freeman, of Neptune and Thomas, is the project architect and has reviewed the attached schedule with his client. Mr. Freeman was also the architect for rehabilitation of the Vista del Arroyo Tower which is now home to the Federal District Court of Appeals. Given the fact this is a major rehabilitation program and there is always an "unanticipated" component to such projects, the schedule is purposely conservative. Secondly, by using the outside deadlines rather than more optimistic dates, if the project should slip, it is less likely that any amendments to the lease will be required. Since Exhibit C will be part of the lease, if the specified dates are not kept, the WJC will not be in compliance with its lease and could be in default unless the Authority opts to amend the lease.

To properly track this project, the WJC has been requested to provide semi-annual progress reports, commencing March 16, 1990. They have readily agreed to this request and anticipate no problems in meeting the time-table in the attached Improvement Schedule.

FISCAL IMPACT: There is no fiscal impact to the General Fund as a consequence of this action.

Respectfully submitted,

_____

DONALD F. MCINTYRE
Executive Director

Prepared by:

/s/ Judith A. Weiss
JUDITH A. WIESS
Assistant City Manager

Concurrence:

/s/ Ted J. Reynolds
for VICTOR J. KALETA
General Counsel

MARY J. BRADLEY
Auditor–Controller

/s/ Donald Nollar
DONALD NOLLAR, Director,
Planning, Building &
Neighborhood Services

JAW:pgp

Attachments

EXHIBIT C

IMPROVEMENT SCHEDULE

| | Action | Date |
|---|---|---|
| 1. | Execution of Lease | April 4, 1989 |
| 2. | Landlord receives possession of the Premises ("Commencement Date") | SEPT 17, 1989 Approximately 20 days after GSA's delivery to Landlord of possession of the Premises |
| 3. | Submission by Tenant to Landlord for Approval of: | |
| | a. Basic Concept Drawings | March 16, 1990 |
| | b. Preliminary Drawings | September 14, 1990 |
| | c. Landscaping and Grading plans | March 15, 1991 |
| 4. | Submit Working Drawings/ Application for Building Permits to City | November 1, 1991 |
| 5. | Issuance of Building Permits | December 15, 1991 |
| 6. | Commencement of Construction | January 15, 1992 |
| 7. | Improvements Completed and Open for Business | September 30, 1992 |

[SEAL] **Agenda Report**

TO: Surplus Property Commission Date: January 30, 1990

FROM: Executive Director

SUBJECT: Approval of First Amendment to Lease Agreement between the Pasadena Surplus Property Authority and the Western Justice Center

RECOMMENDATION: It is recommended that the Surplus Property Commission of the Pasadena Surplus Property Authority adopt a resolution approving the attached First Amendment to Lease Agreement and authorize the Executive Director of the Authority to execute, and the Authority Clerk to attest, the First Amendment to Lease Agreement on behalf of the Authority.

BACKGROUND: On April 4, 1989, the Surplus Property Commission of the Pasadena Surplus Property Authority ("Authority") authorized the City Manager in his capacity as Executive Director of the Authority to purchase real property on South Grand Avenue on the grounds of the Vista del Arroyo. The property was acquired through a negotiated acquisition from the U.S. General Services Administration ("GSA") for the expressed purpose of leasing it to the Western Justice Center ("WJC"). The Authority received possession of the property from the Federal Government in June, 1989; however, escrow did not close until September, 1989. The quit-claim deed conveying the Federal Government's interest in the property to the Authority was recorded on October 10, 1989.

On April 4, 1989, the Authority executed a 55 year lease with the WJC effective upon the date on which the Authority tendered possession to WJC. The lease with the WJC provided that the WJC would make its rental payments to the Authority 30 days before the Authority's quarterly installment loan payments were due and payable to the GSA on the ten-year purchase money promissory note on the property. To date, the WJC has paid to the Authority its initial rental payment in the amount of $82,400 and is current on its lease payments to the Authority.

When the Authority approved the purchase of the site and the lease with the WJC, it was with the understanding that a timetable for the rehabilitation of the structure would be negotiated and a schedule therefore would be established not to exceed 36 months. This Improvement Schedule was to be incorporated into the lease itself as Exhibit C. It was agreed that Exhibit C would be brought back to the Authority for approval at a later date.

Representatives of the WJC requested documentation from the GSA on the structural assessment of the bungalows so that this information could be evaluated prior to agreeing to the rehabilitation schedule. G.S.A. refused to disclose these reports until escrow was closed and the quit-claim deed was recorded. Therefore, the staff and representatives of the WJC postponed discussions on the rehabilitation schedule until the project architect had an opportunity to review this information. On November 15, 1989 the attached schedule was agreed upon between the WJC and the

Assistant City Manager and is now before the Authority for approval.

As you will note, the time-table is a conservative one and presumes that the entire 36 months will be required. The "clock" starts September 17, 1989, the date on which the Deed of Trust was executed between the City and GSA. This seemed to be the best start date. Although the Authority had technical possession in June, 1989, until escrow closed, entry and access to the property was cumbersome. It could only be accomplished at the behest of GSA.

Mr. Rudy Freeman, of Neptune and Thomas, is the project architect and has reviewed the attached schedule with his client. Mr. Freeman was also the architect for rehabilitation of the Vista del Arroyo Tower which is now home to the Federal District Court of Appeals. Given the fact this is a major rehabilitation program and there is always an "unanticipated" component to such projects, the schedule is purposely conservative. Secondly, by using the outside deadlines rather than more optimistic dates, if the project should slip, it is less likely that any amendments to the lease will be required. Since Exhibit C will be part of the lease, if the specified dates are not kept, the WJC will not be in compliance with its lease and could be in default unless the Authority opts to amend the lease.

To properly track this project, the WJC has been requested to provide semi-annual progress reports, commencing March 16, 1990. They have readily agreed to this request and anticipate no problems in meeting the time-table in the attached Improvement Schedule.

FISCAL IMPACT: There is no fiscal impact to the General Fund as a consequence of this action. WJC is the responsible party for raising the funds for the rehabilitation work and managing this project.

Respectfully submitted,

/s/ [Illegible]
for DONALD F. MCINTYRE
Executive Director

Prepared by:

/s/ Judith A. Weiss
JUDITH A. WIESS
Assistant City Manager

Concurrence:

/s/ Ted J. Reynolds
for VICTOR J. KALETA
General Counsel

/s/ Mary J. Bradley
MARY J. BRADLEY
Auditor–Controller

/s/ Donald Nollar
DONALD NOLLAR, Director,
Planning, Building &
Neighborhood Services

JAW:pgp

Attachments

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SECOND AMENDMENT TO LEASE AGREEMENT NO. 13753-2

This Second Amendment to Lease Agreement is made and entered into as of this 20th day of July, 1993 by and between the Pasadena Surplus Property Authority ("Landlord") and corporation ("Tenant") Agreement.

1. The "Improvement Schedule" referred to in paragraph 6 of the Lease Agreement dated April 4, 1989, as amended by the First Amendment to Lease Agreement dated December 5, 1989 by and between the Pasadena Surplus Property Authority and the Western Justice Center (the "Lease"), is hereby amended by substituting for the "Improvement Schedule" attached to the Lease as Exhibit C the "Revised Improvement Schedule" attached to this Second Amendment to Lease Agreement as Exhibit A.

2. Except as expressly set forth herein, the Lease shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Lease as of the day and year first above written.

Pasadena Surplus
Property Authority

BY: /s/ Rick Cole
Rick Cole
President

Western Justice Center, a
California non-profit organization

BY: /s/ Donald F. McIntyre
President

BY: /s/ David K. Robinson
Secretary

Attest:

BY: /s/ Maria M. Stewart
Maria Stewart 8/16/94
City Clerk

APPROVED AS TO FORM:

BY: /s/ Ted J. Reynolds
for Victor J. Kaleta
Authority General Counsel

EXHIBIT "A"

IMPROVEMENT SCHEDULE

| | Action | Date |
|---|---|---|
| 1. | Execution of Lease | April 4, 1989 |
| 2. | Obtain Conditional Use Permit and variances for office use, collective parking, 10 year lease requirement and reduced parking | October 22, 1991 |
| 3. | Obtain building permit for 85 South Grand Avenue | December 10, 1992 |
| 4. | Commence construction on 85 South Grand Avenue | January 1, 1993 |
| 5. | Complete construction on 85 South Grand Avenue | December 31, 1993 |
| 6. | Obtain building permit for 75 South Grand Avenue | April 1, 1994 |
| 7. | Commence construction on 75 South Grand Avenue | June 1, 1994 |
| 8. | Complete construction on 75 South Grand Avenue | December 31, 1994 |
| 9. | Obtain building permit for 85 South Grand Avenue | January 15, 1995 |
| 10. | Commence construction on 65 South Grand Avenue | April 1, 1995 |
| 11. | Complete construction on 65 South Grand Avenue | December 31, 1995 |
| 12. | Obtain building permit for 55 South Grand Avenue | April 1, 199.5 |

13. Commence construction onJune 1, 1995
55 South-Grand Avenue

14. Complete construction on July 1, 1996

c:western:ss

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SECOND AMENDMENT TO LEASE AGREEMENT NO. 13753-2

This Second Amendment to Lease Agreement is made and entered into as of this 20th day of July, 1993 by and between the Pasadena Surplus Property Authority ("Landlord") and corporation ("Tenant") Agreement.

1. The "Improvement Schedule" referred to in paragraph 6 of the Lease Agreement dated April 4, 1989, as amended by the First Amendment to Lease Agreement dated December 5, 1989 by and between the Pasadena Surplus Property Authority and the Western Justice Center (the "Lease"), is hereby amended by substituting for the "Improvement Schedule" attached to the Lease as Exhibit C the "Revised Improvement Schedule" attached to this Second Amendment to Lease Agreement as Exhibit A.

2. Except as expressly set forth herein, the Lease shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Lease as of the day and year first above written.

Pasadena Surplus
Property Authority

BY: /s/ Rick Cole
Rick Cole
President

Western Justice Center, a
California non-profit organization

BY: /s/ [Illegible]
President

BY: /s/ David K. Robinson
Secretary

Attest:

BY: /s/ Maria M. Stewart
Maria Stewart 8/16/94
City Clerk

APPROVED AS TO FORM:

BY: /s/ Ted J. Reynolds
for Victor J. Kaleta
Authority General Counsel

EXHIBIT "A"

IMPROVEMENT SCHEDULE

| | Action | Date |
|---|---|---|
| 1. | Execution of Lease | April 4, 1989 |
| 2. | Obtain Conditional Use Permit and variances for office use, collective parking, 10 year lease requirement and reduced parking | October 22, 1991 |
| 3. | Obtain building permit for 85 South Grand Avenue | December 10, 1992 |
| 4. | Commence construction on 85 South Grand Avenue | January 1, 1993 |
| 5. | Complete construction on 85 South Grand Avenue | December 31, 1993 |
| 6. | Obtain building permit for 75 South Grand Avenue | April 1, 1994 |
| 7. | Commence construction on 75 South Grand Avenue | June 1, 1994 |
| 8. | Complete construction on 75 South Grand Avenue | December 31, 1994 |
| 9. | Obtain building permit for 65 South Grand Avenue | January 15, 1995 |

10. Commence construction on 65 South Grand Avenue — April 1, 1995

11. Complete construction on 65 South Grand Avenue — December 31, 1995

12. Obtain building permit for 55 South Grand Avenue — April 1, 1995

13. Commence construction on 55 South Grand Avenue — June 1, 1995

14. Complete construction on 55 South Grand Avenue — July 1, 1996

c:western:ss

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[SEAL] **Agenda Report**

TO: Pasadena Surplus Property Authority — July 20, 1993

FROM: Executive Director

SUBJECT: Second Amendment to Lease Agreement between the Pasadena Surplus Property Authority and the Western Justice Center – Revised Improvement Schedule

RECOMMENDATION:

It is recommended that the Pasadena Surplus Property Authority approve the attached revised Improvement Schedule, known as "Exhibit C" to the Lease between the Surplus Property Authority and the Western Justice Center, and authorize the President of the

Surplus Property Authority to execute the Second Amendment to the Lease Agreement incorporating the revised Improvement Schedule into the Lease.

BACKGROUND:

In April, 1989 the Pasadena Surplus Property Authority authorized the Executive Director to purchase real property on South Grand Avenue on the grounds of the former Vista del Arroyo. The property was acquired through a negotiated acquisition from the U.S. General Services Administration for the expressed purpose of leasing it to the Western Justice Center. On September 17, 1989, the City acquired title to the site and then received possession of the property from the Federal Government,

Also in April, 1989 the Authority executed a 55 year lease with the Western Justice Center which was effective upon the date on which the City took possession of the property.

When the Pasadena Surplus Property Authority approved the purchase of the siter and the lease with the Western Justice Center, it was with the understanding that a time-table for the rehabilitation of the structure would be negotiated and a schedule would be established not to exceed 36 months. This Improvement Schedule was incorporated into the lease itself as Exhibit "C." On February 13, 1990 the First Amendment to the Lease Agreement was executed adopting the Improvement Schedule in detail.

Attached to this report is a letter from Mr. Donald P. Baker, counsel for the Western Justice Center, requesting consideration of the Second Amendment to Lease Agreement adopting the "Revised Improvement Schedule." Drafts of the proposed amendment and schedule are also attached to Mr. Baker's letter.

As stated in Mr. Baker's letter, rehabilitation of the first building is underway. Although substantial private contributions have been pledged to this project, general economic conditions have caused fund raising efforts to fall short of anticipated goals. At this point in the project it is clear that successful fund raising will be dependent upon the completion and occupancy of buildings in phases. In this way potential contributors and occupants will be able to see the full potential of the Center.

It is the staff's view that the proposed Revised Improvement Schedule is realistic and reasonable.

The staff continues to be strongly supportive of this project which will provide an institutional center of national repute for study and research in the areas of law reform, improvements to judicial administration and lawyer competency, law-related education and service to the community with respect to improvement in legal processes and the use of alternative processes to litigation.

FISCAL IMPACT:

There is no fiscal impact. The Western Justice Center Foundation is the responsible party for raising the funds for the rehabilitation work and managing this project.

Respectfully submitted,

/s/ Philip A. Hawkey
Philip A. Hawkey
Executive Director

Prepared by:

/s/ Donald H. Nollar
Donald H. Nollar, Director
Planning, Building &
Neighborhood Services

Concurrence:

/s/ Victor J. Kaleta
Victor J. Kaleta, City Attorney

LATHAM & WATKINS
ATTORNEYS AT LAW
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 488-1234
FAX (213) 891-8763
TLX 590773
EIN 62736268
CABLE ADDRESS LATHWAT

PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

June 9, 1993

Mr. Don Nollar
City of Pasadena
100 North Garfield Avenue
Pasadena, California 91109-7215

Re: Western Justice Center

Dear Mr. Nollar:

As you know, the Western Justice Center Foundation has been moving forward with the restoration of the four bungalows on Grand Avenue which the City of Pasadena acquired from the General Services Administration and leased to the Western Justice Center.

The process of fundraising in the current economic climate combined with the time necessary to obtain governmental approvals and arrange for a cost effective rehabilitation of the buildings, has delayed the project beyond the Improvement Schedule set forth in

the First Amendment to Lease Agreement between the Pasadena Surplus Property Authority and the Western Justice Center.

In October, 1991, Western Justice Center obtained the Conditional Use Permit and Variances relating to office use, collective parking, ten year lease requirement and reduced parking for the buildings located at 55-85 South Grand Avenue. On April 2, 1992, a letter of determination was issued by the State Office of Historic Preservation approving the plans for rehabilitation of 85 South Grand Avenue as consistent with historic preservation requirements.

On December 10, 1992, a building permit was issued for the rehabilitation of 85 South Grand Avenue and construction commenced with the installation of a new roof on that bungalow in December, 1992. In May, 1993, the Western Justice Center Board of Directors authorized our contractor, Cantwell Anderson, to proceed with the renovation of 85 South Grand Avenue beginning with asbestos removal and utility site work. We anticipate completion of the building in October, 1993.

We appreciate the City's assistance and cooperation in all matters regarding the Western Justice Center's work with this property and now request that the Improvement Schedule be formally amended to reflect the realities of fund raising and construction of this project. Therefore, I have attached a draft Second Amendment to Lease Agreement for consideration by you and the Surplus Property Authority. If you need

any further information or if any changes to this document are required, please do not hesitate to contact me.

Sincerely yours,

/s/ Donald P. Baker
Donald P. Baker
of LATHAM & WATKINS

cc: Judge Dorothy Nelson
Robert S. Warren, Esq.
Jim Minges

---

DRAFT

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement is made and entered into as of this ___ day of ___, 1993 by and between the Pasadena Surplus Property Authority ("Landlord") and the Western Justice Center Foundation, a California non-profit corporation ("Tenant") Agreement.

1. The "Improvement Schedule" referred to in paragraph 6 of the Lease Agreement dated April 4, 1989, as amended by the First Amendment to Lease Agreement dated December 5, 1989 by and between the Pasadena Surplus Property Authority and the Western Justice Center (the "Lease), is hereby amended by substituting for the "Improvement Schedule" attached to the Lease as Exhibit C the "Revised

Improvement Schedule" attached to this Second Amendment to Lease Agreement as Exhibit A.

2. Except as expressly set forth herein, the Lease shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Lease as of the day and year first above written.

Pasadena Surplus
Property Authority

BY: _____
President

Western Justice Center, a California non-profit organization

By: _____
President

By: _____
Secretary

Attest:

By: _____
Clerk

DRAFT

IMPROVEMENT SCHEDULE

| | Action | Date |
|---|---|---|
| 1. | Execution of Lease | April 4, 1989 |
| 2. | Obtain Conditional Use Permit and variances for office use, collective parking, 10 year lease requirement and reduced parking | October 22, 1991 |
| 3. | Obtain building permit for 85 South Grand Avenue | December 10, 1992 |
| 4. | Commence construction on 85 South Grand Avenue | January 1, 1993 |
| 5. | Complete construction on 85 South Grand Avenue | December 31, 1993 |
| 6. | Obtain building permit for 75 South Grand Avenue | April 1, 1994 |
| 7. | Commence construction on 75 South Grand Avenue | June 1, 1994 |
| 8. | Complete construction on 75 South Grand Avenue | December 31, 1994 |
| 9. | Obtain building permit for 65 South Grand Avenue | January 15, 1994 |
| 10. | Commence construction on 65 mouth Grand Avenue | April 1, 1995 |
| 11. | Complete construction on 65 South Grand Avenue | December 31, 1995 |
| 12. | Obtain building permit for 55 South Grand Avenue | April 1, 1995 |

| | | |
|---|---|---|
| 13. | Commence construction on 55 South Grand Avenue | June 1, 1995 |
| 14. | Complete construction on 55 South Grand Avenue | July 1, 1996 |

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**From:** Kitasato, Kelly
**Sent:** Wednesday, February 03, 2010 10:57 AM
**To:** Iraheta, Alba
**Cc:** Valenzuela, Maria
**Subject:** RE: Western Justice Center Lease, Contract 13,753

Alba,

Attached is the First Amendment to the Lease with Western Justice Center and related agenda report. For some reason, it was assigned a different contract number than the 13,753 series.

Maria,

As information, I added this contract number to the Real Property database.

Kelly

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THIRD AMENDMENT TO LEASE AGREEMENT
NO. 13,753-3

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("Third Amendment") is made and entered into as of the 18th day of July, 1994, by and between the CITY OF PASADENA, a municipal corporation ("Landlord"), and the WESTERN JUSTICE CENTER, a California non-profit corporation ("Tenant").

Recitals

A. Landlord's predecessor in interest, the Pasadena Surplus Property Authority, and Tenant are parties to that certain Lease Agreement (No. 13,753) (the "Lease") dated as of April 4, 1989, concerning that certain real property commonly known as 55-85 south Grand Avenue, Pasadena, California.

B. The Lease was amended by that certain First Amendment to Lease Agreement (No. 14,048) dated February 13, 1990, and by that certain Second Amendment to Lease Agreement (No. 13753-2) dated July 20, 1993.

C. The parties wish to further amend the Lease as herein provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. Purpose of this Third Amendment. The purpose of this Third Amendment is to implement the Lease. Capitalized terms used in this Third

Amendment shall have the meanings ascribed to such terms in the Lease.

2. Rent. From and after April 1, 1994, the provisions of Section 3.1 ("Rent") of the Lease are hereby restated to read in full as follows; provided, however, there shall be no change or modification to rent that was due through March 31, 1994, it being intended that the original provisions of Section 3.1 shall remain in effect through March 31, 1994, and that this new provision concerning Section 3.1 shall be effective only from and after April 1, 1994:

3.1 **Rent.**

3.1.1. Tenant covenants to pay to Landlord during the term hereof, at Landlord's address set forth in Section 24 hereof, or to such other persons or at such other places as directed from time to time by written notice to Tenant from Landlord, a base rent as follows: (a) During the period from the date hereof through March 31, 1996, there shall not be any payments of base rent due; (b) During the period from April 1, 1996 though March 31, 2014 (the "Payment Period"), Tenant shall pay monthly, in advance, on the first day of each calendar month, rent in the sum of (i) $1,552.96 per month ("Base Rent"), plus (ii) the amount (the "TI Rent") required to amortize the sum of all advances made by Landlord on account of the Tenant Improvement Allowance (described below) plus interest thereon at the rate of 5.33% per annum from the date of the advance, in equal monthly payments of principal and interest, wherein interest accrues from the date of the advance at the

rate of 5.33% per annum. (By way of example, if Landlord advances the sum of $350,000 to Tenant on account of the Tenant Improvement Allowance in one installment on April 1, 1995, then as of April 1, 1996, accrued interest thereon shall be the shall be the sum of $18,655.00; thus, the TI Rent shall be the sum of $2,657.92 per month during the Payment Period.)

3.1.2 In addition, Tenant shall deliver to the Landlord from time to time, within thirty (30) days after receipt of demand therefor, additional rent equal to all out-of-pocket costs and expenses incurred by Landlord in supervising this Lease and in monitoring the Premises, and all sums advanced by Landlord on behalf of Tenant where such sums are required hereunder to be expended by Tenant but Tenant failed to do so. No cost for general overhead or employee salaries of Landlord or City shall be included in such additional rent.

All rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing.

3. Tenant Improvement Allowance. A new Section 6.11 is hereby added to Section 6 ("Rehabilitation of the Premises") of the Lease, to read as follows:

6.11. Tenant Improvement Allowance.

6.11.1 Landlord hereby agrees to provide to Tenant an allowance (the "Tenant Improvement Allowance") in an amount not to exceed the sum of $458,000, the proceeds of which shall be utilized only for the reconstruction and rehabilitation

of the Premises described in this Section 6, in accordance with plans and specifications which have been approved by Landlord pursuant to Sections 6.3, 6.4, 6.5, 6.6, and 6.8 hereof.

6.11.2 On or before September 1, 1994, Tenant shall deliver to Landlord, for Landlord's review and approval, (i) plans and specifications required for Tenant to obtain all necessary building permits required to construct the Tenant Improvements ("Final Construction Drawings") for each building within the Premises for which the Tenant Improvement Allowance will be utilized, and (ii) a cost breakdown of the work described in the Final Construction Drawings for which the Tenant Improvement Allowance will be utilized. Tenant shall not change or consent to any material change of the plans and specifications without the prior written consent of Landlord. As used herein, a "material change" is one which increases the overall costs of an individual item of the Tenant Improvements by more than $5,000.00, or which, when taken with all prior non-material changes, will result in an increase in the cost of the Tenant Improvements by $20,000.00 or more. The cost breakdown shall describe the projected development costs theretofore and thereafter to he incurred for which the cost thereof shall be paid from the Tenant Improvement Allowance. Landlord shall also have the right to review and approve all contracts and subcontracts, to confirm that they are consistent with the cost breakdown.

6.11.3 Landlord shall distribute the proceeds of the Tenant Improvement Allowance only for the actual costs incurred pursuant to the cost

breakdown and construction contracts and subcontracts to be furnished to Landlord. Landlord shall have no obligation to disburse any funds (including reimbursement for amounts expended for buildings for which rehabilitation has been completed) until Landlord has approved the cost breakdown and construction contracts and subcontracts. The amount to be disbursed from the Tenant Improvement Allowance for each item shall not exceed the amount specified therefor in the cost breakdown; provided, however, Tenant may deviate from the amount of a particular line item if, and only to the extent that, Tenant can demonstrate to Landlord's satisfaction that any increase in such item will be offset by an equivalent decrease in one or more other line item amounts or that Tenant shall obtain funds from a different source to pay for the additional amounts. Disbursements will be made from time to time as necessary to pay for work and material actually performed. Disbursements from the Tenant Improvement Allowance shall also be permitted in reimbursement of costs expended for work performed prior to the Landlord's approval of the Third Amendment to Lease. Landlord shall also have the right to audit all contracts and subcontracts and, with respect to "cost plus" items, to withhold disbursement on account of any costs charged that Landlord reasonably believes to be unreasonable, and to perform inspections to verify the construction, and Landlord shall charge to, and deduct from, the Tenant Improvement Allowance any costs incurred by Landlord in performing such audit and verifying the amounts to be reimbursed to Tenant. Tenant shall designate one or

more Designated Representatives, and only the Designated Representatives of Tenant are authorized to sign Loan Draw Requests. Prior to disbursement, Landlord may require signed mechanics or materialmen lien waivers as a condition to delivering funds, and shall provide Landlord with copies of same, and Landlord reserves the right to condition any future disbursements at any time upon receipt of such waivers for all amounts previously advanced by Landlord. At Landlord's request, Tenant shall provide Landlord with copies of contracts, bills, invoices or other documentation supporting the amount requested. Landlord shall at all times have the right to enter upon the Premises during construction to confirm that the work is in conformance with the approved plans and specifications. Tenant agrees to comply with all applicable laws concerning the utilization of public funds in construction of the Tenant Improvements, including prevailing wage and public bidding requirements, to the extent applicable to Tenant.

6.11.4 Tenant may, at Landlord's option, receive reimbursement from the Tenant Improvement Allowance for site and infrastructure improvements (including, without limitation, installation of electrical, water, telephone, sewer and fire-life safety systems, including City fees therefor) installed in the Premises prior to the date of the Third Amendment to Lease upon presentation to Landlord of evidence of payment for installation of such items.

6.11.5 Tenant agrees from time to time upon the request of Landlord to deliver to

Landlord a report detailing the status of the Tenant Improvements, including percentage of completion by phase and budget category, percentage of funds expended to date (including sums for which reimbursement is being sought), description of third party defaults, and any deviations in budget or time schedules. Tenant shall also deliver reports to Landlord without Landlord's prior request any time following third party defaults and other material matters which might or could either delay construction of the Tenant Improvements or increase the cost thereof.

4. Effect of this Third Amendment. Except as specifically set forth in this Third Amendment, all other provisions of the Lease and the Third Amendment not inconsistent with this Third Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease Agreement as of the day and year first above written.

| | |
|---|---|
| CITY OF PASADENA, a public body, corporate and politic | WESTERN JUSTICE CENTER, a California non-profit corporation |
| By: /s/ Kathryn Nack<br>Kathryn Nack, Mayor | By: /s/ [Illegible]<br>, Pres. |
| Attest: | By: /s/ David K. Robinson<br>, Sec. |
| /s/ Maria M. Stewart<br>Maria Stewart,<br>City Clerk 8/16/94 | |

APPROVED AS TO FORM:

/s/ Ted J. Reynolds
Deputy City Attorney

DATE 7/11/94

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[SEAL] **Agenda Report**

TO: CITY COUNCIL/PASADENA SURPLUS AUTHORITY

FROM: CITY MANAGER/EXECUTIVE OFFICER

DATE: JULY 1, 1994

RE: JOINT ACTION:
TRANSFER OF TITLE TO 55-85 SOUTH GRAND AVENUE FROM PASADENA SURPLUS PROPERTY AUTHORITY TO THE CITY OF PASADENA; THIRD AMENDMENT TO LEASE AGREEMENT WITH WESTERN JUSTICE CENTER FOR THE REAL PROPERTY LOCATED AT 55-85 SOUTH GRAND AVENUE.

RECOMMENDATION:

1. It is recommended that the Pasadena Surplus Property authority adopt a resolution:

   A. Transferring title of real property located in the City of Pasadena from Pasadena Surplus

Property Authority ("Authority") to the City of Pasadena ("City"); and

B. Assigning its interest in Lease Agreement (Agreement #13,753) to the City.

2. It is recommended that the City Council adopt a resolution:

A. Accepting title to the real property and improvements located at 55-85 South Grand Avenue from the Authority and authorizing the City Manager to sign the Certificate of Acceptance of the Deed from the Authority; and

B. Approving the terms and conditions of the Third Amendment to Lease Agreement (Agreement #13,753-1) and authorizing the City Manager to execute the Third Amendment and all necessary documents related thereto;

BACKGROUND:

On April 4, 1989, the Pasadena Surplus Property Authority ("Authority") entered into Lease Agreement (Agreement No. 13,753) (the "Original Lease") with Western Justice Center ("tenant") for the real property situated in the City of Pasadena and commonly known as 55-85 South Grand Avenue. Under the Original Lease, the tenant agreed to rehabilitate and/or construct certain "Tenant Improvements" in accordance with certain plans and specifications.

On September 17, 1989, the Authority acquired title to the premises from the United States General

Services Administration ("GSA") with a downpayment of $82,400 provided by the Western Justice Center and the balance of the purchase price was financed by a loan from GSA in the amount of $329,600. The GSA loan has a term of 10 years which expires in 1999 and bears an interest rate of 9.625% with payments due on a quarterly basis. The rental amount from the Original Lease between the Authority and the tenant was based on the financing terms of the loan between GSA and the Authority, such that rental payments received from the tenant were sufficient to service the debt owed by the Authority to GSA.

The Authority entered into the Original Lease as a means of benefiting the citizens of the City of Pasadena in the following ways: through a center for the study of dispute resolution and the administration of justice, to provide additional employment and revenues to the local economy, to provide for improvements in both the local, regional, national and international components of the legal system, to provide a forum for educational research, and for the purpose of insuring the restoration and historical preservation of the premises. The Western Justice Center provided the down payment for the purchase of the premises in the form of an advance rental obligation and entered into the Original Lease in order to repay the Authority the loan due to GSA because it did not qualify as an organization eligible to purchase the premises from GSA.

On November 16, 1993, the City Council adopted a resolution which provided the refunding and reissuing of the 1989 and 1990 Certificates of Participation (COPS)

and adopted a Reimbursement Resolution which declared the City's intent to reimburse certain expenditures pertaining to the Western Justice Center from proceeds of the indebtedness and approved the use of $700,000 to repay the GSA Loan and assist on the rehabilitation of some of the historic structures located on the premises to be used by the tenant during the lease term.

As the City of Pasadena is the issuer of the bonds, it is advisable to transfer title of the project from the Pasadena Surplus Authority to the City of Pasadena and assign the lease agreement to to the City of Pasadena.

Recommended structure for repayment of the $700,000 Loan.

Western Justice Center has completed the rehabilitation of one of the three buildings and recently opened such building for business.

Of the $700,000 in proceeds of the 1993 COP issue, designated for use for the Western Justice Center property, the City will pay off the balance of the GSA loan ($214,549.81 as of August 1, 1994), pay all costs associated with the Third Amendment to the Original Lease including Western Justice Center's pro-rata share of the costs of issuance of the COPs, legal fees related to the Third Amendment, and fees associated with the periodic review and disbursement of funds to the Western Justice Center. The remaining balance of the approved $700,000 (i.e., $458,000) will be periodically disbursed to Western Justice Center as a tenant

improvement allowance for the restoration of the second of the historical bungalows. The entire amount advanced (i.e., $700,000), together with interest thereon from the date of disbursement at the rate of 5.33% per annum (the interest rate on the COPs) will be repaid to the City by the tenant as rent as follows: No payments shall be due, and interest shall accrue, until March 31, 1996. Thereafter, commencing April 1, 1996, the $700,000 advanced amount, plus accrued interest, will be repaid as additional rent amortized over the next succeeding 18 years in an amount equivalent to the City's periodic debt service requirements on the COP's.

Western Justice Center has provided the following preliminary rough budget for the use of the $458,000 (a final approved budget is a condition of disbursement of funds):

1. $350,000 will be used for rehabilitation of the second building;

2. $50,000 will be used for reimbursement of loans to Western Justice Center the proceeds of which were used to provide infrastructure improvements serving all three buildings; and

3. $58,000 will be used to preserve the roof of the third building and/or repair or restore earthquake damage to the third building and construct earthquake reinforcements to the third building.

The tenant improvement allowance will allow Western Justice Center to rehabilitate the second building and provide immediate protection to the third building necessary to prevent further deterioration thereof while Western Justice Center seeks donations and other sources of funds to rehabilitate the third building. There is no guaranty or timetable within which the Western Justice Center will rehabilitate the third building however, the Original Lease, as amended by the Third Amendment, requires Western Justice Center to perform said rehabilitation during the lease term.

FISCAL IMPACT:

All costs associated with this matter will be paid by Western Justice Center in the form of rent including their pro rata share of the cost of issuing the Certificates of Participation. There is no fiscal impact to the General Fund. All lease payments received by the City will be used to pay the debt service on the $700,000 portion of the bonds.

Respectfully submitted,

/s/ Philip A. Hawkey
Philip A. Hawkey
City Manager/Executive Officer

Prepared by:

/s/ Vic Erganian
Vic Erganian
Principal Financial Analyst/
Assistant Treasurer

Reviewed by:

/s/ Mary J. Bradley
Mary J. Bradley
Director of Finance

/s/ Ted Reynolds
Theodore Reynolds
Assistant City Attorney

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RESOLUTION NO. SPR 7143

A RESOLUTION OF THE COMMISSION OF THE PASADENA SURPLUS PROPERTY AUTHORITY APPROVING THE CONVEYANCE OF REAL PROPERTY TO THE CITY OF PASADENA

WHEREAS, there has been presented to the Pasadena Surplus Property Authority ("Authority") a quitclaim deed wherein the Authority agrees, for valuable consideration, to transfer to the City of Pasadena the real property commonly known as 55-85 South Grand Avenue in the City of Pasadena (the "Property"); and

WHEREAS, the Commission of the Pasadena Surplus Property Authority deems it to be in the best

interests of the Authority to transfer the Property to the City of Pasadena;

NOW, THEREFORE, the Commission of the Pasadena Surplus Property Authority resolves and declares as follows:

1. The Commission hereby approves the quitclaim deed which has been presented to the Authority, substantially in the form on file with the Clerk of the Authority, and hereby authorizes and directs the Executive Director and Clerk of the Authority to execute, acknowledge and deliver said document, and to perform all acts necessary or appropriate to effect the transfer of the Property to the City of Pasadena.

Adopted at a special meeting of the Commission of the Surplus Property Authority on the 18th day of July, 1994, by the following vote:

| | |
|---|---|
| AYES: | Commissioners Cole, Holden, Thomson, Paparian, Nack |
| NOES: | None |
| ABSENT: | Commissioners Crowfoot, Richard |
| ABSTAIN: | None |

/s/ Maria M. Stewart
MARIA M. STEWART
Clerk of the Authority

APPROVED AS TO FORM:

VICTOR J. KALETA
General Counsel

By: /s/ Ted Reynolds
Theodore J. Reynolds

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RESOLUTION NO. 7144

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA APPROVING THE ACQUISITION OF REAL PROPERTY LOCATED AT 55-85 SOUTH GRAND AVENUE AND ACTIONS RELATED THERETO

WHEREAS, there has been presented to the City Council a quitclaim deed wherein the Pasadena Surplus Property Authority (the "Authority") agrees, for valuable consideration, to transfer to the City of Pasadena (the "City") the real property in the City commonly known as 55-85 South Grand Avenue (the "Property");

WHEREAS, as part of the transaction, it is proposed that the City repay the balance of the loan to the Authority from the United Stated General Services Administration in connection with the purchase of the Property;

WHEREAS, there has been presented to the City Council an amendment to Lease Agreement No. 13,753 between the City and the Western Justice Center, the current tenant of the Property; and

WHEREAS, the City Council deems it to be in the best interests of the City to undertake the above transactions;

NOW, THEREFORE, the City Council of the City of Pasadena resolves and declares as follows:

1. The City Council hereby accepts the quitclaim deed which has been presented to the City Council, substantially in the form on file with the City Clerk, and hereby authorizes and directs the City Manager and City Clerk to execute, acknowledge and deliver a certificate of acceptance, and to perform all acts necessary or appropriate to effect the transfer of the Property to the City.

2. The City Council hereby approves repayment by the City of the balance of the loan to the Authority from the United States General Services Administration in connection with the purchase of the Property, and directs the City Treasurer to Perform all acts necessary or appropriate to effect such repayment.

3. The City Council hereby approves that certain Third "Amendment") which has been presented to the City Council, substantially in the form on file with the City Clerk, and hereby authorizes and directs the City Manager and City Clerk to execute and acknowledge the Amendment, and to perform all acts necessary or appropriate to effect the terms and conditions of the Amendment and the intention of this Resolution.

Adopted at the regular meeting of the City Council on the 18th day of July, 1994, by the following vote:

| | |
|---|---|
| AYES: | Councilmembers Cole, Holden, Thomson, Paparian, Nack |
| NOES: | None |
| ABSENT: | Commissioners Crowfoot, Richard |
| ABSTAIN: | None |

/s/ Maria M. Stewart
MARIA M. STEWART,
City Clerk

APPROVED AS TO FORM:

VICTOR J. KALETA
City Attorney

By: /s/ Ted Reynolds
Theodore J. Reynolds
Assistant City Attorney

Recording Requested by:

City of Pasadena

And when recorded return to
and mail tax statements to:

City of Pasadena
100 North Garfield Avenue
P.O. Box 7115
Pasadena, California 91109

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**QUITCLAIM DEED**

The undersigned grantor(s) declare(s):

Documentary transfer tax is $0.00.
**Exempt from Documentary Transfer Taxes Pursuant to R & T Code Section 11922**

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged, the PASADENA SURPLUS PROPERTY AUTHORITY, a public body, corporate and politic, hereby quitclaims, releases and remises to

the CITY OF PASADENA, a municipal corporation,

the following described real property located in the City of Pasadena, County of Los Angeles, State of California:

See Exhibit "A" attached hereto and incorporated by reference herein.

See also Rider attached hereto and incorporated herein.

IN WITNESS WHEREOF, the undersigned have executed this Grant Deed as of the date set forth below.

Dated: 8/16/94

PASADENA SURPLUS PROPERTY AUTHORITY, a public body, corporate and politic

By: /s/ Kathryn Nack
Kathryn Nack, President

Attest:

/s/ Maria M. Stewart
Maria Stewart, City Clerk

State of California }
}
County of Los Angeles }

On 8/16, 1994, before me, Maria M. Stewart a Notary Public, personally appeared Kathryn Nack, personally known to me (or 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 upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[NOTARY STAMP]

Signature Maria M. Stewart

(seal)

Exhibit "A"

Legal Description

That portion of Lot 1 of Vista Crest Tract, in the City of Pasadena, in the County of Los Angeles, State of California, as per map recorded in Book 5 Page 34 of maps and that portion of Lots 2 and 3 of Berry and Elliott's Subdivision, Division "D", of San Gabriel Orange Grove Association Lands, in the City of Pasadena, in the County of Los Angeles, State of California, as per map recorded in Book 32 Page 55, and in Book 2 Page 600, all of Miscellaneous Records, in the Office of the County Recorder of said County, described as follows:

> Beginning at the Northeast corner of Lot 1 of Vista Crest, as per map recorded in Book 5, Page 34 of Maps, Records of said County, said corner being on the Westerly line of Grand Avenue (70 feet wide); thence North 3 degrees 13 minutes 59 seconds East, 142.78 feet along the West line of Grand Avenue to the beginning of a tangent curve, concave Westerly, having a radius of 250.00 feet; thence Northerly along said curve, an arc distance of 86.18 feet; thence leaving the Westerly line of said Grand Avenue South 86 degrees 25 minutes 43 seconds West, 111.41 feet; thence South 0 degrees 45 minutes 56 seconds West, 8.98 feet; thence South 89 degrees 11 minutes 22 seconds West, 19.79 feet; thence South 0 degrees 34 minutes 14 seconds East. 90.38 feet: thence South 89 degrees 46 minutes 51 seconds West, 23.53 feet: thence South 0 degrees 12 minutes 40 seconds East, 137.76 feet;

thence North 89 degrees 47 minutes 20 seconds East, 152.45 feet to the Westerly line of said Grand Avenue; thence North 8 degrees 27 minutes 30 seconds East, 16.32 feet to the point of beginning.

---

Rider to Quitclaim Deed

The GRANTOR further assigns to Grantee all leasehold interests affecting the property, including that certain Lease Agreement dated April 4, 1989, by and between the GRANTOR, as Landlord, and the WESTERN JUSTICE CENTER, as Tenant, as such Lease has been amended.

The GRANTEE covenants for itself, and its assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said GRANTEE and such assigns shall not discriminate upon the basis of race, color, religion, sex, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land of interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

The GRANTEE further covenants for itself, its successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof that the real property above described Is hereby conveyed subject to the conditions, restrictions, and limitations hereinafter set forth which are covenants running with the land; that the GRANTEE, its successors, and assigns, covenants and agrees, that in the event that the property is sold or otherwise disposed of, these covenants and restrictions shall be inserted in the instruments of conveyance.

(1) The structure(s) situated on said real property will be preserved and maintained in accordance with plans approved in writing by the California State Historic Preservation officer (SHPO), Sacramento, California.

(2) No physical or structural changes or changes in color or surfacing will be made to the exterior of the structure(s) and architecturally or historically significant interior features as determined by the California SHPO without the written approval of the California SHPO.

(3) In the event of a violation of the above restrictions, General Services Administration of the United States of America or the California SHPO may institute a suit to enjoin such violation or for damages by reason of any breach thereof.

(4) These restrictions shall be binding on the Parties hereto, their successors, and assigns in perpetuity; however, the California SHPO may, for good

cause, modify or cancel any or all of the foregoing restrictions upon written application of the Grantee, its successors or assigns.

The acceptance of the delivery of this Deed shall constitute conclusive evidence of the agreement of the Grantee to be bound by the conditions, restrictions, and limitations, and to perform the obligations herein set forth.

Development of the property shall be in compliance with The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and development plans shall be approved by the SHPO for guidance in planning the development of the property. If the Grantee and the SHPO are unable to agree on the proposed development, the Grantee shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation. The Grantee, SHPO, and the Advisory Council on Historic Preservation shall reach an agreement regarding the proposed development. If such an agreement cannot be reached the Advisory Council on Historic Preservation shall forward all relevant project materials with comments to the General Services Administration. The General Services Administration will consider such comments and if necessary take action in accordance with the terms and conditions of these covenants.

THIS QUITCLAIM IS MADE SUBJECT TO all covenants, easements, reservations and encumbrances whether of record or not.

THIS QUITCLAIM IS MADE FROM GRANTOR TO GRANTEE 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, and also all the estate, right, title, interest, property possession, claim and demand whatsoever, in law as well as in equity, of the said GRANTOR of, in or to the foregoing described premises, and every part and parcel thereof with the appurtenances.

TO HAVE AND TO HOLD, all the singular, the said premises, with-the improvements thereon, unto the said GRANTEE, its successors and assigns.

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CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by the Quitclaim Deed dated August 16, 1994, from the PASADENA SURPLUS PROPERTY AUTHORITY, a public body, corporate and politic ("Grantor"), to the CITY OF PASADENA, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the CITY OF PASADENA pursuant to authority conferred by Resolution No. 7144 adopted on July 18, 1994, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: August 16, 1994

CITY OF PASADENA

By: /s/ Kathryn Nack
Kathryn Nack, Mayor

ATTEST:

/s/ Maria M. Stewart
Maria Stewart, City Clerk