



To enrich lives through effective and caring service



June 30, 2009

Santos H. Kreimann
Director

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Kerry Silverstrom
Chief Deputy

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 1 TO LEASE NO. 75629
PARCEL 1S (FUEL DOCK) - MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)**

SUBJECT

Request approval of a lease amendment that confirms the lessee's exercise of its option to extend the term of the Parcel 1S (Fuel Dock) lease for an additional 55 years, changes the rent structure for fuel sales from a percentage of gross receipts to a flat fee of \$.15 per gallon, approves a change in ownership structure of the lessee, and incorporates revised site and development plans.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the Regional Planning Commission, acting on behalf of the County, has previously considered and adopted a negative declaration for the proposed landside redevelopment/replacement project contemplated by Amendment No. 1 to Lease Agreement with respect to Parcel 1S (Fuel Dock), attached as Exhibit A, and that the Executive Officer of the Coastal Commission determined that the waterside redevelopment/replacement project involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and is consistent with the policies of section 30200, et seq. of the Coastal Act.
2. Authorize the Chairman to execute the attached Amendment No. 1 to Lease Agreement to: a) grant an extension of the option date to a date concurrent with your Board's approval of Amendment No. 1 to Lease Agreement; b) acknowledge the satisfaction by lessee or waiver by County of all conditions to exercise of the option; c) accept and acknowledge the valid, timely and proper exercise of the option by lessee;

d) extend the term of the existing lease on Parcel 1S by 55 years to enable redevelopment of the improvements thereon; e) approval and incorporation of the change in ownership of the lessee; f) modify certain other terms and provisions of the lease relating to rent and the redevelopment work.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Pursuant to exclusive negotiations authorized by your Board on April 5, 2005, a new five-year lease ("Lease") was negotiated with a new lessee entity, Del Rey Fuel, LLC, a California limited liability corporation ("Lessee"), for Parcel 1S (Fuel Dock), which includes a redevelopment program for the leasehold subject to several conditions, including the following: any landside development be limited in height to that of the existing structure, food service be limited to takeout service only, and the new development remain within the leasehold parcel boundaries. Simultaneously, your Board granted an Option to Amend Lease Agreement ("Option") to extend the term of the Lease by 55 years upon demonstration that the Lessee had satisfied all of the conditions for exercise contained in the Option, including receipt of all planning, zoning, environmental, and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. Unlike the structure of most of the Marina redevelopment leasehold deals, which require an option to be exercised before an amended and restated lease is executed, the County executed the short term (five-year) Lease concurrent with the Option to facilitate the provision by Lessee to the boating public of uninterrupted fueling services while it pursued its development approvals.

The Option expiration date, after extensions by both the Director of the Department of Beaches and Harbors ("Director") and your Board, was May 2, 2009. During the entitlement process, Lessee has worked diligently to obtain the necessary entitlements to permit the exercise of the Option but has encountered delays in securing financing for the project due to the current economic crisis. Almost all marina lenders have exited the market and, as a result, Lessee has been unable to obtain a construction loan commitment.

To avoid loss of the Option to extend the lease, Lessee has negotiated financing with SCM Del Rey Partners, LLC to contribute equity (instead of the more traditional construction loan) and has negotiated a change in ownership of Lessee to add SCM Del Rey Partners, LLC as a new member of the Lessee limited liability company with a 50% interest therein, so as to be able to commence redevelopment of the project in a timely manner. The Department of Beaches and Harbors has reviewed the change of ownership in accordance with the assignment standards of the Lease, including a review of the new member's financial condition, and recommends approval thereof.

Negotiations between Lessee and SCM Del Rey Partners, LLC have taken longer than anticipated. As a result, Lessee was unable to provide evidence of its financing until after the May 2, 2009 expiration of the Option. Lessee has requested an extension of the outside date to exercise the Option to a date concurrent with your Board's approval of the Amendment No. 1 to Lease Agreement ("Amendment No. 1").

Additionally, to satisfy underwriting requirements in today's financial market for permanent financing and to bring the rental structure more in conformity with current rent structures for fuel docks in Southern California, Lessee has proposed changing the rent structure for gross receipts generated by the sale of fuel from a percentage rent (6% of gross revenues) to a flat fee of \$.15 per gallon, effective upon completion of the redevelopment. All other revenue will be subject to the same percentage rents as were previously approved. The County's economic consultant has reviewed and analyzed the requested change and has concluded that the impact to the County will be relatively minor at current market prices, even allowing for some further increase in fuel prices. The consultant also stated that whatever minor and possibly temporary ground rent savings that might accrue to Lessee from the change in rent structure, they would represent only a minor fraction of the substantially increased construction costs the Lessee will incur to comply with much more stringent fuel delivery regulations enacted subsequent to Lessee's entering into the Option. Furthermore, County's economic consultant points out that the economics of fuel operations and the wide practice in public marinas of charging a fixed rent per gallon of fuel sold both suggest that a recurrence of high fuel prices would not enrich the Lessee at County expense, because dollar profit margins tend to remain constant but unit sales tend to decrease, resulting in a decline in Lessee's total dollar profits.

An additional important non-economic factor in determining whether to implement the change in the rent structure is that a fuel dock is a critical service facility to boaters in a marina. Without a fuel dock, boaters will be required to travel to other marinas to buy fuel, which will make Marina del Rey less attractive as a convenient, low cost place for recreational boating.

Upon satisfaction of all the conditions set forth in the Option, the Option provides that Amendment No. 1 will be executed to memorialize the exercise of the option to extend the term. The changes discussed above are included in Amendment No. 1 that your Board is now being requested to approve. Other changes included in Amendment No. 1 are: a) a revised site plan and development plan; b) a new legal description to reflect the actual footprint of the fuel dock (as the original dock was constructed outside the legal boundaries of the parcel); c) elimination of the requirement that Lessee obtain its building permit prior to exercise of the Option, in order to accommodate the required timing for the admission of Lessee's new equity member; and d) an extension of the existing lease reversion provisions to provide that if Lessee fails to commence construction within 120 days of its exercise of the Option, then, at County's election, the

lease termination date will automatically revert back to April 30, 2011, the extension will terminate, and Lessee will have no right to redevelop the parcel.

Implementation of Strategic Plan Goals

The recommended action will allow the Lessee to proactively redevelop its leasehold improvements, which will result in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", as the project will provide a sustained financial resource to the County, and of Strategic Goal No. 3, "Community and Marketing Services", as the redevelopment will provide a convenient place for boaters to refuel their vessels.

FISCAL IMPACT/FINANCING

Parcel 1S paid a total rent of \$261,310 for Fiscal Year (FY) 2007-08. Annual rent to the County is projected to reach \$244,000 at stabilization, a 6% decrease in rent from the FY 2007-08 level. The reason for the decrease in rent is that FY 2007-08 was a time of historically high fuel prices from which the County received more rent than anticipated. Our economic consultant notes that even with no change in fuel sales rent (from percentage rent to a flat fee rental structure), total County rent from the sale of fuel would still decline due to the fall in fuel prices.

Operating Budget Impact

There is no operating budget impact as a result of this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the Lease for Parcel 1S commenced on May 10, 2006 and currently expires on April 30, 2011. Upon execution and delivery of Amendment No. 1, the term of the Lease will be extended to April 30, 2066.

Lessee is an entity established jointly by Harbor Real Estate Limited Partnership, a Delaware partnership, the current lessee of Parcel 53 (The BoatYard), and Westrec Marina Management, Inc., a California corporation.

Extension of the existing Lease is authorized by Government Code sections 25907 and 25536. The extended lease term does not exceed the maximum 99-year period authorized by California law.

At its meeting of June 10, 2009, the Small Craft Harbor Commission did not have a quorum to take action with respect to the Director's recommendation that your Board approve the attached Amendment. However, the two Commissioners in attendance both individually endorsed the Director's recommendation.

The Amendment has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

On March 24, 2008, the Executive Director of the Coastal Commission issued a waiver of Coastal Development Permit ("CDP") requirements for the waterside redevelopment/replacement project, having determined that the waterside project involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and is consistent with the policies of section 30200, et seq. of the Coastal Act. On May 14, 2008, the Regional Planning Commission considered and adopted a negative declaration for the proposed redevelopment/replacement project contemplated by the Lease and Amendment No. 1 prior to approving the landside CDP and Conditional Use Permit for the project, concluding that the proposed project will have no significant effect on the environment. The proposed Amendment No. 1 does not raise any new or different environmental impacts.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Executive Officer of the Board to send two copies of the executed Amendment No. 1 to Lease Agreement to the Department of Beaches and Harbors.

Respectfully submitted,



Santos H. Kreimann, Director

SK:PW:ks
Attachments (1)

c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

AMENDMENT NO. 1 TO LEASE AGREEMENT
PARCEL 1S – MARINA DEL REY SMALL CRAFT HARBOR
(LEASE NO. 75629)

THIS AMENDMENT NO. 1 TO LEASE AGREEMENT ("Amendment") is made and entered into as of _____, 2009 ("Effective Amendment Date") by and between COUNTY OF LOS ANGELES ("County") and DEL REY FUEL, LLC, a California limited liability company ("Lessee").

RECITALS

WHEREAS, County and Lessee entered into Lease Agreement (Lease No. 75629) dated May 2, 2006 (the "Lease"), pursuant to which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 1S;

WHEREAS, County and Lessee entered into Option to Amend Lease Agreement dated May 2, 2006 (the "Option Agreement"), pursuant to which County granted to Lessee an option to extend the Term of the Lease through April 30, 2066 (the "Option") upon the terms and conditions set forth in the Option Agreement;

WHEREAS, the Outside Date for the exercise by Lessee of the Option was previously extended to May 2, 2009;

WHEREAS, County and Lessee desire to enter into this Amendment to (a) acknowledge the satisfaction or waiver by County of all conditions to the exercise of the Option by Lessee; (b) acknowledge the extension of the date for Lessee's exercise of the Option until the Effective Amendment Date and permit Lessee's exercise of the Option pursuant to and in accordance with the terms of this Amendment; and (c) modify certain terms and provisions of the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows effective as of the Effective Amendment Date:

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

2. Exercise of Option. The parties hereby agree that the date by which Lessee must exercise the Option is hereby extended to the Effective Amendment Date. County acknowledges that all conditions to the exercise of the Option by Lessee have been either satisfied by Lessee or waived by County. By its execution and delivery of this Amendment, Lessee hereby exercises the Option. By its execution and delivery of this Amendment, County hereby accepts and acknowledges the valid, timely and proper exercise of the Option by Lessee. From and after the Effective Amendment Date, the

“Option Effective Date” under the Option Agreement shall be the Effective Amendment Date.

3. Extension of Term. The Term of the Lease is hereby extended such that the “Expiration Date” under the Lease is amended to be 11:59 p.m. on April 30, 2066.

4. Modification of Legal Description of Premises. Exhibit A attached to the Lease is hereby replaced with the legal description attached to this Amendment as Exhibit A.

5. Modifications to Redevelopment Work. The following modifications are hereby made to the Redevelopment Work to be performed by Lessee under the Lease:

5.1 Exhibit B attached to the Lease is hereby replaced with the new Development Plan attached to this Amendment as Exhibit B.

5.2 Clause (b) of the first paragraph of Section 5.1 of the Lease is amended such that the number of single-loaded slips required to be constructed by Lessee is changed from 8 to that number shown on Exhibit A-1 attached to Exhibit B attached to this Amendment.

6. Modification to Rental Rate for Sale of Fuel. Conditioned upon, and effective as of the date of, the substantial completion of the Redevelopment Work, subsections 4.2.2(k) and 4.2.2(l) of the Lease are hereby amended in full and replaced with the following:

“(k) Fifteen cents (\$0.15) per gallon of gasoline, diesel fuel, mixed fuel or other fuel sold from or at the Premises;

(l) SIX PERCENT (6%) of Gross Receipts from the sale of non-fuel petroleum products from or at the Premises;”

Notwithstanding any contrary provision of Section 4.3 of the Lease, in no event shall the rental to be paid by Lessee with respect to fuel sales under subsection 4.2.2(k) of the Lease ever be readjusted pursuant to the Fair Market Rental Value adjustments under Section 4.3 of the Lease to an amount less than fifteen cents (\$0.15) per gallon, and if the actual Fair Market Rental Value attributable to fuel sales is less than fifteen cents (\$0.15) per gallon, then the restriction set forth in this sentence shall have no effect on the determination of the Fair Market Rental Value percentages for the other categories of Gross Receipts set forth in subsection 4.2.2 or the amount of any other rent payable by Lessee under the Lease.

7. Modification to Capital Improvement Fund. Clause (b) of the fourth paragraph of Section 5.13 of the Lease is amended in full and replaced with the following: “(b) \$0.01 per gallon of fuel sold from or at the Premises, modified (but never decreased below \$0.01 per gallon) every five (5) years after the CO Date by the

same percentage change as the percentage change in the ENR Index during the preceding five (5) year period.”

8. Parity of Operation/Rent. County agrees that during the remaining Term of the Lease (as extended herein) it will not hereafter enter into any new lease, lease amendment, lease extension, option to lease or option for lease extension with respect to any other property owned by County located in the Marina del Rey Small Craft Harbor for the development and operation during the Term of this Lease of a fuel service dock facility serving boats or other watercraft (a “Competing Lease Transaction”) by a lessee or operator (a “Competing Lessee”) unless the requirements set forth in paragraphs (I), (II) and (III) below are satisfied with respect to such Competing Lease Transaction. For purposes of clarification, as of the Effective Amendment Date of this Amendment the previous lease extension option pertaining to the redevelopment of Parcels 55, 56 and W has expired by its terms. Any renewal of such lease extension option, new lease extension option, lease amendment or new lease pertaining to Parcels 55, 56 and W that would permit the lessee of Parcels 55, 56 and W to redevelop such property to include a fuel service dock facility will constitute a Competing Lease Transaction. Notwithstanding any contrary provision of this Section 8, the operation of a “fuel service dock facility” shall not include the sale or dispensing of fuel by a lessee or operator for “topping off” of small vessels used for pleasure use that are stored or occupy slips at the property from which the fuel is sold or dispensed.

(I) The Competing Lease Transaction shall require that the Competing Lessee’s fuel service dock facility must include high-speed pumps for not less than four (4) different fuel types, except that (x) four (4) different fuel types at each individual pump shall not be required as long as facilities for such different fuel types are made available at such property in a manner so as to avoid unreasonable delay in service, and (y) with the Director’s prior reasonable consent, the Competing Lessee shall have the right from time to time to provide service for less than four (4) different fuel types if less than four (4) fuel types are then used by boating consumers in the Marina del Rey Small Craft Harbor.

(II) The Competing Lease Transaction shall require that the Competing Lessee’s fuel service dock facility shall be required to be open every day of the year for at least the minimum hours of operation approved by County from time to time, except for such holidays during which commercial businesses in Marina del Rey are customarily closed, and except to the extent the Competing Lessee is prevented from doing so due to force majeure or due to temporary interruption for maintenance and repair, renovation, alteration or improvement work, but only during the period reasonably required to complete such work.

(III) The Competing Lease Transaction shall require the payment of rent by the Competing Lessee with respect to fuel sales that is not less than the rent required to be paid by Lessee under this Lease with respect to fuel sales. For purposes of this paragraph (III), the amount of any rent abatement, rent deferral, rent concession or other monetary concession granted by County to the

Competing Lessee under a Competing Lease Transaction that relates or pertains to the rent payable with respect to fuel sales (as opposed to the rent payable with respect to other operations on the applicable property) shall be taken into consideration in calculating the rent payable by the Competing Lessee under such Competing Lease Transaction. However, if the improvements on the property under any Competing Lease Transaction include not only the operation of a fuel service dock facility, but also other improvements, then any rent abatement, rent deferral, rent concession or other monetary concession granted in connection with the development, use or operation of such other improvements shall not be taken into consideration for purposes of this paragraph (III).

Notwithstanding any contrary provision of this Section 8, (a) the restriction set forth in the first paragraph of this Section 8 shall be applicable (and County shall be bound thereby) only during such time as Lessee is operating its fuel service dock facility on the Premises open to the public in a manner consistent with the provisions of paragraphs (I) and (II) above and in material compliance with the other requirements of the Lease, and an uncured Event of Default by Lessee under the Lease does not exist; and (b) any Competing Lease Transaction entered into at a time when the restriction set forth in the first paragraph of this Section 8 is not applicable (including any lease or lease extension subsequently executed pursuant to an option to lease or option for lease extension executed at a time when the restriction set forth in the first paragraph of this Section 8 is not applicable) shall be exempt from the requirements of this Section 8. In addition, (a) to the extent that County waives the application to Lessee's operations under this Lease of any of the requirements set forth in paragraph (I) or (II) above, such waived requirement shall not be applicable (or no longer applicable) to a Competing Lease Transaction; (b) during any period during which a Director consent under clause (y) of paragraph (I) is in effect with respect to a Competing Lease Transaction, Lessee's obligations under Section 3.1(i)(I) of the Lease shall be modified to be consistent with such Director consent; and (c) during any period during which a Director approval under paragraph (II) above is in effect that results in minimum hours of operation for a Competing Lease Transaction that are less than the minimum hours of operation then required under Section 3.4 of the Lease for Lessee's fuel dock service operation, the minimum hours of operation required under Section 3.4 of the Lease for Lessee's fuel dock service operation shall be changed to such reduced hours.

9. Modification to Section 3.1 of the Lease. Section 3.1 of the Lease is hereby amended to add the words "in the Marina del Rey Small Craft Harbor" after the words "boating consumers" in clause (i)(II) of such Section 3.1.

10. County's Inducement. In connection with Lessee's exercise of the Option, County hereby confirms its waiver of the condition to exercise of the Option that Lessee shall have satisfied all conditions to the issuance of any building permit required for the construction of the Redevelopment Work. In consideration of County's waiver of the foregoing condition, and in acknowledgment that the principal inducement to County to extend the Term of the Lease pursuant to the Option is the timely performance by Lessee of the Redevelopment Work, if Lessee fails to commence construction of the

Redevelopment Work within one hundred twenty (120) days after the Effective Amendment Date, then in addition to any other right or remedy that County may have in connection with such failure to timely commence construction of the Redevelopment Work, upon written notice by County to Lessee, the Lease shall be automatically amended such that the terms and provisions of the Lease revert back to the terms and provisions of the Lease prior to Lessee's exercise of the Option and prior to the parties' execution of this Amendment (including, without limitation, the expiration of the Term of the Lease on April 30, 2011). The terms and provisions of this Section 10 shall be in addition to and not in limitation of, the terms and provisions of Section 5.6 of the Lease, including without limitation, subsection 5.6.3 thereof. For purposes of clarification, in the event the Lease is amended in accordance with subsection 5.6.3 of the Lease, the terms and provisions of the Lease (as amended under such subsection 5.6.3) shall be the terms and provisions of the Lease existing prior to Lessee's exercise of the Option and prior to the parties' execution of this Amendment (including, without limitation, the expiration of the Term of the Lease on April 30, 2011).

In order to reduce the amount of time that the docks on the Premises are taken out of service, Lessee intends to have the floats fabricated off-site and then installed in the Premises on a pre-fabricated basis. For purposes of the one hundred twenty (120) day construction commencement date requirement set forth in the immediately preceding paragraph, the commencement of the off-site fabrication of the floats shall constitute commencement of construction of the Redevelopment Work if all of the following requirements are satisfied: (a) fabrication shall mean the actual off-site construction of the floats, and not merely the manufacture, supply or acquisition of the individual component parts or materials that are subsequently combined to produce the floats; (b) fabrication must have commenced with respect to at least all of those floats to be installed in the first phase of installation, as approved by Director; (c) fabrication must continue on a diligent, continuous basis until the completion of the last stage of fabrication prior to transport to the Premises; (d) upon the completion of clause (c) the floats must be installed in the Premises on a timely basis in accordance with the phasing schedule approved by Director; and (e) after the off-site float fabrication commences, any other on-site demolition or construction work pertaining to the Redevelopment Work that, based on the phased construction schedule approved by Director, is to be commenced prior to the on-site installation of the pre-fabricated floats, shall be commenced and diligently performed in accordance with such approved construction schedule. At Director's request, Lessee shall establish to Director's reasonable satisfaction Lessee's compliance with the requirements set forth in clauses (a) through (e) above. For purposes of clarification, County acknowledges that the requirement in the second sentence of Section 5.1 of the Lease that Lessee proceed to demolish the Improvements located on the Premises and perform the Redevelopment Work promptly following the Lessee's exercise of the Option is hereby modified to reflect the terms and provisions of this paragraph.

11. Change of Ownership of Lessee. Lessee represents and warrants to County as follows as of the Effective Amendment Date:

(a) prior to or concurrent with the full execution and delivery of this Amendment, the ownership of Lessee has changed such that (i) immediately prior to such change, the ownership of Lessee consisted of the following two members: The Schem Revocable Family Trust held a 51% membership interest in Lessee and The JMM Schem Irrevocable Trust held a 49% membership interest in Lessee; and (ii) as of the Effective Amendment Date, the ownership of Lessee now consists of the following three members: The Schem Revocable Family Trust now holds a 25.5% membership interest in Lessee, The JMM Schem Irrevocable Trust now holds a 24.5% membership interest in Lessee, and SCM Del Rey Partners, LLC now holds a 50% membership interest in Lessee;

(b) the manager of Lessee is Greg Schem;

(c) SCM Del Rey Partners, LLC is owned by the members listed on Exhibit C attached to this Amendment;

(d) the manager of SCM Del Rey Partners, LLC is Somera Capital Management, LLC;

(e) the financials statements and other information disclosed by Lessee to County regarding Lessee's members were true and correct as of the date of such disclosure on June 1, 2009 (or as of the date of such financial statements if dated as of a different date), and there has been no material adverse change to the financial condition of Lessee's members between the date of such disclosure (or the date of such financial statements if dated as of a different date) and the Effective Amendment Date;

(f) Lessee has delivered to County a true and correct copy of its Amended and Restated Operating Agreement dated as of June 1, 2009, and effective as of the Effective Amendment Date ("Lessee's Operating Agreement"); as of the Effective Amendment Date, Lessee's Operating Agreement is in full force and effect and constitutes a valid and binding agreement enforceable in accordance with its terms;

(g) The only monetary consideration paid by SCM Del Rey Partners, LLC for its membership interest in Lessee is the obligation of SCM Del Rey Partners, LLC to make certain capital contributions to Lessee in accordance with the terms and provisions of Lessee's Operating Agreement, such capital contributions shall be used to pay for Applicable Costs (as defined in Section 4.8.1 of the Lease), and no portion of such capital contributions shall be distributed to the other members of Lessee except for reimbursements to the other members of Lessee for organizational, formation, due diligence and transaction expenses not to exceed an aggregate of \$25,000; and

(h) The execution and delivery of this Amendment on behalf of Lessee has been approved by SCM Del Rey Partners, LLC and has been authorized by all

necessary limited liability company (or other corporate, partnership or trust action, as applicable) on the part of all direct or indirect members or owners of beneficial interests in Lessee.

The admission of SCM Del Rey Partners, LLC as a member of Lessee constitutes a Change of Ownership under Section 4.6 of the Lease. Conditioned upon the truth and accuracy of the foregoing representations and warranties, County hereby approves such Change in Ownership and agrees that no Net Proceeds Share shall be payable to County in connection with such Change of Ownership. In accordance with Section 4.6 of the Lease, Lessee shall pay to County the Actual Costs incurred by County in connection with its review and processing of the Change of Ownership described in this Section 11, provided that such costs shall not be duplicative of the costs to be reimbursed to County pursuant to Section 12 of this Amendment.

In acknowledgment of the Change of Ownership described in this Section 11, the following two additional modifications are hereby made to the Lease:

(i) All references to "Effective Date" in Sections 4.6.2, 4.6.3 and 4.7.1 of the Lease are hereby changed to "Effective Amendment Date"; and

(ii) The third sentence of Section 4.8 of the Lease is hereby amended in full and replaced with the following: "With respect to each Financing Event, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event; provided, however, that there shall be no Net Proceeds Share payable with respect to the first Financing Event as long as such first Financing Event occurs not later than the third (3rd) anniversary of the CO Date."

12. County Costs. Within thirty (30) days after written request from County, Lessee shall reimburse County for the Actual Costs (as defined in the Lease) incurred by County in the review, negotiation, preparation and documentation of this Amendment, to the extent not paid by Lessee prior to the Effective Amendment Date.

13. No Other Modifications. This Amendment is intended to supersede and replace the form of First Amendment to Lease attached as Exhibit A to the Option Agreement. Except as expressly set forth in this Amendment, all terms, conditions, and provisions of the Lease remain in full force and effect and are unmodified, and each of the parties reaffirms and acknowledges its respective obligations under the Lease as amended hereby.

14. Counterparts. This Amendment may be signed in any number of counterparts. Each counterpart represents an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.


SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Lessee have entered into this Amendment as of the date first set forth above.

COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

DEL REY FUEL, LLC,
a California limited liability company

By: 
Gregory F. Schem, its Manager

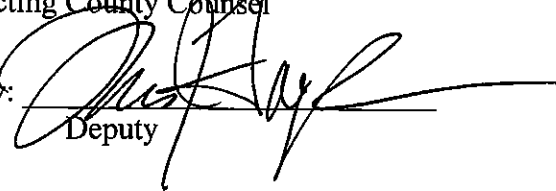
ATTEST:

SACHI HAMAI,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN,
Acting County Counsel

By: 
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: 

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

LEASE PARCEL NO. 1S:

All of Parcels 1, 2 and 3, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, Pages 53 to 70, inclusive, of Assessor's Maps, in the office of the Registrar-Recorder/County Clerk of the County of Los Angeles and that portion of Parcel 905, as shown on said map, within the following described boundaries:

Beginning at the northeasterly corner of said Parcel 3; thence easterly along the easterly prolongation of the northerly line of said Parcel 3 to a line parallel with and 15.00 feet easterly, measured at right angles, from the easterly line of said Parcel 3; thence southerly along said parallel line, a distance of 280.15 feet to a line parallel with said northerly line; thence westerly along said last mentioned parallel line to said easterly line; thence northerly along said easterly line, a distance of 280.15 feet to the point of beginning.

Together with a right of way for ingress and egress to be used in common with others over those portions of Parcels 5, 8 and 22, as shown on said map, within the following described boundaries:

Beginning at the intersection of the southwesterly line of said Parcel 22 with a line parallel with and 65 feet southeasterly, measured at right angles, from the northwesterly line of said last mentioned parcel; thence North 58° 22' 54" East along said parallel line, a distance of 201.83 feet to the beginning of a curve concave southerly, having a radius of 26 feet, tangent to said parallel line and tangent to a line parallel with and 40 feet southerly, measured at right angles, from the northerly line of said Parcel 8; thence easterly along said curve through a central angle of 31° 37' 06" and an arc distance of 14.35 feet to said last mentioned parallel line; thence EAST along said last mentioned parallel line, a

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distance of 1347.72 feet to the beginning of a curve concave southwesterly, having a radius of 24 feet, tangent to said last mentioned parallel line and tangent to a line parallel with and 101 feet westerly, measured at right angles, from the most westerly line in the westerly boundary of said Parcel 1; thence southeasterly along said last mentioned curve through a central angle of 90° 00' 00" and an arc distance of 37.70 feet to said last mentioned parallel line; thence SOUTH along said last mentioned parallel line, a distance of 182.00 feet to the beginning of a curve concave northeasterly, having a radius of 10 feet, tangent to said last mentioned parallel line and tangent to a line parallel with and 256 feet southerly, measured at right angles, from the southerly line of Parcel 6, as shown on said map; thence southeasterly along said last mentioned curve through a central angle of 90° 00' 00" and an arc distance of 15.71 feet to said last mentioned parallel line; thence EAST along said last mentioned parallel line, a distance of 104.81 feet to the southerly prolongation of the most easterly line in said westerly boundary; thence NORTH along said southerly prolongation and said most easterly line to a line parallel with and 226 feet southerly, measured at right angles, from said southerly line; thence WEST along said last mentioned parallel line to the beginning of a curve concave to the northeast, having a radius of 4 feet, tangent to said last mentioned parallel line and tangent to a line parallel with and 71 feet westerly, measured at right angles, from said most westerly line; thence northwesterly along said last mentioned curve through a central angle of 90° 00' 00" and an arc distance of 6.28 feet to said last mentioned parallel line; thence NORTH along said last mentioned parallel line, a distance of 174.00 feet to the beginning of a curve concave southwesterly, having a radius of 24 feet, tangent to said last mentioned parallel line and tangent to a line parallel with and 24 feet southerly, measured at right angles, from said southerly line; thence northwesterly along said last mentioned curve through a central angle of 90° 00' 00" and an arc distance of 37.70 feet to said last mentioned parallel line; thence EAST along said last mentioned parallel line, a distance of 36.00 feet to the beginning of a curve concave southwesterly, having a radius of 24 feet, tangent to said last mentioned parallel line and tangent to a line parallel with and 35 feet westerly, measured at right angles, from said most westerly line; thence southeasterly along said last mentioned curve through a central angle of 90° 00' 00" and an arc distance of 37.70 feet to said last mentioned parallel line; thence SOUTH along said last mentioned parallel line, a distance of 174.00 feet to the beginning of a curve concave northwesterly, having a radius of 4 feet, tangent to said last mentioned parallel line and tangent to a line parallel with and 226 feet southerly, measured at right angles, from said southerly line; thence southwesterly along said last mentioned curve through a central angle of 90° 00' 00" and an arc distance of 6.28 feet to said last mentioned parallel line; thence EAST along said last mentioned parallel line to said most easterly line; thence NORTH along said most easterly line to the easterly terminus of that certain course having a bearing and distance of due WEST 13.81 feet in the generally westerly boundary of said Parcel 1; thence WEST along said course, a distance of 13.81 feet to the southerly terminus of said most westerly line; thence NORTH along said most westerly line, a distance of 30.94 feet to a point, said point being the easterly terminus of a curve concave northeasterly and having a radius of 5 feet, tangent at the northerly terminus thereof to a line parallel with and 5 feet westerly, measured at right angles, from said most westerly line; thence northwesterly along said last mentioned

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curve through a central angle of 90° 00' 00" and an arc distance of 7.85 feet to said last mentioned parallel line; thence NORTH along said last mentioned parallel line, a distance of 88.00 feet to a line parallel with and 8 feet southerly, measured at right angles, from said southerly line; thence WEST along said last mentioned parallel line, a distance of 1484.13 feet to a line parallel with and 33 feet southeasterly, measured at right angles, from said northwesterly line; thence South 58° 22' 54" West along said last mentioned parallel line, a distance of 218.34 feet to said southwesterly line; thence South 31° 45' 28" East along said southwesterly line to the point of beginning.

APPROVED AS TO DESCRIPTION
<u>November 15, 2007</u>
COUNTY OF LOS ANGELES
By <u>[Signature]</u>
SUPERVISING CADASTRAL ENGINEER III
Mapping and Property Management Division

This real property description has been prepared in conformance with the Professional Land Surveyors Act. The signatory herein is exempt pursuant to Section 8726 of the California Business and Professions Code.

EXHIBIT B
DEVELOPMENT PLAN

(attached)

EXHIBIT B – PARCEL 1S LEASE

1) SCOPE OF WORK	
<p>A reasonably detailed, written narrative description of the work to be done, including each of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All new construction and renovation <input type="checkbox"/> Timing for the start of the work <input type="checkbox"/> Timing for the completion of the work <p>The narrative shall include all applicable components of the project, grouped as set forth below.</p>	
<p>a) Apartments, Office and Commercial (Note: for renovation-only apartment projects, use "Renovation Comparison Worksheet" instead of this section)</p>	
<ul style="list-style-type: none"> • Demolition (of existing improvements prior to commencing work) 	<p>Complete demolition of the existing commercial building (approximately 1,000 square feet), parking lot, landscape elements, and fuel delivery systems (with the exception of the underground storage tanks), except as may be precluded by regulatory agencies.</p>
<ul style="list-style-type: none"> • New building construction 	<p>Construction of a new marine commercial building on land containing approximately 1400 square feet and limited to the height of the existing structure and construction of a new dock kiosk containing approximately 1600-1900 square feet. The buildings will provide replacement space for the existing public bathrooms and boater storage lockers plus approximately 2,000 square feet of new space.</p>
<ul style="list-style-type: none"> • Remodeled building exteriors 	<p>Not applicable, as this project involves complete demolition of existing improvements and requires new construction.</p>
<ul style="list-style-type: none"> • Remodeled building interiors 	<p>Not applicable, as this project involves complete demolition of existing improvements and requires new construction.</p>

<ul style="list-style-type: none"> • Remodeled interior building common areas 	<p>Not applicable, as this project involves complete demolition of existing improvements and requires new construction.</p>
<ul style="list-style-type: none"> • Remodeled exterior building common areas 	<p>Not applicable, as this project involves complete demolition of existing improvements and requires new construction.</p>
<ul style="list-style-type: none"> • Landscaping 	<p>The exterior of the property shall be landscaped to the extent possible with drought resistant plantings and incorporate the use of flowers and mounds to give color and visual relief to the site and shall include two over-the-water view platforms of approximately 300 square feet combined.</p>
<p>b) Marina</p>	
<ul style="list-style-type: none"> • Replacement of docks and slips, including design and materials 	<p>Complete replacement of the existing docks (containing an approximately 210 lineal foot fuel dock, an approximately 400 square foot round dock office, and side-tie space) with an approximately 276 lineal foot fuel dock, an approximately 1900 square foot dock kiosk, 5 single slips, a water taxi berth, a large-vessel guest dock not less than 170 lineal feet, a guest dinghy basin to accommodate not less than 6 dinghies, not less than two pumpouts, high-speed fuel pumps, provision of not less than 4 types of fuel, an automatic payment system, bait pens, and a fish weigh-station; docks to be made of concrete or other material acceptable to the Director.</p>
<ul style="list-style-type: none"> • Retention of existing slip count, including slip count before and after by slip size 	<p>The existing dock configuration contains no single slips; the new docks shall be configured in the same manner as shown on the attached Exhibit A-1, "Parcel 1S-Site Plan dated December 15, 2008."</p>
<ul style="list-style-type: none"> • Retention of marine commercial facilities, including area count before and after for each category 	<p>Replacement of approximately 1,000 square feet of landside marine commercial space and replacement of approximately 400 square feet of marine commercial space located on the docks.</p>

c) Promenade	
<ul style="list-style-type: none"> • Walkway design and materials 	Construct and maintain a waterfront promenade to run the length of the bulkhead, in compliance with the LCP and Marina guidelines.
<ul style="list-style-type: none"> • Fencing design and materials 	Fencing design and materials shall be in compliance with the LCP and Marina guidelines.
<ul style="list-style-type: none"> • Lighting design and materials 	Lighting design and materials shall be in compliance with the LCP and Marina guidelines.
d) Signage	
<ul style="list-style-type: none"> • New signage program 	Attractive signage shall be provided on the landside entrance to the project on Bora Bora Way and on the waterside entrance to the project from the Main Channel, to express both land and water entrances to the project.

2) PLANS & DRAWINGS	
Preliminary plans for all work to be done	
a) Site Plan	
<ul style="list-style-type: none"> • Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips 	See Exhibit A-1, "Parcel 1S – Site Plan dated December 15, 2008."
b) Building Elevation	
<ul style="list-style-type: none"> • A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations 	See Exhibit A-2, "Parcel 1S – Water Side Building Elevations" Also see Exhibit A-3, "Parcel 1S – Land Side Building Elevations"
c) Landscape Plan	
<ul style="list-style-type: none"> • If not already included in the above materials 	See Exhibit A-1, "Parcel 1S – Site Plan dated December 15, 2008."
d) Dock Plan	
<ul style="list-style-type: none"> • Dock construction plan, including physical layout of docks and slips 	See Exhibit A-1, "Parcel 1S – Site Plan dated December 15, 2008"

3) BUDGET

a) Budget worksheet

- Estimated cost for all of the work agreed upon

Worksheet 1

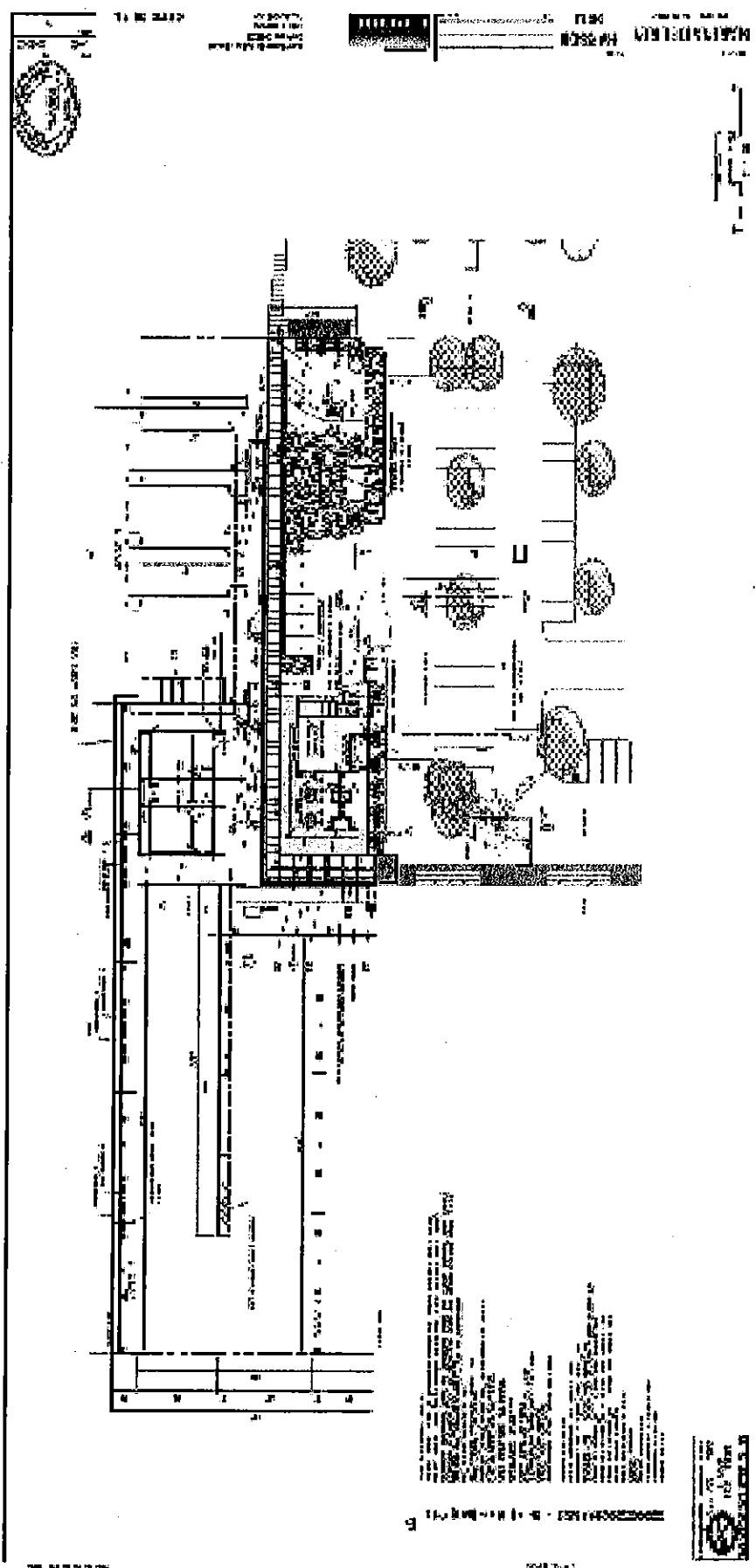
Page 1

Project: [Project Name]

BUDGET WORKSHEET

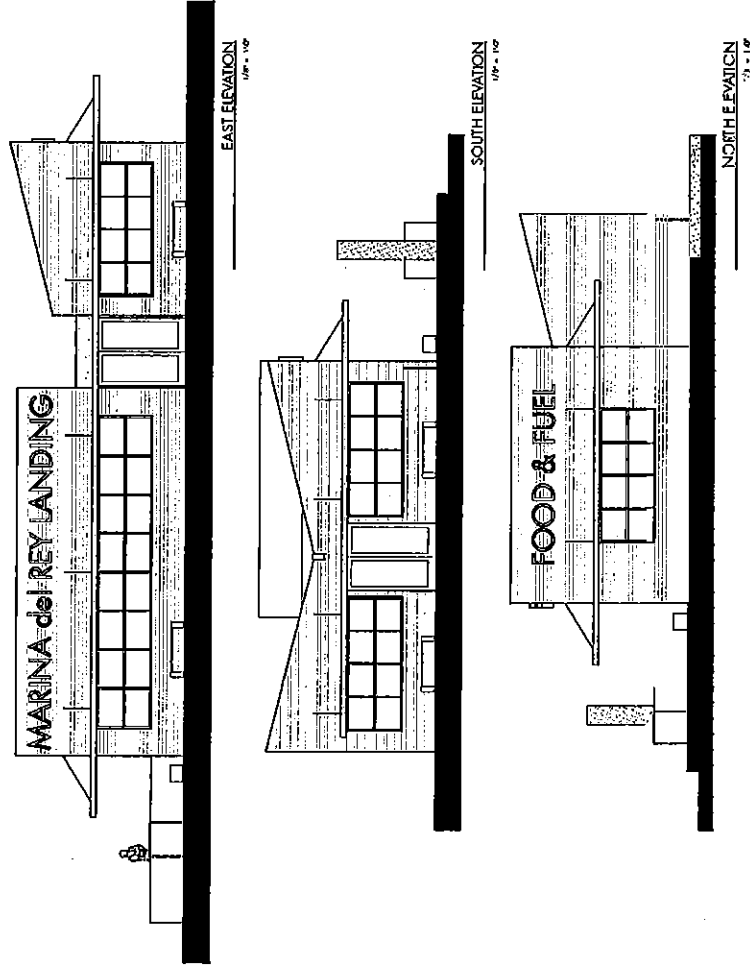
DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	REMARKS
1. Mobilization					
1.1 Mobilization of equipment	Day	10	100	1000	
1.2 Mobilization of labor	Day	10	50	500	
1.3 Mobilization of materials	Day	10	20	200	
1.4 Mobilization of site	Day	10	10	100	
1.5 Mobilization of other resources	Day	10	10	100	
2. Demobilization					
2.1 Demobilization of equipment	Day	10	100	1000	
2.2 Demobilization of labor	Day	10	50	500	
2.3 Demobilization of materials	Day	10	20	200	
2.4 Demobilization of site	Day	10	10	100	
2.5 Demobilization of other resources	Day	10	10	100	
3. Construction					
3.1 Excavation	m ³	100	10	1000	
3.2 Foundation	m ²	100	20	2000	
3.3 Wall construction	m ²	100	30	3000	
3.4 Roof construction	m ²	100	40	4000	
3.5 Floor construction	m ²	100	30	3000	
3.6 Finishing	m ²	100	20	2000	
3.7 Painting	m ²	100	10	1000	
3.8 Other work	m ²	100	10	1000	
4. Total					
4.1 Mobilization				2000	
4.2 Demobilization				2000	
4.3 Construction				13000	
4.4 Total				17000	

Exhibit A-1
Parcel 1S - Site Plan dated December 15, 2008



No Scale

**Exhibit A-2
Parcel 1S – Water Side Building Elevations**



WATER SIDE BUILDING
ELEVATIONS

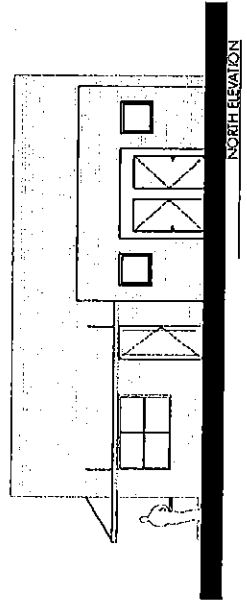
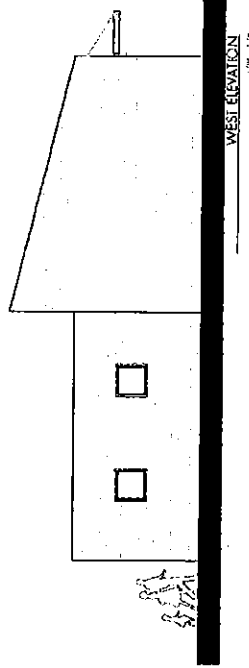
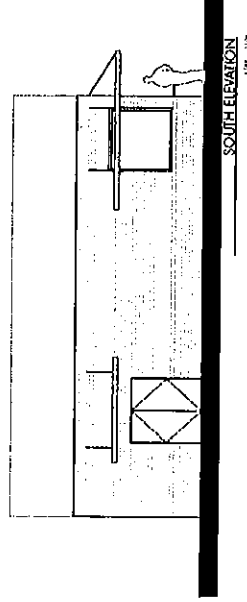
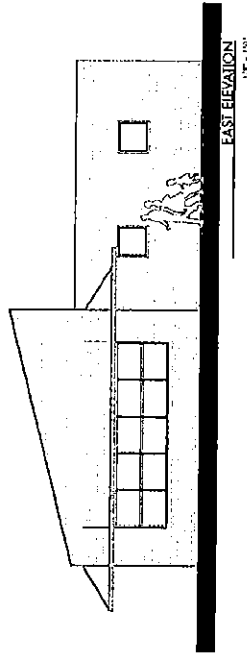
2/27/2008
A.2

Marina Fuel Dock
Marina Del Rey, CA

Architectural Association
of the City of Los Angeles

No Scale

**Exhibit A-3
Parcel 1S – Land Side Building Elevations**



LAND SIDE BUILDING
ELEVATIONS

01/10/02
A.4

Marina Fuel Dock
Marina Del Rey, CA

Michael Hixon, Architect, Inc.
2140 Avenue 21st Street

No Scale

EXHIBIT C

OWNERSHIP OF SCM DEL REY PARTNERS, LLC

SCM Del Rey Partners, LLC, a California limited liability company ("SCM"), will be owned by Hurricane Hole Investments, LLC, a California limited liability company ("HHC"), with respect to a 90% membership interest in SCM, and approximately five (5) other individuals that in aggregate will own the remaining 10% membership interest in SCM.

Steven Firestone and Julie Lubin are two of the three managing members of HHC. They are also owners and executives of Somera Capital Management, LLC. The other managing member of HHC is Robert Feinberg, who is also a member in HHC and has been a close family friend of Steven Firestone for over 30 years.

HHC is owned by (a) Robert and Tamsen Firestone, Trustees for the Robert and Tamsen Firestone Family Trust, with respect to a 24.4% membership interest in HHC, (b) Daniel Firestone, Trustee for the Dan Firestone Living Trust, with respect to a 14.2% membership interest in HHC, (c) Gil Varon, Trustee for the Gil Varon Revocable Trust with respect to a 14.2% membership interest in HHC, and (d) approximately seventy-two (72) other individuals and trusts, comprised of trusts for family members and close friends, which own the remaining 47.2% membership interest in HHC.