

Appendix H. Possessory Use Agreements

Contents

Appendix H. Possessory Use Agreements..... H.1

Table of Figures

Figure H-1: Possessory Use Agreements Under Discussion..... H.5
Figure H-2: Possessory Use Agreements Termination in Process H.5
Figure H-3: Possessory Use Agreements Veteran Centric to Remain or Logistical to Remain H.6
Figure H-4: Possessory Use Agreements Expired or Not Applicable..... H.7

In January 2015, a settlement agreement was reached in the June 2011 lawsuit filed against VA (*Valentini v. McDonald*) on behalf of several Veterans, the Vietnam Veterans of America, and Carolina Winston Barrie (a descendant of family members that deeded the GLA Campus to the United States). The lawsuit alleged that VA violated the covenant contained in the March 1888 deed whereby the United States acquired title to the GLA Campus, by misusing parts of it for commercial purposes, in lieu of caring for and serving Veterans – namely chronically homeless Veterans with significant disabilities, and other underrepresented Veterans that are severely disabled, aging, or female Veterans.

This Veteran focused intent for all land use agreements at GLA going forward is absolutely appropriate and warranted, particularly given: (a) the 1888 deed where the United States received a donation of title to the GLA campus intended for the campus to be used for disabled volunteer soldiers (e.g., homeless Veterans); and (b) the holding and lessons learned from the August 2013 District Court for Central District of California decision in the *Valentini v. McDonald* case (Case No. 2:11-cv-04846-SJO-MRW), which held that nine of the existing land use agreements were illegal as they did not constitute a valid sharing of “health-care resources” under VA’s Enhanced-Sharing Authority (38 U.S.C. §§ 8151-8153). Given those two clear principles, and as part of the “Principles for Partnership Agreement” that settled the *Valentini* lawsuit in January 2015, VA Secretary Robert McDonald commissioned an extensive review of the land use agreements at GLA, including those nine voided agreements. The nine agreements voided under the Court decision were as follows:

1. Brentwood School
2. Sodexo Marriott Laundry Services
3. UCLA Regents (Baseball Stadium)
4. 20th Century Fox TV
5. Veterans Park Conservancy
6. Westside Breakers Soccer Club
7. Westside Services Parking
8. TCM Farmer’s Market
9. Filming Agreement ESAs

All land use agreements at GLA including the above nine agreements have or are being reviewed, to determine whether they are or can be made sufficiently Veteran focused (thru fair market value rent to VA and services directly benefitting Veterans and their families), and fit within the overall needs and vision for a revitalized campus. To date, the terminated agreements include Richmark Entertainment; the Farmer’s Market; various filming agreements; Sodexo laundry agreement; 20th Century Fox; Westside Breakers; TCM Farmer’s Market; and Veterans Garden (Rancho Santa Ana); have ended from a legal standpoint. This gives VA the right and authority to end related physical presence of those activities on the GLA campus. VA is also in negotiations with certain of the existing land use arrangements (e.g., Brentwood School, UCLA, and Veterans Park Conservancy), to leverage the significant Veteran focused potential of those relationships, through a combination of fair market rents to VA (that will be strictly used to help revitalize the campus if S. 2013 and H.R. 3484 are enacted), and Veteran focused consideration (such as in-kind consideration and use of existing and future facilities under those arrangements for purposes tied to recreation, rehabilitation, therapy, mental health support, legal and addiction services). The potential future of those agreements depends on VA and the underlying parties achieving adequate Veteran focus. Veteran focus means consideration that results in additional healthcare, benefits, services, or resources being provided directly to Veterans and/or their families on the GLA campus.

VA will continue its ongoing efforts to terminate any existing third party use arrangements that fall outside of providing direct benefits to Veterans. VA will do so in a manner that takes into account the legal parameters for doing so based on the underlying contract provisions at issue, and that is representative of being stewards of tax payer resources. As part of this process, we will also ensure that any third party Veteran focused arrangements provide VA with best value within a principally Veteran focused approach. Regarding such revenues, it will be VA's objective going forward, to work with Congress to ensure that if S. 2013 or H.R. 3484 is enacted, the revenues generated from these arrangements will be used strictly at the GLA campus. Doing so will help us maintain and renovate the campus in accordance with applicable law and regulations, along with funding that VA receives through other prioritization, budgetary, congressional authorization and appropriation legislative, and enactment processes.

Veteran Focus for Future Land Use Activities

Going forward, VA's efforts to revitalize the campus will only include 'Veteran focused' agreements, or agreements that result in additional healthcare, benefits, services, or resources being provided directly to Veterans and/or their families on the GLA campus. Monetary proceeds paid to VA alone will not constitute an acceptable agreement. Neither will agreements that only benefit the public at large, versus Veterans and their families. This concept will be a key consideration in terms of how existing and any future land use agreements are evaluated for approval, rejection, or termination.

VA's review of any proposed third party land use agreements will entail a linear, multilayered process, to ensure adequate due diligence occurs. At a minimum, each agreement will receive input from the following VA personnel:

- (1) West LA Chief of Outreach
- (2) VAMC Director
- (3) VISN 22 Director
- (4) SAO West Land Use Contracting Officer
- (5) The San Francisco Regional Counsel Office (now known as the Pacific District (North))
- (6) OGC's Real Property Deputy Chief Counsel in VA Headquarters

This Veteran focused intent for all land use agreements at GLA going forward is absolutely appropriate and warranted, particularly given the lessons learned from the August 2013 District Court for Central District of California decision in the Valentini v. McDonald case, which held that nine of the existing land use agreements were illegal as they did not constitute a valid sharing of "health-care resources" under VA's Enhanced-Sharing Authority. Given those two clear principles, and as part of the "Principles for Partnership Agreement" that settled the Valentini lawsuit in January 2015, VA Secretary Robert McDonald commissioned an extensive review of the land use agreements at GLA, including those nine voided agreements. The nine agreements voided under the Court decision were as follows:

1. Brentwood School
2. Sodexo Marriott Laundry Services
3. UCLA Regents (Baseball Stadium)
4. 20th Century Fox TV
5. Veterans Park Conservancy
6. Westside Breakers Soccer Club
7. Westside Services Parking
8. TCM Farmer's Market
9. Filming Agreement ESAs

All land use agreements at the GLA campus, including the above nine agreements, have or are being reviewed, to determine whether they are or can be made sufficiently Veteran focused (thru fair market value rent to VA and services directly benefitting Veterans and their families), and fit within the overall needs and vision for a revitalized campus. To date, the terminated agreements include Richmark Entertainment; various filming agreements; Sodexo laundry agreement; 20th Century Fox; Westside Breakers; TCM Farmer's Market; and Veterans Garden (Rancho Santa Ana). VA is also in negotiations with the principals of certain existing land use arrangements (e.g., Brentwood School, UCLA, Westside Services, and Veterans Park Conservancy), to help assess the potential for Veteran focused consideration, and compatibility with the Draft Master Plan. As appropriate for those arrangements deemed to be Veteran focused, VA will seek to negotiate deals that are good for Veterans, their families, and our nation's tax payers, through a combination of fair market value rents, and Veteran focused consideration (such as in-kind consideration and use of existing and future facilities under those arrangements for purposes tied to recreation, rehabilitation, therapy, mental health support, legal and addiction services). The consideration generated will help VA significantly to transform and revitalize the campus into a state-of-the art model for other VA campuses nationwide.

The GLA Chief of Outreach and Fiscal Office, and VISN 22 Capital Asset Manager shall ensure that all executed third party land use contracts and any subsequent amendments or modifications, are uploaded into VA's Capital Asset Inventory (or successor program), within 30 days of execution, or such other time as national VA policy guidance dictates. VHA West LA shall adhere to national VA policy guidance regarding VA real property contracts and land use issues, and will consult the VA's Office of General Counsel as necessary.

Lastly, VA will continue ongoing coordination and cooperation with congressional members and their staffs, and stay apprised of existing and future congressional legislation pertinent to issues at the GLA campus, such as S. 2013 and H.R. 3484 (known as the "Los Angeles Homeless Veterans Leasing Act of 2015") and California Proposition 41 (the "Veterans Housing and Homeless Prevention Bond Act of 2014"); and S. 833 and H.R. 1543 (known as the Department of Veterans Affairs Medical Facility Earthquake Protection and Improvement Act).

Figure H-1 below, displays the agreements that are under negotiations between VA and the pertinent land use entities, and will be subject to the provision of Veteran-centric services that directly support the medical, clinical, therapeutic, dietary, rehabilitative, legal, mental, spiritual, physical, recreational, research, and counseling needs of Veterans and their families. Figure H-2 shows agreements that have been terminated or where the termination is in process. Finally, Figure H-3 displays the agreements that have already agreed to provide such services and, as such, they have been given the provision to remain on GLA Campus according to the provisions described above. Figure H-4 displays the agreements that are expired or have been terminated.

Figure H-1: Possessory Use Agreements Under Discussion

Possessory Use Agreements under Discussion					
	Agreement Partner	WLA VA Asset	Agreement Number	Term of Agreement	Agreement Status
1	American Red Cross ("ARC") (WLA)	ARC district headquarters located on the southwest corner of VA grounds between Ohio Ave and Dowlen Drive	Revocable license V691-88-044 LI	4/15/1989 to 4/14/2039	Active
2	Barrington Park (WLA)	City of Los Angeles 12 acre park includes dog run, baseball diamonds, athletic fields, parking lot	ESA V691S-5276	N/A	None
3	Brentwood School (WLA)	20 acre athletic complex includes a swimming pool, track field, tennis courts and baseball diamonds	ESA V691S-171	06/20/2000 to 06/19/2020	Active
4	Golf Course (US Vets) (WLA)	Golf course located on north east area of campus includes Golf Club House (Building 329) and Golf Course Storage (Building 334)	ESA V691S-5310 (terminated) VA262-15-RL-003	9/15/2015 to 02/1/2016	Active
5	Parrot Sanctuary (WLA)	Building numbers 512 and 521 and vicinity parking area	Revocable license VA-262-15-RL-0001	06/01/2015 to 02/01/2016	Active
6	UCLA Cyclotron (WLA)	Medical Sharing Agreement	ESA V691S-5292	07/15/2009 to 07/15/2017	Active
7	UCLA Jackie Robinson Stadium (WLA)	Baseball stadium on the east side of campus	ESA V691S-287	Expired 5/14/2011	Expired (month to month)
8	Veterans Park Conservancy (WLA)	Veterans Memorial Park, healing garden and incomplete amphitheater on 16 acres of the campus	2014-1111 V691S-5294	11/11/2014-02/25/2015	Expired

Figure H-2: Possessory Use Agreements Termination in Process

Possessory Use Agreements Termination in Process					
	Agreement Partner	WLA VA Asset	Agreement Number	Term of Agreement	Agreement Status
1	Westside Services Parking (WLA)	Vehicular parking areas throughout campus	ESA V691S-154	04/01/2002 to 07/14/2022	Terminated effective 5/26/2016

Figure H-3: Possessory Use Agreements Veteran Centric to Remain or Logistical to Remain

Possessory Use Agreements Veteran Centric to Remain or Logistical to Remain					
	Agreement Partner	WLA VA Asset	Agreement Number	Term of Agreement	Agreement Status
1	Breitburn Energy/ Westside Operating Partners (WLA)	2.5 acre site in an industrial area of the campus	License No. 691-97-010LI/ESA V691S-5140	No End Date	Active
2	New Directions, Inc. (Bldg. 116) (WLA)	Building 116	691-95-010LE	08/29/1995 to 08/31/2045	Active
3	Ready America (WLA)	Building 259	MOU (services only), not for use of RP	10/01/2014-09/30/2017	Pending
4	Salvation Army Bldg. 207 (WLA)	Building 207	ESA V691S-5271	07/06/2006 to 07/05/2016	Active
5	Salvation Army Bldg. 212 (WLA)	Building 212	ESA 691-94-2-LI	7/25/2004 to 7/24/2024	Active
6	VA Desert Pacific Credit Union (WLA)	Building 500, Room 1404-1405	Lease VA262-0-1060	11/1/2013 to 10/31/2016	Active
7	South Coast AQMD (WLA)	Temporary trailer occupying 30' x 40' area on the south campus	Revocable license 2013-0401	04/01/2013 to 03/30/2018	Active
8	Los Angeles County Metropolitan Transportation Authority (LACMTA) and California Dept. of Trans. (CALTRANS)	“Certain Real Property, northwest and southwest of Wilshire Blvd” (See Exhibit A for map of area)	Revocable License	10/11/2011 – 12/31/2061	Active

Figure H-4: Possessory Use Agreements Expired or Not Applicable

Possessory Use Agreements Expired or Not Applicable					
	Agreement Partner	WLA VA Asset	Agreement Number	Term of Agreement	Agreement Status
1	Farmers Market (WLA)	N/A (no longer on WLA campus)	Expired-OLD ESA 691S-5275	Expired 2009	Expired
2	Filming agreements	N/A (no longer on WLA campus)	N/A	N/A	Expired
3	New Directions, Inc. Bldg. 257 (WLA)	N/A (New Directions to consolidate services in Building 116)	Expired-OLD 691-95-010LE	Expired 3/18/2002- 3/17/2012	Expired
4	Richmark Entertainment (WLA)	Wadsworth and Brentwood Theaters	ESA V691S-159	9/23/2010 to 9/22/2016	Terminated (effective 10/1/15)
5	Sodexo Marriott (WLA)	N/A (no longer on WLA campus)	ESA V691S-203	03/17/2000 - 03/17/2010	Expired
6	Twentieth Century Fox (WLA)	N/A (no longer on WLA campus)	V691S-5278	Terminated	Terminated 2011
7	Veterans Garden (Rancho Santa Ana) (WLA)	N/A (no longer on WLA campus)	Expired-OLD V691S-5307	Expired 10/23/2009	Expired
8	Westside Breakers (WLA)	Macarthur Field and adjacent parking lot 38 located on the northwest side of campus	Expired-OLD ESA V691S-5309	Expired 08/06/2010- 12/06/2011	Expired