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6 Attorneys for Plaintiff  
7 CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103  
To the benefit of the City of San Diego

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

10 CITY OF SAN DIEGO, a municipal  
11 corporation,  
12 Plaintiff,

13 v.

14 The testate and intestate successors of GEORGE  
15 W. MARSTON, deceased, and all persons  
16 claiming by, through, or under him; The testate  
17 and intestate successors of ANNA L.  
18 MARSTON, deceased, and all persons claiming  
19 by, through, or under her; CHARLES  
20 MARSTON, an individual; ANNE  
21 CATHERINE MARSTON, an individual;  
22 GEORGE A. MARSTON, an individual; All  
23 persons unknown and claiming any legal or  
24 equitable right, title, estate, lien or interest in the  
25 property described in this complaint adverse to  
26 Plaintiff's title, or any cloud on Plaintiff's title  
27 thereto; and DOES 1 through 50, inclusive,  
28 Defendants.

) Case No.

) **COMPLAINT TO QUIET TITLE TO  
REAL PROPERTY AND FOR  
DECLARATORY RELIEF**

23 Plaintiff CITY OF SAN DIEGO, a municipal corporation (City), alleges as follows:

24 **I.**

25 **GENERAL ALLEGATIONS**

26 1. The City is a municipal entity established pursuant to the California Constitution,  
27 Article XI, section 3. The City's corporate powers are established in Article 1 of the San Diego  
28 City Charter.

1           2.       The City is the owner of real property commonly known as the former public  
2 library (Former Central Library or Central Library) located at 814-848 E Street, San Diego,  
3 California 92101 (Property), specifically described as follows:

4           LOTS D, E, F, G, H AND I IN BLOCK 47 OF HORTON'S ADDITION, IN THE  
5 CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA,  
6 ACCORDING TO MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN  
7 THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO  
8 COUNTY.

9           APN: 534-323-02

10          3.       The Property description is also set forth in the grant deed dated December 29,  
11 1899, attached hereto as **Exhibit "A"** and incorporated herein by reference (Grant Deed).

12          4.       The City is informed, believes and thereon alleges that defendant GEORGE W.  
13 MARSTON is deceased. The City does not know the names of his heirs and devisees and thereon  
14 designates them as the testate and intestate successors GEORGE W. MARSTON (Successor  
15 Defendants). These Successor Defendants, and each of them, claim some right, title, estate, lien,  
16 or interest in the Property adverse to the City's title, and their claims, and each of them,  
17 constitute a cloud on the City's title to the Property.

18          5.       The City is informed, believes and thereon alleges that defendant ANNA L.  
19 MARSTON is deceased. The City does not know the names of her heirs and devisees and thereon  
20 designates them as the testate and intestate successors ANNA L. MARSTON (Successor  
21 Defendants). These Successor Defendants, and each of them, claim some right, title, estate, lien,  
22 or interest in the Property adverse to the City's title, and their claims, and each of them,  
23 constitute a cloud on the City's title to the Property.

24          6.       The City is informed, believes and thereon alleges that defendant CHARLES  
25 MARSTON, an individual, may be an heir, devise, testate, or intestate successor of GEORGE W.  
26 MARSTON or ANNA L. MARSTON and may, therefore, claim some right, title, estate, lien, or  
27 interest in the Property adverse to the City's title, and his claims, therefore, may constitute a  
28 cloud on the City's title to the Property.

          7.       The City is informed, believes and thereon alleges that defendant ANNE  
CATHERINE MARSTON, an individual, may be an heir, devise, testate, or intestate successor

1 of GEORGE W. MARSTON or ANNA L. MARSTON and may, therefore, claim some right,  
2 title, estate, lien, or interest in the Property adverse to the City's title, and her claims, therefore,  
3 may constitute a cloud on the City's title to the Property.

4 8. The City is informed, believes and thereon alleges that defendant GEORGE A.  
5 MARSTON, an individual, may be an heir, devise, testate, or intestate successor of GEORGE  
6 W. MARSTON or ANNA L. MARSTON and may, therefore, claim some right, title, estate, lien,  
7 or interest in the Property adverse to the City's title, and his claims, therefore, may constitute a  
8 cloud on the City's title to the Property.

9 9. The defendants designated as "all other persons unknown, claiming any legal or  
10 equitable right, title, estate, lien, or interest in the Property adverse to the City's title, or any  
11 cloud on the City's title thereto" are unknown to the City (Unknown Defendants). These  
12 Unknown Defendants, and each of them, claim some right, title, estate, lien, or interest in the  
13 Property adverse to the City's title, and their claims, and each of them, constitute a cloud on the  
14 City's title to the Property.

15 10. The true names and capacities, whether individual, corporate, associate or  
16 otherwise, of defendants DOES 1 through 50, inclusive are unknown to the City, who therefore  
17 sues said defendants by such fictitious names pursuant to Code of Civil Procedure section 474.  
18 Any reference in the complaint to the actions or inactions of any defendant, whether such  
19 reference is made to such defendant by specific name or otherwise, is also a reference to the  
20 actions or inactions of DOES 1 through 50, inclusive.

21 11. The City is informed and believes and thereon alleges each of the fictitiously  
22 named defendants claim some right, title, or interest in the Property.

23 12. The City alleges on information and belief that at all times material herein,  
24 defendants were agents, employees, representatives, partners, conspirators, alter egos and related  
25 or affiliated entities of their co-defendants, and in doing the things alleged herein, were acting in  
26 the course and scope of their agency and employment with the permission, consent, authority and  
27 ratification of their co-defendants.

28 13. All defendants, including the Successor Defendants, individually named

1 defendants, Unknown Defendants, and DOE defendants are hereinafter referred to collectively as  
2 “defendants.”

3 **II.**

4 **FIRST CAUSE OF ACTION**

5 **(Quiet Title Against All Defendants)**

6 14. The City realleges and incorporates paragraphs 1 through 13 above, as if fully set  
7 forth herein.

8 15. In approximately December 1899, GEORGE W. MARSTON and ANNA L.  
9 MARSTON (the MARSTONS) assembled the Property through multiple private party purchases  
10 for the total sum of \$17,000.00.

11 16. On or about December 29, 1899, the MARSTONS granted the Property to the  
12 City in fee simple as set forth in the attached Grant Deed in exchange for \$17,000.00.

13 17. The granting clause of the Grant Deed does not contain reference to any  
14 conditions on or purpose for the grant.

15 18. The subsequent habendum clause contains the following language: “TO HAVE  
16 AND TO HOLD, all and singular, the said premises, together with the appurtenances, (except as  
17 above stated), unto the said party of the second part, its successors and assigns forever, for the  
18 public use as a site for a building for a public library and reading-room.”

19 19. After the City purchased the Property at fair market value, it constructed and  
20 opened the Carnegie Library on the Property in 1902 and operated it until 1952.

21 20. The City later constructed a new library on the site, known as the Central Library,  
22 which opened in 1954. The City operated the Central Library until 2013 when the City opened  
23 the “New Central Library” approximately five blocks away at 330 Park Boulevard. Having  
24 fulfilled its use, the Former Central Library has not reopened or otherwise operated as a public  
25 library at the site since that time. In total, the City used the Property as a public library for over  
26 100 years.

27 21. At this time, the City would like to convert the Property into an emergency  
28 homeless shelter or other permissible use and may, in the future, wish to sell the Property.

1 However, prior to incurring the cost of any such conversion or before any potential future sale of  
2 the Property, the City respectfully requests a judicial determination that the provision in the  
3 Grant Deed stating “for the public use as a site for a building for a public library and reading-  
4 room” (hereinafter “the Provision”) is merely directory, invalid or otherwise non-binding in any  
5 way on the City’s (or any future owner’s) use of the Property, or in the alternative, that said  
6 Provision has been fully satisfied.

7 22. Based on the foregoing, the City seeks to quiet title to the Property, against all  
8 adverse claims of all claimants, known and unknown, as of the date this complaint was filed.

9 23. In addition, the City seeks reformation of any deeds or cancellation of any title  
10 restrictions which contain any limitations on the use of the Property.

11 **III.**

12 **SECOND CAUSE OF ACTION**

13 **(Declaratory Relief Against All Defendants)**

14 24. The City realleges and incorporates paragraphs 1 through 23 above, as if fully set  
15 forth herein.

16 25. To ensure marketable title for purposes of any potential future sale or any  
17 potential future use of the Property, including as an emergency homeless shelter, the City  
18 requests that the Provision be declared by this Court as merely directory, invalid, cancelled or  
19 otherwise non-binding on the City’s (or any future onwer’s) use of the Property, or in the  
20 alternative, as fully satisfied pursuant to Code of Civil Procedure section 1060 et seq.

21 **PRAYER**

22 WHEREFORE, the City prays for judgment as follows:

23 1. For a declaration the City is the fee simple owner of the Property without any  
24 qualification, restriction, condition or limitation on the Property including the Property’s use as a  
25 public library or reading-room;


26 2. For a declaration that the Provison is merely directory, invalid or otherwise non-  
27 binding on the City’s (or any future onwer’s) use of the Property, or alternatively, that the  
28 Provision been fully satisfied;

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- 3. For a declaration that no defendant has any interest in the Property adverse to the City;
- 4. For reformation of any applicable deeds or cancellation of any title restrictions which contain any limitation on the use of the Property;
- 5. For costs of suit incurred in this action; and
- 6. For such other and further relief as the court may deem proper.

Dated: March 23, 2022

MARA W. ELLIOTT, City Attorney

By   
Jana Mickova Will  
Deputy City Attorney

Attorneys for Plaintiff,  
CITY OF SAN DIEGO

# EXHIBIT A

THIS INDENTURE, made the 29th day of December in the year of our Lord, one thousand eight hundred and ninety-nine, between George W. Marston and Anna L. Marston, his wife, residents of the city of San Diego, County of San Diego, State of California, the parties of the first part, and the City of San Diego, a municipal corporation situated in the County of San Diego, State of California, and organized and existing under and by virtue of the laws of the State of California, party of the second part, W I T N E S S E T H:

That the said parties of the first part for and in consideration of the sum of Seventeen Thousand Dollars (\$17,000.00) gold coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, its successors and assigns forever, all those certain Lots, pieces and parcels of land situated in the City of San Diego, County of San Diego, State of California, and described as follows, to-wit:

Being Lots lettered "D", "E", "F", "G", "H", and "I" in Block numbered Forty-seven (47) of Hortons' Addition to the said City of San Diego, being the South one-half (S. 1/2) of said Block, according to the official map of said Horton's Addition. ... made by L. L. Lockling, and filed for record in the office of the County Recorder of the said County of San Diego, on the 21st day of July, 1871, at the request of A. E. Horton; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, (except the buildings and improvements on said premises), and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.



TO HAVE AND TO HOLD, all and singular, the said premises,  
together with the appurtenances, (except as above stated), unto  
the said party of the second part, its successors and assigns  
forever, for the public use as a site for a building for a  
public library and reading-room.

And the said parties of the first part, and their heirs,  
*the* said premises in the quiet and peaceable possession of the  
said party of the second part, its successors and assigns,  
against the said parties of the first part, and their heirs,  
and against all and every person and persons, whomsoever, law-  
fully claiming, or to claim the same, shall and will warrant,  
and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part  
have hereunto set their hands and seals the day and year first  
above written.

George W. Marston  
Anna L. Marston



FILED  
FRED W. SICK, V. M. City Clerk

230323

Deed

George H. Maiston  
S. H. 2

to

The City of San Diego

Witnessed at San Diego, Cal.  
J. N. Stearns

50 DEC 30 1899

City of San Diego  
City Clerk's Office  
Book No. 283

Page 219

Witnessed at San Diego, Cal.  
J. F. Forward  
H. Johnson  
1899

25

BOOK 283 PAGE 219

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20 claiming by, through, or under him; The testate  
21 and intestate successors of ANNA L.  
22 MARSTON, deceased, and all persons claiming  
23 by, through, or under her; CHARLES  
24 MARSTON, an individual; ANNE  
25 CATHERINE MARSTON, an individual;  
26 GEORGE A. MARSTON, an individual; All  
27 persons unknown, claiming any legal or  
28 equitable right, title, estate, lien or interest in the  
property described in this complaint adverse to  
Plaintiff's title, or any cloud on Plaintiff's title  
thereto; and DOES 1 through 50, inclusive,  
Defendants.

) Case No.  
)  
) **DECLARATION OF ARON**  
) **HERSHKOWITZ IN SUPPORT OF**  
) **COMPLAINT TO QUIET TITLE TO**  
) **REAL PROPERTY AND FOR**  
) **DECLARATORY RELIEF PURSUANT**  
) **TO CODE OF CIVIL PROCEDURE**  
) **SECTION 762.030**

23 I, Aron Hershkowitz, declare:

- 24 1. I have personal knowledge of the following facts and can truthfully and  
25 competently testify as to these facts if called as a witness.  
26 2. I am an investigator for plaintiff City of San Diego (City) and have been assigned  
27 to this action.  
28

1           3.       I understand that the property at issue in this action is commonly referred to as the  
2 former central library, located at 814-848 E Street, San Diego, California 92101 (Property),  
3 specifically described as follows:

4           LOTS D, E, F, G, H AND I IN BLOCK 47 OF HORTON'S ADDITION, IN THE  
5 CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA,  
6 ACCORDING TO MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN  
7 THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO  
8 COUNTY.

9           APN: 534-323-02

10          4.       To the best of my abilities, I have researched all potential parties who may have  
11 an interest in the Property or this action.

12          5.       Based on my research, it is my understanding that defendants GEORGE W.  
13 MARSTON and ANNA L. MARSTON are deceased.

14          6.       Based on my research, it is my understanding that the estates of defendants  
15 GEORGE W. MARSTON and ANNA L. MARSTON do not have a personal representatives.

16          7.       Based on the foregoing, and in accordance with Code of Civil Procedure section  
17 762.030, the City has joined the following as defendants:

18               a.       The testate and intestate successors of GEORGE W. MARSTON,  
19 deceased, and all persons claiming by, through, or under him; and

20               b.       The testate and intestate successors of ANNA L. MARSTON, deceased,  
21 and all persons claiming by, through, or under her.

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