Los Angeles County
Caring for Your Coast
Beaches & Harbors

To enrich lives through effective and caring service

Stan Wisniewski
Director

Kerry Gottlieb
Chief Deputy

June 22, 2004

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

Dear Supervisors:

CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND AMENDMENT TO LEASE - PARCEL 10R (NEPTUNE MARINA) - MARINA DEL REY
(4th DISTRICT)
(3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that approval of the proposed assignment of the leasehold interest and amendment of the lease for Parcel 10R, Lease No. 5574, is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chairman of the Board to sign the attached Consent to Assignment of Lease (Consent) (Exhibit A) for Parcel 10R from Neptune Marina, a California limited partnership (Neptune), to Legacy Partners Neptune Marina L.P., a Delaware limited partnership (Legacy).

3. Approve and authorize the Chairman of the Board to sign the attached Amendment No. 9 to Lease No. 5574 (Amendment) (Exhibit B) which: (1) expands the definition of an assignment under Section 22 of the original lease; (2) allows for a retroactive adjustment of percentage rents for boat slips; and (3) provides for an increase in liability insurance coverage.

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Neptune is now requesting the County's consent to the assignment of its leasehold interest in Parcel 10R, commonly known as the Neptune Marina Apartments, to Legacy. Department policy provides that the County's approval or denial of any assignment will be based on the following criteria: (a) the financial condition of the assignee; (b) the price to be paid for the leasehold as it relates to the improvements or potential development thereon; and (c) management of the leasehold by the new lessee being in the best interests of the Marina as a whole.

Our review has found: (a) Legacy, the proposed assignee, is a single purpose entity formed for the purpose of owning and operating the leasehold and has adequately demonstrated its financial ability to provide for the continued operation and maintenance of the leasehold; (b) the $20,000,000 sale price appears to be fair for the leasehold interest and improvements thereon; and (c) Legacy has the required experience to operate the leasehold consistent with the Marina's interest. The general partner of Legacy is the founder of several successful commercial and residential real estate development and management companies, including Legacy Partners Commercial, Inc. and Legacy Residential Partners, Inc., with the latter having experience developing more than 51,000 multifamily units during its 30-year history, and currently owns and manages more than 30,000 multifamily units throughout the Western United States.

With regard to the Amendment, Section 22 of the lease currently defines an assignment as the change in one or more general partners in a limited partnership and/or the sale or transfer of 50% or more of the stock in a corporation that owns the leasehold. Since the proposed new lessee is a limited partnership with a limited liability company as one of its limited partners, it is appropriate to expand the definition of an assignment in the lease beyond limited partnerships and corporations in order to cover similar changes that may be undertaken by a limited liability company. Therefore, the proposed amendment, requested by the County as a condition of the assignment, specifies that the change in one or more of the managing members, or the sale, assignment, or transfer of fifty percent or more of the ownership interests of a limited liability company, shall also be considered an event of assignment subject to the County's approval. Moreover, the Amendment also expands the definition of assignment to include a series of additional transfers.

As an additional condition of the assignment, lessee has agreed to an adjustment in the percentage rent for slips to 25%, up from the existing 22.5%, retroactive to May 4, 1993, plus interest. County has already received $162,185 as additional rent, and upon completion of the assignment, will receive an additional payment representing interest on the retroactive rent.

Finally, lessee has further agreed to maintain a higher level of commercial general liability insurance coverage on the leasehold. The new coverage will increase the single limit per occurrence from the existing $1,000,000 requirement to $10,000,000, and the aggregate requirement from $2,000,000 to $20,000,000, as recommended by the Chief Administrative Office's Risk Manager.

Implementation of Strategic Plan Goals

These recommendations are consistent with the County's Strategic Plan Goals of Fiscal Responsibility and Service Excellence. The County will realize additional revenues from lessee's agreement to pay a higher boat slip and liveaboard percentage rent retroactive to 1993, while allowing the transfer of the leasehold interest to accommodate a bona fide financial transaction and retaining appropriate control of the leasehold to protect the County's interests.

FISCAL IMPACT/FINANCING

The County has received $162,186 as retroactive rents and will receive an additional amount as interest payment on the retroactive rent after consummation of the assignment.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On May 4, 1962, the County entered into a 60-year lease for the premises currently known as Parcel 10R, Neptune Marina Apartments, with the lessee, consisting of Stanton Jay Platt, Samuel Leeds, and George R. Platt. On February 22, 1972, your Board approved an assignment of interest in Parcel 10R to Neptune Marina, a California limited partnership.

The parcel is currently improved with 136 apartment units and 184 boat slips on 7.3 acres of land and 4.7 acres of water leasehold area.

The proposed assignee is a Delaware limited partnership, having Legacy Partners 2598 L.P., a California limited partnership, as its general partner, and AIGGRE Residential Fund

Chelsea I LLC, a Delaware limited liability company, and AIRE Investments Inc., a Delaware corporation, as its limited partners. The attached Exhibit C illustrates the proposed ownership structure.

The Consent and the Amendment have been approved as to form by County Counsel. At its meeting held on June 9, 2004, the Small Craft Harbor Commission voted unanimously to endorse the Director's recommendation that your Board consent to the assignment of the leasehold interest and amendment of the lease.

ENVIRONMENTAL DOCUMENTATION

The assignment of leasehold interest and amendment of the lease is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Not applicable.

CONCLUSION

Attached are three copies each of the Consent and the Amendment. Please have the Chairman of the Board sign all copies and have the Executive Officer acknowledge the Chairman's signature. Please send two executed copies of each of the documents to the Department of Beaches and Harbors.

Respectfully submitted,

Stan Wisniewski

Stan Wisniewski, Director

SW:RM:pw
Attachments (3)

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

EXHIBIT A

CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES (County), lessor under that certain lease No. 5574, dated May 4, 1962, as amended applicable to those certain premises commonly known as Parcel 10R, Marina del Rey Small Craft Harbor, described in the attachment hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, NEPTUNE MARINA, a California limited partnership (Assignor), to LEGACY PARTNERS NEPTUNE MARINA L.P., a Delaware limited partnership (Assignee), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby. It is further understood and agreed that the County's consent to the proposed assignment described herein is subject to the following express conditions:

A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the assignment above referred to is complete and irrevocable in all respects within 120 days of the date of execution by the County of this Consent to Assignment of Lease and executed copies of the Assignment of Lease and Acceptance of Assignment of Lease have been provided to County's Director of Beaches and Harbors.

B. This Consent to Assignment is contingent upon Assignee's assumption and agreement to perform all obligations past, present and future, created by the terms, covenants and conditions of said Lease on the part of the lessee therein named to be performed.

C. This assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon the Assignee whether or not the Assignor and Assignee have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the assignment, and whether or not in such event any party thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.

D. Assignee shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of the Lease.

E. Subject to the County's audit rights for periods after December 31, 1999, Assignor has paid to County the additional principal amounts of percentage rent payable for the period from May 4, 1993 (the "Retroactivity Date") through the end of April, 2004 as a result of the retroactive application of an increase to 25 percent of total percentage rents payable by Assignor for boat slip and

liveaboard gross receipts under subsection 13(a) of the Lease (the "Reconciliation Amounts"). In addition to the Reconciliation Amounts, Assignor is required to pay to County interest on the Reconciliation Amounts as required under the terms of the Lease. As of the date of this Consent to Assignment, there is a dispute between the parties as to the amount of the interest required to be paid to County on the Reconciliation Amounts. County has asserted that the total amount of interest payable on the Reconciliation Amounts is $89,496.00. Assignor and Assignee shall be jointly and severally liable to County for the payment of the interest payable on the Reconciliation Amounts, and County reserves all of its rights in connection therewith. County has previously completed an audit of gross receipts under the Lease for periods through December 31, 1999. County is currently in the process of performing an audit of gross receipts for the period from December 31, 1999 through December 31, 2003 and reserves the right to also audit gross receipts for periods on and after January 1, 2004. County reserves its rights to collect additional Reconciliation Amounts (and interest thereon) for periods after December 31, 1999 if any such audit reveals an understatement of gross receipts under subsection 13(a) as amended by Amendment No. 9 referenced below.

F. This Consent is contingent upon the execution and delivery by Assignee of that certain Amendment No. 9 to Lease No. 5574 to be entered into between Assignee and County with respect to the Lease.

Dated this _____ day of _____, 2004.

COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By: _____
Deputy

EXHIBIT B

AMENDMENT NO. 9 TO LEASE NO. 5574
PARCEL NO. 10R – MARINA DEL REY

THIS AMENDMENT TO LEASE ("Amendment") made and entered into this ____ day of _____, 2004 (the "Effective Date").

BY AND BETWEEN — COUNTY OF LOS ANGELES, hereinafter referred to as "County"

AND — LEGACY PARTNERS NEPTUNE MARINA L.P., a Delaware limited partnership, hereinafter referred to as "Lessee"

WITNESSETH

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 5574 under the terms of which County leased to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 10R, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of May 4, 1993, and as of May 4 of every tenth (10th) year thereafter (each a "Rental Adjustment Date"), the square foot rental, percentage rentals and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, an arbitration was conducted to determine rental rates with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing on May 4, 1993 (the "1993 Rental Adjustment Date"), however, the parties have agreed, notwithstanding the arbitration, on rates for boat slips and liveaboard; and

WHEREAS, the parties have also reached agreement with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing May 4, 2003 (the "2003 Rental Adjustment Date"), whereby the Adjusted Rentals set forth in this Amendment No. 9 shall also apply for the ten (10) year period commencing on the 2003 Rental Adjustment Date, and that the readjustment of rents set forth herein constitutes the readjustment of rents required under the Lease; and

WHEREAS, Section 22 of the Lease provides that subject to enumerated exceptions, Lessee may not assign all or any part of its interest in the Lease without the prior written consent of the County; and

WHEREAS, in consideration of the County's approval of the transfer of the Lease to Lessee, the parties desire to amend Section 22 of the Lease to define what changes shall be considered an event of assignment under said Section, including changes in management and ownership of a limited liability company; and

WHEREAS, Section 26 of the Lease provides for the periodic adjustment of the amounts of liability insurance that Lessee is required to maintain under the Lease and the parties hereto have reached agreement as to the amount of liability insurance to be maintained by Lessee as of the Effective Date hereof;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions contained herein, the parties, and each of them, agree as follows:

1. Square Foot Rental. The parties agree that there shall be no adjustment to the square foot rental as provided under Section 12 of the Lease, which shall be applicable as well for the ten (10) year period commencing on the 2003 Rental Adjustment Date.

2. Percentage Rental. Commencing as of the 1993 Rental Adjustment Date and continuing through the ten (10) year period commencing on the 2003 Rental Adjustment Date, subsection (a) of Section 13 (PERCENTAGE RENTALS) of the Lease is deemed deleted and the following subsection is substituted therefor:

> "(a) Twenty-Five Percent (25%) of gross receipts from the rental or other fees charged for the use of boat slips (including live-aboard charges), anchorages, moorings, dockside gear lockers, dockside storage space, and such other facilities and services ancillary thereto as are provided in common to all tenants."

Effective as of the 1993 Rental Adjustment Date and continuing through the ten (10) year period commencing on the 2003 Rental Adjustment Date, Subsection 13(c)(8) of the Lease shall be deleted. All other categories of percentage rental or fees shall remain at their present levels.

3. Assignment and Sublease. Commencing as of the Effective Date, Section 22 (SUBLEASES, ASSIGNMENTS, AND SUCCESSORS) is amended by adding the following at the end of such Section 22:

> "For purposes of this Section 22, the following shall constitute an assignment of this Lease by Lessee and shall require the prior written consent of County (collectively, "Changes of Ownership"):

(1) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in the Lease, (2) the execution by Lessee of a sublease pertaining to all or substantially all of the Premises ("Major Sublease"), or the transfer by the sublessee under a Major Sublease of a five percent (5%) or greater direct ownership interest in such Major Sublease, (3) any transaction or series of related transactions not described in (1) or (2) above that constitute an Aggregate Transfer (as defined below) of fifty percent (50%) or more of the beneficial residual interests in Lessee or a Major Sublessee, or (4) a Change of Control (as defined below) of Lessee or a Major Sublessee. Notwithstanding the foregoing, with respect to any Aggregate Transfer of beneficial residual interests in Lessee by AIG Global Real Estate Investment Corp., or any person or entity that directly or indirectly controls, is controlled by, or is under common control with AIG Global Real Estate Investment Corp. (collectively, an "AIG Entity"), the phrase "fifty percent (50%) or more" in clause (3) above shall be changed to "more than fifty percent (50%)."

"For purposes hereof, "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial residual interests in Lessee or a Major Sublessee, as appropriate) transferred or assigned in one transaction or a series of related transactions occurring since the most recent assignment or Change of Ownership requiring County's consent (but without double counting successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest). Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

"For purposes hereof, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

"Notwithstanding anything to the contrary contained herein, Changes of Ownership resulting from the following transfers shall not require the County's consent ("Excluded Transfers"):

> "(a) a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the

Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection (c) below) of any direct or indirect partner or member of Lessee who is an individual;

"(b) a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

"(c) a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection (c) is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

"(d) a transfer of a beneficial residual interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities are traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

"(e) a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as of the Effective Date, or as otherwise excluded in accordance with sections (a) through (d) above;

"(f) any transfer consummated pursuant to Section 12.02(a) of the Limited Partnership Agreement of Lessee in the form of such partnership agreement existing as of the Effective Date and delivered to County on or prior to the Effective Date;

"(g) any transfer resulting from a condemnation by County; or

"(h) any assignment of the Lease by Lessee to a parent, subsidiary or affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

"In addition, except for Excluded Transfers, the following shall also require the prior written consent of County: (A) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability company, except (y) by death, insolvency, incapacity, resignation (except for a sole general partner, if any), or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (z) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (B) the sale, assignment, or transfer of fifty percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease; provided, however, that with respect to any sale, assignment or transfer of an AIG Entity or ownership interests therein, the phrase "fifty percent (50%) or more" in clause (B) above shall be changed to "more than fifty percent (50%)." Lessee shall provide County with any information reasonably requested by County in order to determine whether to grant approval of the matters requiring County's consent under this paragraph. The limitations and approval requirements set forth in this paragraph as to Lessee's interest under the Lease shall also apply with respect to any sublessee's interest under a Major Sublease.

"For purposes hereof, "beneficial residual interest" shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts."

4. Insurance. Commencing as of the Effective Date and continuing through the 10-year period commencing on the 2003 Rental Adjustment Date, the second paragraph of Section 26 of the Lease is deleted and the following substituted therefor:

"Lessee shall maintain in full force and effect during the Term of this Lease, commercial general liability insurance coverage, together with premises operations, products, completed operations, advertising, independent contractor and contractual liability coverages, including liquor liability, with a combined single limit of not less than Ten Million

Dollars ($10,000,000) per occurrence, Twenty Million Dollars ($20,000,000) annual aggregate. Lessee agrees that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under such liability insurance policy or policies. The insurance described in this paragraph shall provide coverage on a "primary basis" with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain."

5. Concurrent Assignment. This Amendment No. 9 is to be executed concurrently with the assignment of the leasehold estate from Neptune Marina, a California limited partnership, to Legacy Partners Neptune Marina L.P., a Delaware limited partnership. If the assignment does not occur, this Amendment shall be null and void and shall have no effect on the subject leasehold.

6. No Other Modifications. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

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IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of the Board, and the Lessee has executed same the day and year first hereinabove written.

COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

LEGACY PARTNERS NEPTUNE MARINA L.P., a Delaware limited partnership

Legacy Partners 2598 L.P., a California limited partnership, its general partner

By: _____
Dennis Cavallari, general partner

Attest:

Violet Varona-Lukens
Executive Officer of the
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

BY: _____
Deputy

EXHIBIT A

Legal description of Parcel 10R

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 10R

Parcels 102 to 132 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said County.

Excepting therefrom that portion thereof within the following described boundaries:

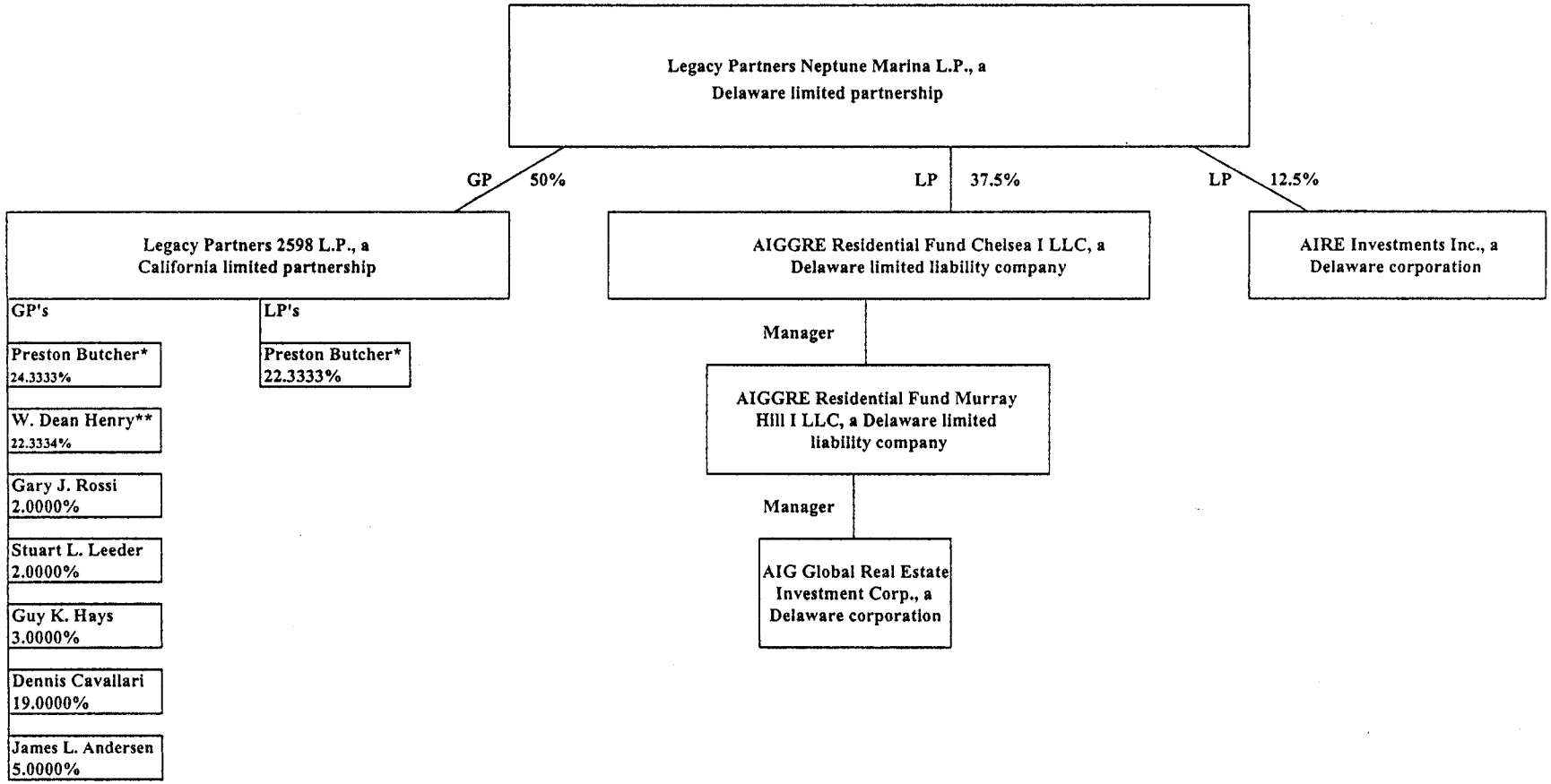
Commencing at the northerly terminus of that certain 1000 foot radius curve having a length of 561.21 feet in the center line of Via Marina, as shown on said map; thence southerly along said certain curve 297.08 feet; thence easterly along a radial of said certain curve to a point in that certain 960 foot radius curve in the easterly boundary of said Via Marina, said point being the true point of beginning, said point also being the beginning of a compound curve concave to the east and having a radius of 880.11 feet more of less, said compound curve being tangent at its northerly terminus to a line parallel with and 3.5 feet easterly, measured at right angles, from the straight line in the westerly boundary of Parcel 188, as shown on said map, at a point distant southerly along said parallel line 90.66 feet from the northerly line of said last mentioned parcel; thence northerly along said compound curve 120.49 feet to the beginning of a compound curve concave to the southeast, tangent to a line parallel with and 5 feet southerly, measured at right angles, from the straight line in the northerly boundary of said Parcel 108 and having a radius of 19 feet; thence northeasterly along said last mentioned compaund curve 32.89 feet to said last mentioned parallel line; thence East along said last mentioned parallel line 2.52 feet; thence North 5.00 feet to said northerly boundary; thence westerly, southwesterly and southerly along the northerly, northwesterly and westerly boundaries of said last mentioned parcel to said true point of beginning.

Also reserving and excepting unto the County of Los Angeles, rights of way for sanitary sewer, fire access and harbor utility purposes in and across those portions thereof designated on said map as easements to be reserved by said County for such purposes.

DESCRIPTION APPROVED
JUL 14 [illegible]
HARVEY T. BRANDT
County Engineer

By [signature] Deputy

P10 Assign 042004



*as trustee of the Preston Butcher Legacy Partners Business Assets Revocable Trust u/d/t dated May 12, 2003
**as trustee of the W. Dean Henry Legacy Partners Business Assets Revocable Trust u/d/t dated February 20, 2004

EXHIBIT C

F:\Sja\30720002\Organizational Chart.xls