

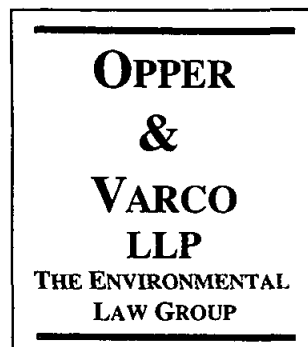
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May 26, 2011

Regional Water Quality Control Board
San Diego Region
San Diego Water Board Advisory Team
Attn: Frank Melbourn
9174 Sky Park Court, Suite 100
San Diego, CA 92123

RECEIVED 26 MAY 2011
Frank Melbourn
FRANK MELBOURN

Re: San Diego Bay Shipyard Sediment Site
Comments Regarding the Tentative Cleanup and Abatement Order

Dear Mr. Melbourn:

Please find enclosed with this letter the written comment submittal by Star & Crescent Boat Company to the May 12, 2001 Notice of Extended Comment Period and Revised Comment Format, San Diego Bay Shipyard Sediment Site, Tentative Cleanup and Abatement Order No. R9-2011-001 and Draft Technical Report.

Thank you for your time and consideration of the comments presented by Star & Crescent Boat Company.

Yours very truly,

OPPER & VARCO LLP

Suzanne R. Varco
Suzanne R. Varco

SRV/kmh

cc: Sarah Evans, Esq. (via email)
George Palermo, Flagship Cruises & Events
All parties identified in the attached Service List (via email)

Enclosures: 12 Copies of Star & Crescent Boat Company's Written Submittal to the
Tentative Cleanup and Abatement Order No. R9-2011-001

SAN DIEGO BAY SHIPYARD SEDIMENT SITE

Star & Crescent Boat Company's Written
Submittal of Comments to the Tentative
Cleanup and Abatement Order No. R9-
2011-0001

Designated Party: Star & Crescent Boat Company

Represented by: Suzanne R. Varco
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May 26, 2011

RECEIVED 26 MAY 2011

Frank Melbourn

FRANK MELBOURN

INTRODUCTION

Opper & Varco represents Star & Crescent Boat Company, a California corporation ("S&C Boat"), in this matter. In the Tentative Cleanup and Abatement Order ("TCAO") dated September 15, 2010, the California Regional Water Quality Control Board, San Diego Region ("Water Board") named S&C Boat as a "discharger" in the San Diego Bay Shipyard Sediment case.

The Water Board bases its determination on the presumption that S&C Boat is a corporate successor-in-interest to the San Diego Marine Construction Company ("SDMCC"), which is alleged to have contributed to pollution by way of discharges from its shipyard facility between 1914 and 1972. The Draft Technical Report ("DTR") Finding 5 identifies this as the basis upon which the Water Board seeks to impose liability for part of the environmental cleanup on S&C Boat. The DTR findings and discovery responses provided by the Water Board demonstrate that the successor-in-interest theory is the Water Board's sole basis for conferring the "discharger" designation upon S&C Boat.

As detailed herein, however, S&C Boat does not meet the basic legal requirements that must be established in order to assign successor-in-interest liability with respect to SDMCC. S&C Boat is a distinct entity that, as a matter of law, is not liable for contamination allegedly caused by SDMCC. There is no other basis of liability alleged. Thus, S&C Boat is not liable in this matter. The TCAO should be revised to remove reference to S&C Boat as a responsible party, and S&C Boat's designation as a "discharger" should be rescinded.

COMMENT I

Star & Crescent Boat Company is Not a Successor to San Diego Marine Construction Company

(See TCAO Paragraph 5, "Accordingly, Star & Crescent is the corporate successor of and responsible for the conditions of pollution or nuisance caused or permitted by San Diego Marine Construction Company.")

(See DTR Finding 5, "Accordingly, Star & Crescent is the corporate successor of and responsible for the conditions of pollution or nuisance caused or permitted by San Diego Marine Construction Company".)

S&C Boat was incorporated in 1976. Throughout its entire history, its business has been to run harbor excursions in and around the San Diego Bay. Its shore operations have always taken place north of the San Diego-Coronado Bay Bridge (the "Bridge"). S&C Boat never leased or used the Shipyard Sediment Site south of the Bridge. S&C Boat has no direct connection – nor has any direct connection ever been alleged by the Water Board – to the contamination at the Shipyard Sediment Site. The question at issue is whether S&C Boat is indirectly responsible for contamination at the Shipyard Sediment Site due to an alleged relationship with SDMCC. The following facts and legal argument establish that it is not.

I. Factual Background

a. **SDMCC Corporate History**

Captain Oakley J. Hall was a prominent businessman who was the sole shareholder of SDMCC until his death in 1967.¹ Captain Hall's SDMCC empire had three divisions: the Marine Division, the Boat Division, and the Investment Division.² The Marine Division represented 86.7% of SDMCC's revenue.³ It did ship repair for Navy and tuna boats.⁴ From 1915 until 1972, this Marine Division occupied the 19.2 acre shipyard site located at the foot of Sampson Street in San Diego, south of the San Diego-Coronado Bay Bridge (the "Shipyard Sediment Site"). Contamination at the Shipyard Sediment Site is the basis of this Water Board action.

SDMCC's second division, the Investment Division, owned a building in downtown San Diego at 201 West Broadway and had several other real and personal assets.⁵ The Investment Division owned and operated various assets and businesses until its dissolution in 1991.⁶

SDMCC's third division, the Boat Division, was commonly known as Star and Crescent Boat Company.⁷ This Star and Crescent Boat Company was not a separately incorporated entity, but only operated as a division of SDMCC.⁸ It was clear to the San Diego Unified Port District ("Port District") at this time that the Boat Division was operating as a division of SDMCC, and not as a separate corporate entity.⁹ The Boat Division operated a commercial towing and harbor excursion business and ran the Broadway gift shop from leased space along Harbor Drive between the Broadway and B Street piers north of the San Diego-Coronado Bay Bridge.¹⁰ When Captain Hall died in 1967, the assets of the Boat Division included three harbor excursion vessels, four commercial tugboats, and ten assorted barges.¹¹ The Boat Division of SDMCC is not the designated party and is not the entity that submits this comment letter today.

¹ United States Tax Court's opinion in *Estate of Oakley J. Hall, Deceased, Southern California First National Bank, Executor v. Commissioner of Internal Revenue* (1975) (attached as Exhibit 1), p. 1.

² See Exhibit 1, p. 1.

³ See Exhibit 1, pp 1-2.

⁴ See Exhibit 1, p. 1.

⁵ See Exhibit 1, p. 8.

⁶ See Exhibit 15.

⁷ See Exhibit 1, p. 3.

⁸ In 1925, Captain Hall incorporated an entity called Star and Crescent Boat Co. but dissolved that corporation in 1957. Articles of Incorporation of Star and Crescent Boat Co. filed with the California Secretary of State on March 30, 1925 (attached as Exhibit 2); Certificate of Winding Up and Dissolution of Star and Crescent Boat Co. filed with the California Secretary of State on June 13, 1957 (attached as Exhibit 3).

⁹ Port District Inter-Staff Communication, dated April 14, 1972 (attached as Exhibit 7).

¹⁰ See Exhibit 1, p. 3.

¹¹ See Exhibit 1, p. 3.

i. SDMCC's Lease of the Shipyard Sediment Site

SDMCC's Marine Division leased the Shipyard Sediment Site from 1915 until 1972. Beginning in 1915, SDMCC leased the Shipyard Sediment Site, first from the City of San Diego, then from the Port District.^{12,13} On December 3, 1968, SDMCC and the Port District entered into their final lease for the Shipyard Sediment Site, which was a five-year lease with an option to extend the lease for nine additional five-year terms.¹⁴

Campbell Industries purchased SDMCC's interest in the Shipyard Sediment Site in 1972, paying \$4.6 million in total consideration.¹⁵ On June 26, 1972, the Port District accepted SDMCC's surrender of its lease for the Shipyard Sediment Site.¹⁶ Thereafter, Campbell Industries secured a new lease for the Shipyard Sediment Site. Thus, after 1972, SDMCC had no leasehold interest in, or any operations at, the Shipyard Sediment Site.

ii. SDMCC Becomes Star & Crescent Investment Company

After surrendering the Shipyard Sediment Site lease in 1972, SDMCC amended its Articles of Incorporation and changed its name to Star & Crescent Investment Co. ("Investment Co.").¹⁷ Investment Co. continued to operate the Boat Division, which ran the harbor excursion business on the San Diego Bay. Additionally, Investment Co. operated many other businesses, including the Lake Mead Ferry Service, Las Vegas Baggage Service, and Lasco Truck Rental & Equipment Co., and considered opening and operating a furniture stripping business.¹⁸

In 1976, four years after SDMCC, now Investment Co., sold the ship building business to Campbell Industries and surrendered its lease for the Shipyard Sediment Site, Investment Co. transferred the assets of its harbor excursion business to a new corporation, S&C Boat. After the sale of these harbor excursion assets (the Boat Division) to S&C Boat, Investment Co. continued to operate its diverse group of businesses, including the Lake Mead Ferry Service, the Las Vegas Baggage Service, and Lasco Truck Rental & Equipment Co. Over 15 years after selling the harbor excursion assets to S&C Boat, Investment Co. dissolved in 1991.¹⁹

¹² The Port District statutorily assumed responsibilities for, as trustee and inherited the tidelands leases from, the City of San Diego in February 1963. (See First Amended Cross-Claims of the Port District, filed February 25, 2010, at ¶ 73 (attached as Exhibit 4).)

¹³ SDMCC Leases from 1915 through 1959 (attached as Exhibit 5).

¹⁴ SDMCC Lease dated December 3, 1968 (attached as Exhibit 6).

¹⁵ See Exhibit 1, p. 8.

¹⁶ Surrender of Port Lease, dated July 14, 1972 (attached as Exhibit 8); and Port District Ordinance Accepting Surrender of Lease from SDMCC (attached as Exhibit 9).

¹⁷ Certificate of Amendment of Articles of Incorporation (attached as Exhibit 10).

¹⁸ Investment Co.'s minutes for its annual meeting of stockholders on December 23, 1977 (attached as Exhibit 11); Investment Co.'s resolutions following its July 7, 1978 meeting (attached as Exhibit 12); Investment Co.'s written consent of June 8, 1979 (attached as Exhibit 13); and Investment Co.'s written consent of March 9, 1981 (attached as Exhibit 14).

¹⁹ Investment Co.'s Certificate of Election to Wind Up and Dissolve, Certificate of Dissolution, and Tax Clearance Certificate, filed on December 23, 1991 (attached as Exhibit 15).

b. S&C Boat Corporate History

In April 1976 a new corporation was formed by the name of Star & Crescent Company, a California corporation ("S&C Boat").²⁰ The formation and incorporation of S&C Boat occurred four years *after* SDMCC surrendered its Shipyard Sediment Site lease. Immediately following the filing of its Articles of Incorporation, S&C Boat voted to issue 1,500 shares of stock.²¹ S&C Boat then voted to purchase specified assets and assume specified liabilities of the harbor excursion business from Investment Co.²² The purchase price for the harbor excursion business assets was 1,500 shares of S&C Boat stock with a fair market value of \$718,825.53.²³ The transferred assets included leases for properties associated with the harbor excursion business, none of which included the Shipyard Sediment Site.²⁴

Six harbor excursion boats were listed among the assets transferred to S&C Boat, as well as two floats, two vehicles, and the right to use the name "San Diego Harbor Excursion."²⁵ As only specified harbor excursion business assets and liabilities were purchased by S&C Boat, none of the transferred assets or liabilities had any relation to the former operations at the Shipyard Sediment Site. The assets transferred, less outstanding liabilities, were valued at \$719,825.83.²⁶

Also among the assets listed and transferred to S&C Boat were four leases with the San Diego Unified Port District: two leases for 570 Harbor Drive (dated March 26, 1976²⁷ and August 21, 1973), a B Street Pier lease dated March 26, 1976,²⁸ and a lease dated January 2, 1976²⁹ for a building and space west of Harbor Drive between the Broadway and B street piers, all properties associated with the harbor excursion business, and all north of the Bridge.³⁰ The leases transferred from Investment Co. specifically recognize the lessee as "Star and Crescent Boat Co., a *division* of Star and Crescent Investment Co., a corporation."³¹ None of the transferred leases relate to the Shipyard Sediment Site, as SDMCC/Investment Co. had surrendered that lease four years earlier.³² Following the transfer of leases to S&C Boat, new leases were entered into between S&C Boat and the Port District. Those leases specifically recognized the lessee as "Star and Crescent Boat Co., a California corporation."³³

²⁰ Articles of Incorporation of S&C Boat, filed on April 7, 1976 (Exhibit 16).

²¹ Minutes of Meeting of Board of Directors of S&C Boat dated April 9, 1976 (attached as Exhibit 17).

²² See Exhibit 17.

²³ See Exhibit 17.

²⁴ See Exhibit 17.

²⁵ See Exhibit 17.

²⁶ See Exhibit 17.

²⁷ Tideland Use and Occupancy Permit dated March 26, 1976 (attached as Exhibit 18).

²⁸ Tideland Use and Occupancy Permit dated March 26, 1976 (attached as Exhibit 19).

²⁹ Tideland Use and Occupancy Permit dated January 2, 1976 (attached as Exhibit 20).

³⁰ See Exhibits 17-20.

³¹ See Exhibits 18-20.

³² See Exhibits 8 and 9.

³³ Lease dated January 17, 1978 (attached as Exhibit 21).

It is clear from the lease history that the Port District understood that the Boat Division called Star and Crescent Boat Company and the corporation S&C Boat were two distinct and separate entities, requiring separate leases.

Almost immediately, Investment Co.'s 1,500 shares of S&C Boat stock were transferred to Stephen P. Carlstrom, Judy Hall, and Janet Miles, who each received 500 shares.³⁴ Under the terms of the applicable stock sale agreement, these three individuals paid \$765,400 to purchase this stock,³⁵ and the payments were made from S&C Boat dividends until paid in full in 1981.³⁶ In 1983, Judy Hall sold her 500 shares in S&C Boat back to S&C Boat for \$400,000.³⁷

In 1984, San Diego Harbor Excursion acquired all outstanding stock in S&C Boat from the two remaining shareholders, and in 1986, San Diego Harbor Excursion merged with S&C Boat.³⁸ None of the current S&C Boat shareholders, Arthur E Engel, Herbert G. Engel and David Engel, have any relationship with Investment Co., Stephen P. Carlstrom, Judy Hall, and/or Janet Miles.³⁹ Moreover the current shareholders of S&C Boat had no affiliation with either SDMCC, Investment Co., or any of their officers, directors or shareholders.⁴⁰

From 1976 to the present, S&C Boat's operations have been limited to the operation of a harbor excursion business, which operates not at the Shipyard Sediment Site, but at different locations along the San Diego Bay, all north of the Bridge.

II. Legal and Factual Analysis Demonstrates that S&C Boat Fails to Meet Any of the Tests that Establish Corporate Successor Liability.

As indicated above, there is no allegation or finding by the Water Board that S&C Boat is directly responsible for the Shipyard Sediment Site contamination. The only issue at hand is whether corporate successor liability law can be said to establish such indirect liability. For the reasons stated below, it cannot.

³⁴ Shareholder certificates for S&C Boat dated October 26, 1976 (attached as Exhibit 22).

³⁵ Minutes of Special Meeting of Shareholders and Directors of S&C Boat dated October 26, 1976 (attached as Exhibit 23); and Shareholders' Agreement and Stock Redemption Agreement of S&C Boat dated September 21, 1977 (attached as Exhibit 24).

³⁶ Minutes of Special Meeting of Directors of S&C Boat dated May 6, 1977 (attached as Exhibit 25); Minutes of a Meeting of the Board of Directors of S&C Boat dated May 18, 1977 (attached as Exhibit 26); Minutes of a Meeting of the Board of Directors of S&C Boat dated June 28, 1977 (attached as Exhibit 27); Minutes of a Meeting of the Board of Directors of S&C Boat dated December 14, 1977 and Memorandum to Stockholders, dated December 12, 1977 (attached as Exhibit 28); S&C Boat Minutes of Board of Directors Meeting dated September 19, 1979 (attached as Exhibit 29); and S&C Boat Minutes of Board of Directors Meeting dated March 4, 1981 (attached as Exhibit 30).

³⁷ S&C Boat Minutes of the Board of Directors Meeting, dated February 28, 1983 (attached as Exhibit 31).

³⁸ Agreement of Merger Between San Diego Harbor Excursions, Inc. and S&C Boat and Amendment and Restatement of Articles of Incorporation of S&C Boat, filed December 24, 1986 (attached as Exhibit 32).

³⁹ Deposition of George Palermo, President of S&C Boat, dated February 22, 2011, pp. 67-68, 83-86, 110 (relevant pages attached as Exhibit 36).

⁴⁰ See Exhibit 36, pp. 48, 67-68, 85-86, 110.

First, the corporate facts evidenced above show that S&C Boat is a distinct legal entity that is not related to SDMCC in the manner alleged by the Water Board. Second, S&C Boat does not bear liability under any of the legal tests for corporate successor liability.

The general rule governing successor liability provides that where a corporation purchases, or otherwise acquires by transfer, the assets of another corporation, the acquiring corporation does **not** assume the selling corporation's debts and liabilities. (*Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 28.) California courts have identified specific situations in which an entity may be held liable as a successor-in-interest for another's debts and liabilities. Such successor liability will **only** attach where: (a) the purchaser expressly or impliedly agrees to assume the other's debts and liabilities; (b) a transaction amounts to a consolidation or merger of the two corporations; (c) the purchasing corporation is merely a continuation of the selling corporation; or (d) the transaction is entered into fraudulently to escape liability for debts. (*Ortiz v. South Bend Lathe* (1975) 46 Cal.App.3d 842, 846, disapproved on other grounds in *Ray, supra*, 19 Cal.3d at 34; *Franklin v. USX Corp.*, (2001) 87 Cal.App.4th 615, 621.)⁴¹

a. S&C Boat Only Assumed Specific SDMCC/Investment Co. Liabilities.

Under *Ortiz*, the first situation in which an entity may be held liable for a predecessor's debts and liabilities is if the purchaser expressly or impliedly agrees to assume **all** of the other's debts or liabilities. There is no express or implied agreement that S&C Boat would assume **all** the liabilities incurred by SDMCC/Investment Co. prior to the purchase of the harbor excursion business assets. To the contrary, the corporate minutes and all related documents clearly set forth exactly which assets and which liabilities S&C Boat was purchasing.⁴² None of the assets nor any of the liabilities were related to either the shipbuilding business or the Shipyard Sediment Site.⁴³

There is no evidence that S&C Boat ever impliedly agreed to assume Investment Co.'s debts or liabilities, either. In fact, the evidence is quite to the contrary; the purchase by S&C Boat was strictly limited to the assets of the harbor excursion business and specified limited liabilities. Investment Co. continued to own and operate its many other diverse assets, and continued to be responsible for the debts and liabilities associated therewith, after selling the harbor excursion assets to S&C Boat and for many years thereafter.⁴⁴ As a matter of law, successor-in-interest liability cannot be established under the first situation identified in *Ortiz*.

⁴¹ The final situation in which an entity may be held liable for a successor-in-interest's debts and liabilities is when a person has been injured by the predecessor's product, the "product line successor" rule, articulated in *Ray, supra*, 19 Cal.2d 22. There are no grounds for imposing this "product line successor" rule here, as the "product line successor" rule only applies to manufacturers, of which S&C Boat is not.

⁴² See Exhibit 17.

⁴³ See Exhibit 17.

⁴⁴ See Exhibit 17 and Exhibits 11-14.

b. S&C Boat Never Consolidated or Merged with SDMCC/Investment Co.

The second situation in which an entity may be held liable for a predecessor's debts and liabilities under *Ortiz* is if a transaction amounts to a consolidation or merger of the two corporations. There was no transaction between S&C Boat and Investment Co. that amounts to a consolidation or merger of the two corporations.

The 1976 purchase of the harbor excursion assets and assumption of related liabilities by S&C Boat did not amount to a consolidation or merger. As described in *Ray*, the "consolidation or merger" theory "has been invoked where one corporation takes *all* of another's assets without providing any consideration that could be made available to meet claims of the other's creditors or where the consideration consists wholly of shares of the purchaser's stock which are promptly distributed to the seller's shareholders *in conjunction with the seller's liquidation.*" (*Ray, supra*, 19 Cal.3d at pages 28-29, citations omitted, emphasis added.) Satisfaction of several elements is necessary to establish such a "consolidation or merger": (i) *all* of the Seller's assets must be sold; (ii) consideration must be inadequate, in that *no* consideration is made available to meet claims of other creditors; (iii) consideration consists wholly of shares of the purchaser's stock; (iv) those shares are immediately distributed to the seller's shareholders; and (v) the seller must then be liquidated. Each of these five elements must be shown to establish a consolidation or merger. These are not the facts before us here.

The TCAO, at paragraph 5 (page 4), and the DTR, in Finding 5 (page 5-1), state that "Star & Crescent Investment Co. (formerly San Diego Marine Construction Company) transferred *all* of its assets and liabilities to [S&C Boat]" (emphasis added). This statement forms the basis for all claims alleged by the Water Board against S&C Boat, and is fatally inaccurate.

As noted above, S&C Boat did not acquire *all* of SDMCC/Investment Co.'s assets,⁴⁵ which is an essential element for successor liability under this theory. The assets purchased by S&C Boat were specifically enumerated in the corporate documents.⁴⁶ Moreover, Investment Co. did not liquidate following the sale of its harbor excursion assets to S&C Boat, but rather it continued to function as a separate entity, operating other businesses separate and apart from S&C Boat, including, but not limited to, the Las Vegas Baggage Service, Lasco Truck Rental, and Lake Mead Ferry Service, and was exploring other business opportunities.⁴⁷ None of the assets or liabilities of these other business entities were sold to S&C Boat as part of this 1976 harbor excursion transaction.⁴⁸ Thus, S&C Boat did not take *all* of Investment Co.'s assets when it purchased the harbor excursion business, and neither did Investment Co. liquidate following that sale.

⁴⁵ See Exhibits 11-14 and Exhibit 17.

⁴⁶ See Exhibit 17.

⁴⁷ See Exhibits 11-14.

⁴⁸ See Exhibit 17.

As discussed in detail in subsection (c) below, adequate consideration was paid for the assets purchased by S&C Boat from Investment Co. While the original consideration that S&C Boat used to purchase Investment Co.'s harbor excursion assets was its own stock, this stock was not distributed to Investment Co.'s shareholders in conjunction with its liquidation, which is another required element of successor liability under this theory. Instead, less than six months after the purchase, Investment Co. sold its S&C Boat stock to Stephen P. Carlstrom, Judy Hall, and Janet Miles, who paid \$765,400 for it.⁴⁹ These three individuals were not shareholders of Investment Co. Further, rather than being in conjunction with Investment Co.'s liquidation, these shares were sold at a time that Investment Co. was operating other businesses and 15 years before it was dissolved.⁵⁰

Thus, the facts of this transaction between S&C Boat and Investment Co. show that the essential criteria for the "consolidation or merger" theory described in *Ray* are not met here. As a result, there is no ground upon which the Water Board can establish successor-in-interest liability on S&C Boat under the second situation identified in *Ortiz*.

c. S&C Boat is Not a Continuation of SDMCC/Investment Co.

Under *Ortiz*, the third situation in which an entity may be held liable for a predecessor's debts and liabilities is if an entity is a "mere continuation" of the original entity. This situation is obviously designed to prevent a corporation from escaping its debts and liabilities by simply re-naming itself. In *McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 754, the court reaffirmed the rule that "corporations cannot escape liability by a mere change of name or a shift of assets when and where it is shown that the new corporation is, in reality, but a continuation of the old." As is shown below, S&C Boat's purchase of Investment Co.'s harbor excursion business was not merely a name change or a shift of assets; instead Investment Co. continued in its existence, operating its other businesses for years thereafter. Further, the S&C Boat shareholders were different from those of Investment Co., and these shareholders paid adequate consideration to Investment Co. for their S&C Boat stock. S&C Boat carried on only the Investment Co.'s harbor excursion business, acquiring no other assets or liabilities of Investment Co., which remained viable and responsible for its own operations, assets, debts and liabilities.

Courts have described the criteria for applying successor-in-interest liability under a mere continuation theory, holding that the party that asserts liability must be able to show one or both of the following factual elements: (1) no adequate consideration was given for the predecessor corporation's assets and made available for the claims of its unsecured creditors, and (2) one or more persons were officers, directors, or stockholders of both corporations. (*Franklin, supra*, 87 Cal.App.4th at 626-627.) Cases in which these criteria have been used to impose successor-in-interest liability involved both the payment of inadequate cash consideration and near complete identity of ownership, management or directorship after the transfer. (*See, e.g., Ray, supra*, 19 Cal.3d at 29; *Stanford Hotel Co. v.*

⁴⁹ See Exhibits 22-24.

⁵⁰ See Exhibits 11-17.

M. Schwind Co. (1919) 180 Cal. 348 [inadequate consideration and near identical ownership]; *Higgins v. California Petroleum & Asphalt Co.* (1898) 122 Cal. 373 [inadequate consideration and substantially same ownership]; *Economy Refining & Service Co. v. Royal Nat. Bank of New York* (1971) 20 Cal.App.3d 434 [inadequate consideration and substantially same ownership].

There is no evidence that S&C Boat paid inadequate consideration to Investment Co. for the harbor excursion assets. "Before one corporation can be said to be a mere continuation or reincarnation of another, it is required that there be insufficient consideration running from the new company to the old." (*Maloney v. American Pharmaceutical Co.*, (1988) 207 Cal.App.3d 282, 287, quoting *Ortiz, supra*, 46 Cal.App.3d at 847.) "Inadequate consideration is an 'essential ingredient' to a finding that one entity is a mere continuation of another." (*Katzir's Floor and Home Design, Inc. v. M-MLS.com*, (9th Cir. 2004) 394 F.3d 1143, 1150-51.) Where an acquisition of assets occurs, there is a statutory presumption that adequate consideration was paid. (Civ. Code §§ 1614; 1615) "The party asserting the theory of successor liability bears the burden of establishing inadequate consideration." (*Id.* at 1151, citing *Maloney v. American Pharmaceutical Co.* (1988) 207 Cal.App.3d 282, 288, which in turn cites Civ. Code §1615.)

Adequate consideration was paid by S&C Boat for the harbor excursion assets. The value of Investment Co.'s harbor excursion assets transferred to S&C Boat was \$805,332.13, which was offset by \$86,506.30 in liabilities that S&C Boat assumed in the 1976 sale.⁵¹ Six months later, Investment Co. sold its stock in S&C Boat for \$765,400, which was completely repaid with interest over a five year period.⁵² Rather than paying inadequate consideration, the S&C Boat shareholders paid consideration which exceeded the amount that the assets and liabilities were worth at the time, demonstrating that sufficient consideration was paid.

Second, there was no complete identity of ownership, management, or directorship between S&C Boat and Investment Co. The original directors of S&C Boat were Carole Lechleitner, Monica Triplett, Kay Harpold, Gail Lary, Jacqueline Rhodes, and Dorine Schamens.⁵³ At the first meeting, these directors resigned and were replaced by Stephen P. Carlstrom, Raleigh Miles, Judy Hall, Janet Miles, Kenneth Beiriger, and O.J. Hall, Jr.⁵⁴ O.J. Hall, Jr. served as president for less than six months, until Investment Co.'s stock in S&C Boat was sold to Stephen P. Carlstrom, Judy Hall, and Janet Miles.⁵⁵ At that point, O.J. Hall, Jr. resigned from the S&C Boat board and Mr. Carlstrom became president.⁵⁶

⁵¹ See Exhibit 17.

⁵² See Exhibits 23-30.

⁵³ See Exhibit 16.

⁵⁴ See Exhibit 17.

⁵⁵ See Exhibit 23.

⁵⁶ See Exhibit 23.

There was admittedly some overlap between the two corporations: O.J. Hall, Jr. (who was president and on S&C Boat's board for six months) was president of the Investment Co. and an Investment Co. director for many years,⁵⁷ and Kenneth Beiriger was an Investment Co. director while serving as an S&C Boat director.⁵⁸ Neither ever owned any S&C Boat shares.⁵⁹ Such minimum level of overlap alone is not sufficient to impose liability here.

In *Franklin*, the court declined to impose successor liability for personal injuries on a corporation in which "only a single person with minimal ownership interest in either entity remained as an officer and director." (*Franklin, supra*, 87 Cal.App.4th at 625, 627.) As was recently noted in a case examining successor liability issues under the "mere continuation" theory:

[I]t is not dispositive that some of the same persons may serve as officers or directors of the two corporations. The relevant inquiries are whether the two corporations have preserved their separate identities and whether recourse to the debtor corporation is available.

(*CenterPoint Energy, Inc. v. Superior Court* (2007) 157 Cal.App.4th 1101, 1121 (citation omitted).)

S&C Boat and Investment Co. preserved their separate identities in many ways. Investment Co. collected from S&C Boat's shareholders regular payments plus occasional accelerated payments until these shareholders had paid the \$765,400 plus interest they agreed to pay to purchase their S&C Boat stock.⁶⁰ During this same time frame, Investment Co. operated a variety of other businesses which were completely unrelated to S&C Boat's harbor excursion business.⁶¹ Recourse to Investment Co. was available while it ran its own businesses from 1976 until it dissolved in 1991.⁶²

The fact that one non-shareholding director served on both corporate boards here does not determine the issue, because the crucial inquiries for this "continuation" prong are whether adequate consideration was paid and whether the entities preserved their separate identities. As described above, adequate cash consideration was paid for Investment Co.'s harbor excursion assets, and S&C Boat and Investment Co. both maintained their separate identities after the sale of assets. S&C Boat was not a mere continuation of Investment Co., despite the fact that one non-shareholding director served on both entities' boards. As a result, successor-in-interest liability on S&C Boat under the third situation identified in *Ortiz* cannot be established.

⁵⁷ See Exhibits 10 and 15.

⁵⁸ See Exhibits 11-14; 17; and 31.

⁵⁹ See Exhibit 22.

⁶⁰ See Exhibits 23-30.

⁶¹ See Exhibits 11-14.

⁶² See Exhibits 11-14 and Exhibit 17.

d. No Fraudulent Transfer Occurred.

The final situation described in *Ortiz* in which an entity may be held liable for a predecessor's debts and liabilities is if the transaction is entered into fraudulently to escape liability. There is no evidence that S&C Boat purchased Investment Co.'s harbor excursion business in order to allow Investment Co. to fraudulently escape any debts or liabilities. Quite to the contrary, Investment Co., following the sale of the harbor excursion assets to S&C Boat, continued to operate its many and diverse other businesses, holding itself out as a separate entity. As a result, successor-in-interest liability on S&C Boat cannot be established under the fourth situation identified in *Ortiz*.

For the reasons herein stated, there is no legal basis upon which successor-in-interest liability can be attributed to S&C Boat for the pollution allegedly caused by SDMCC. As such, the Water Board must amend its TCAO to remove reference to S&C Boat.

III. The Water Board Has Alleged No Other Basis for Imposing Liability on S&C Boat.

The Water Board's entire basis for naming S&C Boat a "discharger" rests upon the successor-in-interest theory. It has alleged no other facts that indicate there is any other basis by which liability can be asserted. Due to the fact that S&C Boat was not a successor-in-interest to SDMCC/Investment Co., and there is no other alleged basis for liability, the Water Board has no foundation for imposing liability on S&C Boat.

As described above, the TCAO and DTR specify that the Water Board's theory of liability as to S&C Boat is that it is liable as a successor to SDMCC.⁶³ Further, the Water Board's responses to discovery demonstrate that its entire basis for liability rests upon the successor-in-interest theory. It has provided no documents or evidence to support that theory, however, and cannot provide such evidence because it does not exist.

a. Written Discovery Shows that the Water Board Has No Theory of Liability Aside from the Corporate Successor-in-Interest Theory.

In response to written requests for discovery propounded by S&C Boat, the Water Board provided responses verified by David Barker, the Branch Chief of the Surface Waters Basins Branch and a Supervising Water Resource Control Engineer at the Water Board. Those responses identified no facts giving rise to any theory of liability based on anything but successor-in-interest theory.

For example, in its response to the Special Interrogatory in which S&C Boat asked the Water Board to "identify all facts in support of the contention . . . that 'Star & Crescent Boat Company . . . caused or permitted the discharge of waste to the Shipyard Sediment Site resulting in the accumulation of waste in the marine sediment,'" the Water Board responded

⁶³ See TCAO, paragraph 5 at p. 4; DTR Finding 5 at p. 5-1.

by referencing sections of Chapters 5 and 6 of the DTR.⁶⁴ The sections contain no facts that support a theory of liability aside from a successor-in-interest theory.

Additionally, in its response to the Special Interrogatory in which S&C Boat asked the Water Board to “identify all facts in support of the contention...that ‘Star & Crescent is the corporate successor of and responsible for the conditions of pollution or nuisance caused or permitted by San Diego Marine Construction Company,’” the Water Board responded by referencing sections of Chapters 5 and 6 of the DTR.⁶⁵ Again, these sections contain no facts that support a theory of liability aside from a successor-in-interest theory. Thus, all allegations that the Water Board asserts against S&C Boat are based upon this defective successor in interest theory, which does not apply in this instance.

b. Depositions Show that the Water Board Has No Theory of Liability Aside from the Corporate Successor-in-Interest Theory.

The Water Board’s written discovery responses identified Water Board employees David Barker and Craig Carlisle among the witnesses with knowledge of the facts supporting the allegation that S&C Boat caused or permitted the discharge.⁶⁶ Its responses identified Water Board employees David Barker and Craig Carlisle among the witnesses with knowledge of the facts supporting the allegation that S&C is the corporate successor of SDMCC.⁶⁷ As a result, S&C Boat participated in the depositions of Mr. Barker and Mr. Carlisle. In response to questions posed in deposition by counsel for S&C Boat, neither Mr. Barker nor Mr. Carlisle identified any evidence that supports S&C Boat’s liability on any basis other than the alleged successor-in-interest theory which is rebutted above.

Specifically, Mr. Carlisle stated that he was aware of no other basis – aside from the allegation based on corporate liability – by which S&C Boat would be a responsible party for the discharge.⁶⁸ Mr. Carlisle also stated that he had seen no document that purported to evidence the transfer of *all* assets and liabilities from Investment Co. to S&C Boat,⁶⁹ which would be the lynchpin of a successor-in-interest argument.

During deposition, Mr. Barker informed S&C Boat’s counsel that all the documents related to SDMCC that he reviewed were in the administrative record, the supplemental record, or Exhibits 1 [the TCAO] and 2 [the DTR].⁷⁰ No documents therein contain facts that support any basis of liability, including a successor-in-interest theory. Further, Mr. Barker

⁶⁴ Regional Board Cleanup Team’s Responses & Objections to Designated Party S&C Boat’s First Set of Special Interrogatories (relevant pages attached as Exhibit 33), pp. 5-7 (Response to Special Interrogatory No. 1).

⁶⁵ See Exhibit 33, pp. 20 – 22 (Response to Special Interrogatory No. 10).

⁶⁶ See Exhibit 33, p. 7 (Response to Special Interrogatory No. 2).

⁶⁷ See Exhibit 33, p. 22 (Response to Special Interrogatory No. 11).

⁶⁸ Deposition of Craig Carlisle, Vol. I, dated February 9, 2011, pp. 144-145 (relevant pages attached as Exhibit 34).

⁶⁹ See Exhibit 34, p. 145.

⁷⁰ Deposition of David Barker, Vol. II, dated March 2, 2011 (relevant pages attached as Exhibit 34), p. 391.

stated that he did not believe he had seen any documents related to Investment Co., S&C Boat's Articles of Incorporation, S&C Boat's meeting minutes, nor offers between Investment Co. and S&C Boat which related to the sale of the harbor excursion business or any other assets of Investment Co.⁷¹ Mr. Barker indicated that it was legal counsel that added the language in the TCAO that assigned liability to S&C Boat.⁷² Mr. Barker further stated that he was not aware of any other basis for liability other than the alleged transfer of *all* of Investment Co.'s assets to S&C Boat,⁷³ which was the basis for the DTR findings by the Water Board and the inclusion of S&C Boat as a "discharger" in the TCAO. As discussed above, no such transfer of *all* of Investment Co.'s assets occurred. The TCAO and DTR findings are fatally flawed.

IV. Conclusion

The Water Board does not allege and cannot prove that S&C Boat engaged in any direct activity at, or related to, the Shipyard Sediment Site. The only basis for the Water Board's assertion of liability against S&C Boat is based upon a flawed corporate successor liability theory. S&C Boat has no successor liability for SDMCC or Investment Co., the entity from which S&C Boat acquired only harbor excursion assets and liabilities four years after SDMCC/Investment Co. gave up all leasehold interest in the Shipyard Sediment Site.

Moreover, S&C Boat did not assume *all* of SDMCC/Investment Co.'s liabilities when it acquired the harbor excursion business. The acquisition of the harbor excursion business did not result in a mere continuation or de facto merger between S&C Boat and SDMCC/Investment Co. because the two companies were owned and operated separately: Investment Co. continued to own and operate several other businesses and own real property until 1991, while S&C Boat separately operated the harbor excursion business. S&C Boat acquired this harbor excursion business for adequate consideration. Finally, there is no evidence that S&C Boat's acquisition of the harbor excursion business was part of a fraudulent transfer. Thus, S&C Boat does not have successor liability for SDMCC or Investment Co.

The Water Board has identified no other fact or theories of liability aside from the successor-in-interest theory, which is herein shown to be inappropriate and without merit. As a result, there is no basis upon which the Water Board can assign liability to S&C Boat.

⁷¹ See Exhibit 35, pp. 393-394.

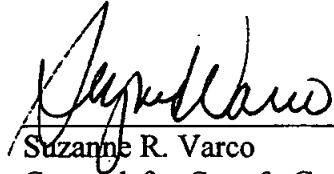
⁷² See Exhibit 35, pp. 394-395.

⁷³ See Exhibit 35, p. 401.

The TCAO must be amended to remove reference to S&C Boat as a responsible party or "discharger." S&C Boat is a distinct corporate entity that does not bear legal responsibility for the contamination allegedly caused or permitted by SDMCC at the Shipyard Sediment Site.

Respectfully Submitted,

OPPER & VARCO, LLP

A handwritten signature in black ink, appearing to read "Suzanne R. Varco", is written over a horizontal line.

Suzanne R. Varco

Counsel for Star & Crescent Boat Company, a
California Corporation

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

2 SAN DIEGO REGION

3 IN THE MATTER OF:

4 TENTATIVE CLEANUP AND
5 ABATEMENT ORDER NO. R9-2011-0001
(formerly No. R9-2010-002)(SHIPYARD SEDIMENT SITE)

6
7 **PROOF OF SERVICE**

8 I am employed in the County of San Diego, State of California. I am over the age of 18
9 and not a party to the within action; my current business address is 225 Broadway, Suite 1900,
San Diego, California 92101.

10 On May 26, 2011, I served the foregoing document(s) described as:

- 11
12 1. **STAR & CRESCENT BOAT COMPANY'S WRITTEN SUBMITTAL OF**
13 **COMMENTS TO THE TENTATIVE CLEANUP AND ABATEMENT**
ORDER NO. R9-2011-0001.

14 on the interested parties in this action listed below in the following manner:

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<p>23 Frederick Ortlieb, Esq. 24 fortlieg@sandiego.gov</p> <p>25 <i>CITY OF SAN DIEGO</i></p>	<p>Kelly E. Richardson, Esq. David Mulliken, Esq. LATHAM & WATKINS LLP 600 W. Broadway, Suite 1800 San Diego, CA 92101 Kelly.richardson@lw.com David.mulliken@lw.com Matthew.luxton@nassco.com</p> <p><i>NATIONAL STEEL & SHIPBUILDING</i></p>

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27
28
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17	<i>SAN DIEGO UNIFIED PORT DISTRICT</i>	
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27	<i>BAE SYSTEMS SHIP REPAIR INC.</i>	<i>BAE SYSTEMS SAN DIEGO SHIP REPAIR INC.</i>
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C. Scott Spear, Esq. U. S. Department of Justice, Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026 <u>Scott.spear@usdoj.gov</u>	Melanie Andrews, Esq. Special Assistant U.S. Attorney U.S. Department of Justice 880 Front Street, Room 6293 San Diego, CA 92101 <u>Melanie.andrews@usdoj.gov</u>
<i>U.S. NAVY</i>	<i>U.S. NAVY</i>

BY REGULAR MAIL: I deposited such envelope in the mail at San Diego, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY ELECTRONIC MAIL The parties agreed that they would serve the papers on the date of filing via electronic mail. These papers were served by electronic mail on today's date.

BY FACSIMILE TRANSMISSION (CRC, Rule 2003 & 2008(e)) The recipient's name and fax number that I used are as shown above. The facsimile machine that I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

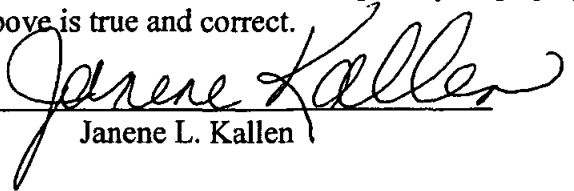
BY OVERNIGHT MAIL (to Hanson Bridgett LLP Only): I deposited such document at the Overnight Express or Federal Express Drop Box located at 225 Broadway, San Diego, CA 92101. The envelope was deposited with delivery fees thereon fully prepaid.

BY PERSONAL SERVICE: I caused such envelope(s) to be delivered by hand to the above addressee(s).

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on May 26, 2011, at San Diego, California. I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.



Janene L. Kallen

List of Attached Exhibits

1. United States Tax Court's opinion in *Estate of Oakley J. Hall, Deceased, Southern California First National Bank, Executor v. Commissioner of Internal Revenue* (1975) T.C. Memo. 1975-141, available online at 1975 WL 2771;
2. Articles of Incorporation of Star and Crescent Boat Co. filed with the California Secretary of State on March 30, 1925;
3. Certificate of Winding Up and Dissolution of Star and Crescent Boat Co., filed with the California Secretary of State on June 13, 1957;
4. Excerpt from First Amended Cross-Claims of the San Diego Unified Port District in the federal action, filed February 25, 2010;
5. SDMCC Leases from 1915 through 1959;
6. SDMCC Lease dated December 3, 1968;
7. San Diego Unified Port District Inter-Staff Communication dated April 14, 1972;
8. Surrender of Port Lease dated July 14, 1972;
9. San Diego Unified Port District Ordinance 584, an Ordinance Accepting Surrender of Lease from San Diego Marine Construction Company and Granting a Lease Option to MCCSD;
10. Certificate of Amendment of Articles of Incorporation of San Diego Marine Construction Co., filed with the California Secretary of State on July 20, 1972;
11. Star and Crescent Investment Company's minutes for its annual meeting of stockholders on December 23, 1977;
12. Star and Crescent Investment Company's resolutions following its July 7, 1978 meeting;
13. Star and Crescent Investment Company's written consent of June 8, 1979;
14. Star and Crescent Investment Company's written consent of March 9, 1981;
15. Star & Crescent Investment Co.'s Certificate of Election to Wind Up and Dissolve, filed with the California Secretary of State on December 23, 1991; Star & Crescent Investment Co.'s Certificate of Dissolution, filed with the California Secretary of State on December 23, 1991; Star & Crescent Investment Co.'s Tax Clearance Certificate, filed with the California Secretary of State on December 23, 1991.
16. Articles of Incorporation of Star & Crescent Boat Company, filed with the California Secretary of State on April 7, 1976;
17. Minutes of Meeting of Board of Directors of Star & Crescent Boat Company dated April 9, 1976;
18. Tideland Use and Occupancy Permit dated March 26, 1976 for tideland area;

19. Tideland Use and Occupancy Permit dated March 26, 1976, for portion of B Street Pier;
20. Lease dated January 2, 1976;
21. Lease dated January 17, 1978;
22. Shareholder certificates for Stephen P. Carlstrom, Judy Hall, and Janet Miles in Star & Crescent Boat Company dated October 26, 1976;
23. Minutes of Special Meeting of Shareholders and Directors of Star & Crescent Boat Company dated October 26, 1976;
24. Shareholders' Agreement and Stock Redemption Agreement of Star & Crescent Boat Company dated September 21, 1977;
25. Minutes of Special Meeting of Directors of Star & Crescent Boat Company dated May 6, 1977;
26. Minutes of a Meeting of the Board of Directors of Star & Crescent Boat Company dated May 18, 1977;
27. Minutes of a Meeting of the Board of Directors of Star & Crescent Boat Company dated June 28, 1977;
28. Minutes of a Meeting of the Board of Directors of Star & Crescent Boat Company dated December 14, 1977 and an attached Memorandum to Stockholders, Star & Crescent Boat Co. dated December 12, 1977;
29. Star & Crescent Boat Company Minutes of Board of Directors Meeting dated September 19, 1979;
30. Star & Crescent Boat Company Minutes of Board of Directors Meeting dated March 4, 1981;
31. Minutes of the Meeting of the Board of Directors of Star & Crescent Boat Company dated February 28, 1983;
32. Agreement of Merger Between San Diego Harbor Excursions, Inc. and Star & Crescent Boat Company and Amendment and Restatement of Articles of Incorporation of Star and Crescent Boat Company, filed with the California Secretary of State on December 24, 1986;
33. Relevant pages from the Regional Board Cleanup Team's Responses & Objections to Designated Party Star & Crescent Boat Company's First Set of Special Interrogatories;
34. Relevant pages from the deposition of Craig Carlisle, Transcript, Vol. I, dated February 9, 2011;
35. Relevant pages from the deposition of David Barker, Transcript, Vol. II, dated March 2, 2011.
36. Relevant pages from the deposition of George Palermo, President of S&C Boat, dated February 22, 2011.

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
(Cite as: T.C. Memo. 1975-141)

H

United States Tax Court
ESTATE OF OAKLEY J. HALL, DECEASED,
SOUTHERN CALIFORNIA FIRST NATIONAL BANK,
EXECUTOR, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE RE-
SPONDENT.

Docket No. 8611-71.

Filed May 15, 1975.

Value of decedent's 100-percent stock interest in San Diego Marine Construction Co. at the date of his death, September 24, 1967, determined.

Jack M. Harrison and Raymond L. Heidemann, for the petitioner.

Melvorn Stein, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

DRENNEN, Judge:

Respondent determined a deficiency in Federal estate tax due from petitioner-estate in the amount of \$587,953.96. By amendment to his answer respondent seeks additional deficiencies in the amount of \$313,836.49. Following certain concessions by the parties, the issues remaining for decision are: (1) The fair market value at the date of decedent's death of 700,000 shares of stock of San Diego Marine Construction Co., which were properly included in decedent's gross estate, exclusive of certain investment real estate owned by the corporation; and (2) the fair market value at the date of decedent's death of the investment real estate located at 201 West Broadway, San Diego, Calif., which the parties agreed should be valued separately and added to the value of the stock of the corporation.

FINDINGS OF FACT

Government Work

Certain facts have been stipulated and are found accordingly.

The petitioner, Southern California First National Bank is a national banking association and is the duly appointed and qualified executor of the will of Oakley J. Hall, decedent in the present case. The decedent died a resident of San Diego, Calif., on September 24, 1967. The estate of the decedent was administered under the jurisdiction of the State of California.

On December 24, 1968, the petitioner filed an estate tax return with the district director of internal revenue at Los Angeles, Calif. The date of death was used as the date of valuation of the estate.

At the time of his death, decedent owned as his separate property 700,000 shares of common stock of San Diego Marine Construction Co. (hereinafter Marine), a California corporation. These shares represented all of the outstanding shares of stock of Marine.

Marine was incorporated under the laws of the State of California in 1938. There have never been any sales of shares of capital stock of Marine from which the fair market value of such shares could be determined as of September 24, 1967.

As of September 24, 1967, Marine operated three divisions, the Marine Division, the Boat Division, and the Investment Division.

The type of work undertaken by the Marine Division consisted principally of naval ship repair and commercial repair, primarily of tuna fishing vessels.

For the taxable year ended September 30, 1967, the Marine Division accounted for 86.7 percent of the corporation's total revenues from operations other than the investment in the property at 201 West Broadway. The Marine Division's gross receipts from government work versus nongovernment work for the fiscal years 1958 through 1967 are set forth below as follows:

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
(Cite as: T.C. Memo. 1975-141)

Year Ended Sept. 30	Amount	Percent of Total	Amount	Percent of Total	Total Amount
1958	\$1,049,665	50.3	\$1,038,017	49.7	\$2,087,682
1959	540,089	33.5	1,073,257	66.5	1,613,346
1960	806,670	38.2	1,306,744	61.8	2,113,414
1961	626,979	34.2	1,206,747	65.8	1,833,726
1962	612,753	30.3	1,411,888	69.7	2,024,641
1963	990,396	39.7	1,507,151	60.3	2,497,547
1964	948,485	40.7	1,381,805	59.3	2,330,290
1965	2,567,933	56.6	1,970,152	43.4	4,538,085
1966	3,999,808	66.9	1,982,361	33.1	5,982,169
1967	4,022,644	75.2	1,327,260	24.8	5,349,904

The Marine Division occupied a 19.2-acre site leased from the San Diego Unified Port District, which consisted of approximately 7.22 acres of industrial land, the remainder being tide land and harbor area seaward of the shipyard bulkheads and shoreline. In addition to this main site, the Marine Division also occupied a 12,525-square foot area adjacent to the shipyard leased from San Diego Gas and Electric Co. and two parking lots located across the shipyard frontage road leased from the Atchinson, Topeka and Santa Fe Railway.

Marine did not have facilities at the above location to repair naval vessels made of steel. This work was done either on the navy vessel or at U.S. Navy drydock facilities at San Diego and Coronado.

On the valuation date, Marine was operating under a lease entered into with the San Diego Unified Port District on February 1, 1944. This lease was due to expire on January 31, 1969. A new lease with the Port Authority was exe-

cuted on December 3, 1968, in which Marine agreed to spend a minimum of \$1,250,000 within the next 5 years to restore the yard. Between October 1, 1967 and June 30, 1972, Marine did make restoration expenditures of over \$1,800,000. This new lease ran for a period of 5 years and gave Marine the option to extend it for nine additional 5-year terms.

Marine, on September 24, 1967, employed approximately 350 people of which 300 represented the Marine Division yard's work force, all of whom were union members. These union members began a strike against the Marine Division on June 30, 1967, which was not settled until September 30, 1967.

As of September 24, 1967, the directors of the corporation were Oakley J. Hall, Sr., Oakley J. Hall, Jr., and William G. Mirow.

The corporate books showed an indebtedness to O. J. Hall, Sr., in the following amounts:

Date	Amount
9-30-62	\$465,611
9-30-63	447,611

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141

(Cite as: T.C. Memo. 1975-141)

9-30-64	273,611
9-30-65	213,611
9-30-66	253,611
9-30-67	193,611

For the years ending September 30, 1962 through September 30, 1967, the decedent did not draw a salary from the corporation nor did he receive or earn interest on the amount shown as loans on the corporate books.

float-pier and a gift shop located at Broadway Pier on Harbor Drive, San Diego, Calif. The assets of the Boat Division included three harbor excursion vessels, four commercial tugboats, and ten assorted barges.

The Boat Division, known as the Star and Crescent Boat Co., which was acquired on March 1, 1961, was a commercial towing and harbor excursion business with a

Marine's profit and loss statements for the taxable years ending September 30, 1962, through September 30, 1967, are as follows:

REVENUE:	1962	1963	1964
Construction operations	\$2,022,278	\$2,497,241	\$2,329,234
Boat operations	924,363	1,194,214	558,342
Real Estate operations	150,994	52,250	52,250
Total Revenue	\$3,097,635	\$3,743,705	\$2,939,826

COST OF OPERATIONS

Prime costs of construction

operations:

Materials	\$ 788,545	\$1,068,653	\$1,081,307
Labor	596,770	709,042	565,122
Boat operations	778,376	1,084,236	508,475
Real Estate operations	101,590	26,117	23,062
Plant overhead, administrative & general expenses	727,758	759,044	615,560
Total cost of operations	\$2,993,039	\$3,647,092	\$2,793,526
PROFIT FROM OPERATIONS	104,596	96,613	146,300

OTHER INCOME (EXPENSE):

Gain on sale of property	-0-	-0-	\$ 159,440
Discounts earned	6,183	7,883	5,107
Interest-net	(407)	(285)	64,790
Miscellaneous	12,683	5,130	35,794
Other income-net	\$ 18,459	\$ 12,728	\$ 265,131
INCOME BEFORE FEDERAL INCOME TAX	\$ 123,055	\$ 109,341	\$ 411,431

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
(Cite as: T.C. Memo. 1975-141)

FEDERAL INCOME TAX	58,489	45,716	176,294
NET INCOME	\$ 64,566	\$ 63,625	\$ 235,137
RETAINED EARNINGS AT BEGINNING OF YEAR	219,613	284,179	347,804
RETAINED EARNINGS AT END OF YEAR	\$ 284,179	\$ 347,804	\$ 582,941
Ship & boat building & repairing	\$3,499,335	\$5,363,759	\$5,349,903
Boat operations	534,444	793,635	823,997
Real Estate operations	52,250	52,250	49,999
Total revenue	\$4,086,029	\$6,209,644	\$6,223,899

COST OF OPERATIONS

Prime costs of ship & boat building & repairing:

Materials	\$1,585,628	\$2,595,529	\$2,590,117
Labor	1,024,083	1,185,697	1,372,706
Boat operations	415,379	578,400	669,496
Real Estate operations	20,559	18,954	9,228
Plant overhead, administrative, & general expenses	1,104,684	1,163,482	1,163,162
Total cost of operations	\$4,150,333	\$5,542,062	\$5,804,709
PROFIT (LOSS) FROM OPERATIONS	\$ (64,304)	\$ 667,582	\$ 419,190
GAIN ON SALE OF VESSELS CONSTRUCTED BY COMPANY	260,597	129,398	-0-
Total	\$ 196,293	\$ 796,980	\$ 419,190

OTHER INCOME (EXPENSE):

Interest income	\$ 73,092	\$ 67,143	\$ 79,587
Interest expense	-0-	(1,145)	(27,502)
Discounts earned	10,600	18,446	12,595
Miscellaneous	19,317	26,878	22,132
Total other income-net	\$ 103,009	\$ 111,322	\$ 86,812
INCOME BEFORE FEDERAL INCOME TAX	\$ 299,302	\$ 908,302	\$ 506,002

FEDERAL INCOME TAX:

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
 (Cite as: T.C. Memo. 1975-141)

Adjustments applicable to prior years	-0-	7,169	(685)
NET INCOME	\$ 299,302	\$ 915,471	\$ 505,317
RETAINED EARNINGS AT BEGINNING OF YEAR	582,941	931,373	901,128
Total	\$ 882,243	\$1,846,844	\$1,406,445
ADD-Federal income tax adjustments	49,130		-0-
Deduct-Adjustments for deferred			
Federal income tax	-0-	-0-	(76,000)
Distributions to shareholder	-0-	(945,716)	(536,613)
RETAINED EARNINGS AT END OF YEAR	\$ 931,373	\$ 901,128	\$ 793,832

A comparative balance sheet for Marine for the taxable years ending September 30, 1962 through September 30, 1967, is set forth below:

Comparative Balance Sheet-San Diego Marine Construction Co.

In Re: Estate of Oakley J. Hall-Valuation Date: September 24, 1967

Assets	For Years Ending September 30,					
	1967	1966	1965	1964	1963	1962
Cash	\$396,539	\$389,177	\$392,405	\$694,509	\$406,315	\$880,254
Notes receivable-current	375,000	350,000	75,000	75,000	.....	.....
Accounts receivable						
Trade	461,553	513,684	207,580	169,415	369,925	319,796
Affiliates	12,655	59,456				79,557
Other	48,727	46,133	56,798	27,932	14,118	13,442
Inventory	124,013	83,824	108,019	93,768	74,755	77,584
Prepaid expenses	42,316	17,614	31,081	23,189	26,934	25,209
Income tax			21,396	21,396	21,396	
Other current assets	291,431	329,296	1,055,340	311,268	439,103	354,085
Total current assets	\$1,752,033	\$1,789,184	\$1,947,613	\$1,416,477	\$1,352,546	\$1,749,927
Notes receivable, less current	\$1,125,000	\$1,500,000	\$ 975,000	\$1,050,000	.....	.....
Property, plant and equipment	1,677,535	1,392,830	1,393,201	1,348,783	743,247	2,041,006
Other assets	.....	.....	.....	.....	.....	.....

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
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Total assets	\$4,554,569	\$4,682,014	\$4,315,814	\$4,015,262	\$3,785,493	\$3,790,933
Liabilities						
Notes payable, current	\$ 560,000	\$ 560,000	\$ 60,000	\$ 39,000	\$ 38,614	\$ 18,000
Accounts payable						
Trade	101,079	208,799	301,840	122,694	133,963	116,175
Affiliates	27,623		29,990	13,169	7,120	24,919
Accrued salaries and wages	32,856	22,229	18,988	27,700	20,065	20,058
Accrued vacation and leave pay	34,024	22,690	24,441	17,938	21,082	18,033
Income tax, current	21,500	.....	64,114	232,692	65,053	193,548
Other current liabilities	88,743	66,756	24,656	11,716	6,310	14,303
Total current liabilities	\$ 865,825	\$ 880,474	\$ 524,029	\$ 464,909	\$ 292,207	\$ 385,036
Notes payable, long term	193,611	253,611	213,611	273,611	447,611	465,611
Deferred Federal Income Tax	54,500	.....	.....	47,000	51,070	.....
Total liabilities	\$1,113,936	\$1,134,085	\$737,640	\$738,520	\$790,888	\$850,647
Capital Stock	\$ 700,000	\$ 700,000	\$ 700,000	\$ 700,000	\$ 700,000	\$ 700,000
Additional paid-in capital	1,946,801	1,946,801	1,946,801	1,946,801	1,946,801	1,956,107
Retained earnings	793,832	901,128	931,373	582,941	347,804	284,179
Total Stockholders' Equity	\$3,440,633	\$3,547,929	\$3,578,174	\$3,229,742	\$2,994,605	\$2,940,286
Total Liabilities and capital	\$4,554,569	\$4,682,014	\$4,315,814	\$4,015,262	\$3,785,493	\$3,790,933
Working Capital Ratio	2.0:1	2.0:1	3.7:1	3.0:1	4.6:1	4.5:1

FNI Acquired from stockholder—Principally land and buildings.

The following table is a comparative statement of the income of Marine for the taxable years ending September 30, 1962 through September 30, 1967. This table reflects adjustments to exclude net rental income from the investment property of Marine and nonrecurring gain on the sale of capital assets in fiscal 1964 as an extraordinary

income item. Since Marine in the fiscal years 1965 through 1967 elected to be treated as a subchapter S corporation, taxes, as estimated in the table, were computed on a standard corporate tax basis. With the one exception noted below, both parties obtained the results as shown in this table.

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
(Cite as: T.C. Memo. 1975-141)

SAN DIEGO MARINE CONSTRUCTION CO.						
COMPARATIVE STATEMENTS OF INCOME ¹						
1962-67						
Years Ended September 30						
	1962	1963	1964	1965	1966	1967
	\$	\$	\$	\$	\$	
Revenue ^c	2,946,641	3,691,455	2,887,576	4,033,779	6,157,394	6,173,900
Cost of Operations:						
Prime Cost of Ship and Boat Repairs:						
Materials	788,545	1,068,653	1,081,307	1,585,628	2,595,529	2,590,117
Labor	596,770	709,042	565,122	1,024,083	1,185,697	1,372,706
Depreciation	224,843	271,506	138,051	145,765	170,251	213,891
Other	1,281,291	1,571,774	985,984	1,374,298	1,572,776	1,618,767
Total	2,891,449	3,620,975	2,770,464	4,129,774	5,524,253	5,795,481
Balance	55,192	70,480	117,112	(95,995)	633,141	378,419
Other Income:						
Gain on sale of vessels constructed by company for sale	-	-	-	260,597	129,398	-
Miscellaneous	18,459	12,728	105,691	103,009	112,466	86,812
Net rental income - 201 West Broadway	49,404	26,133	29,188	31,691	33,296	40,771
Gain on Sale of Capital Assets:						
Vessels	-	-	159,440	-	-	-
Other	-	-	-	-	-	-
Net income	123,055	109,341	411,431	299,302	908,301	506,002
Less Nonrecurring and Investment Income:						
Gain on sale of capital assets	-	-	(159,440)	-	-	-
Net rental income - 201 West Broadway	(49,404)	(26,133)	(29,188)	(31,691)	(33,296)	(40,771)
Net income (adjusted) before						

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federal						
income tax	73,651	83,208	222,803	267,611	975,005	465,231
Less federal income tax ^b	32,799	37,768	106,197	123,165	413,502	216,811
<hr/>						
Net income (adjusted) after federal						
income tax	40,852	45,440	116,606	144,446	461,503	248,420

Notes:

Source: Data provided by the Estate.

FNa Adjusted to eliminate net rental income from investment real property located at 201 West Broadway, San Diego, California, and for nonrecurring gain on sale of capital assets.

FNb As computed by the Estate.

FNc From operations - other than from 201 West Broadway investment property. Parentheses indicate red figures.

FN1 Respondent failed to exclude this item and as a result, computed the net income for FYE 9/30/62 as \$64,566.

In July 1972, Marine sold the Marine Division to Campbell Industries, Inc., a competitor shipyard company in San Diego, for total consideration of approximately \$4.6 million, payable through a combination of cash of \$694,130, a promissory note in the amount of \$750,000, and the remainder by assumption of liabilities. During this time, Campbell had a large backlog of work and needed additional facilities. Consequently Campbell acquired the Marine Division in order to obtain its assets, primary consideration being given to the relatively new lease held by the Marine Division as a very important asset and a major factor in the price paid for the facilities of the Marine Division. Campbell was not interested in acquiring the stock of Marine as a going business.

Marine, on the date of decedent's death, also held investment real property located at 201-251 West Broadway in San Diego, Calif. This property is on the south side of Broadway between Front and Union Streets. The legal description of this property is Lots A, B, C, D, I, J, K, and L, Block 56, Horton's Addition. This real estate has a 200-foot frontage on Broadway and a depth of 200 feet containing 40,000 square feet.

At the valuation date, a part of the property was used as a bus depot for Continental Trailways and had a large parking garage in the rear which was separately rented. The Broadway frontages were divided into smaller store

spaces used as a jewelry store, a souvenir shop, a cocktail lounge, a restaurant, and a waiting room for Continental Trailways.

Improvements on the land consisted of a one-story masonry building containing 40,000 square feet. The northerly 70 feet of the building was divided into stores catering to retail trade. The southerly or rear portion of the building was used as garage and storage space. During the period in issue, this building was approximately 50 years old.

As of the date of valuation, there had been no development of property for commercial office buildings or otherwise of any significance south of Broadway in San Diego.

The U.S. Government had under consideration the construction of a Federal office building and courthouse in San Diego since 1961 or 1962. Marine's investment property was one of several locations considered to be a suitable site for the building. However, a letter from the General Services Administration of the United States to the mayor of San Diego, dated September 8, 1967, indicates that, as of that date, no specific land in San Diego had been selected or approved by the General Services Administration as a site for the Federal buildings project. This letter contained a list of numerous sites which were

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deemed acceptable.

Additionally, this Federal building project was not approved by the Public Works Committees of Congress until May 9, 1968.

Eventually the Federal government, under a purchase agreement dated December 28, 1969, involving an exchange of properties, obtained this property plus additional property as the building site for a new Federal courthouse.

The Federal building site included not only the investment property which had been owned by Marine but also land owned by Mary F. Amaral, the First Gray Line West Corporation, and the City of San Diego. Amaral and First Gray Line were willing to sell their real property for cash but were not interested in trading for excess Federal land.

After the death of decedent, Marine conveyed the investment property to decedent's sons, Oakley J. Hall, Jr., and G. E. Hall, by a deed recorded June 7, 1968. In order to consummate a deal with the Federal government, it was necessary for the Halls to purchase the parcels owned by Amaral, First Gray Line, and the City of San Diego. ^{FN1}

The parcel owned by Amaral was purchased by the Halls on November 6, 1969, for a consideration of \$75,000. On March 16, 1970, the Halls also purchased the land owned by the City of San Diego for \$350,000, and the land owned by First Gray Line for \$250,000.

The investment property at 201 West Broadway, and the adjoining parcels which were purchased by Oakley J. Hall, Jr., and G. E. Hall for a total consideration of \$675,000, were subsequently transferred to the United States of America in exchange for excess Federal land known as the Warren Housing property. The purchase agreement covering this transfer was dated December 28, 1969. The Warren property was conveyed to Oakley J. Hall, Jr., and G. E. Hall by quitclaim deed dated February 27, 1970. Simultaneously, but under a purchase agreement dated November 19, 1969, the Warren property was sold by Oakley J. Hall, Jr., and G. E. Hall to Swan Constructors, Inc., for \$2,300,000. The Halls paid a real estate commission in the amount of \$200,000 to the several real estate brokers who had put the deal together.

The parties have stipulated that for estate tax purposes the value of decedent's separate property interest in a diesel

yacht named the 'Caronia,' as of September 24, 1967, was \$275,000.

ULTIMATE FINDINGS OF FACT

(1) The fair market value of the 700,000 shares of San Diego Marine Construction Co. on September 24, 1967, exclusive of the investment real estate at 201 West Broadway, was \$1,680,000.

(2) The fair market value of the investment real estate located at 201 West Broadway, San Diego, Calif., and owned by Marine on September 24, 1967, was \$850,000.

OPINION

The sole issue in this case involves the determination of the fair market value of 700,000 shares of stock in San Diego Marine Construction Co. owned by decedent, Oakley J. Hall, on September 24, 1967, the date of his death. These shares represent all of the outstanding stock of Marine.

By agreement, both parties addressed themselves to this valuation issue as follows. First, these shares of Marine were valued by each party exclusive of the investment real estate owned by Marine and located at 201 West Broadway, San Diego, Calif. Secondly, separate determinations were made of the value of this real estate. Finally each party added together the two separately computed values to arrive at his determination of the fair market value of the Marine stock. We have followed the approach taken by the parties in determining the total value of the stock in question.

On its Federal estate tax return, petitioner reported the value of the 700,000 shares of Marine to be \$2,185,000. Petitioner now claims that the value of the stock, exclusive of the investment real estate, was \$1,216,000 and that the value of the real estate was \$800,000.

In the notice of deficiency respondent determined the value of the 700,000 shares of Marine to be \$3,133,000. In his answer to an amended petition and in support of his claim for an increased deficiency, respondent claims that the value of the stock, exclusive of the investment real estate, was \$2,600,000 and that the value of the real estate was \$1,100,000.

Section 2001, I.R.C. 1954, ^{FN2} imposes an estate tax on the

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transfer of the taxable estate of a decedent, which, under section 2051, shall be determined by deducting from the value of the gross estate the exemption and deductions provided in Part IV. Sections 2031(a) and 2033 provide in general that the value of the gross estate of a decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, to the extent of decedent's interest therein.

Value of the stock exclusive of the real estate.

The first question for resolution is the fair market value at the date of decedent's death of his 700,000 shares of stock in Marine, exclusive of the investment real estate. Marine's stock is not listed on a stock exchange nor have there been any sales of the stock to assist in determining its fair market value.

The long-standing and accepted definition of fair market value is contained in section 20.2031-1(b), Estate Tax Regs., which states, in pertinent part:

The fair market value is the price at which the property would change hands between a willing

Since the stock of Marine neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. * * *

Estate of Maurice Gustave Heckscher, 63 T.C. 485 (1975).

Since the stock of Marine was not traded on the open market, we must first follow the dictates of section 2031(b), which provides:

Valuation of Unlisted Stock and Securities.-In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

In addition, section 20.2031-2(f), Estate Tax Regs., provides that in valuing stocks and bonds where selling prices or bid and asked prices are lacking, the fair market

value is established by taking the following factors into consideration:

In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the 'other relevant factors' referred to in subparagraphs (1) and (2) of this paragraph are: The good will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case. * * *

The evidence pertinent to this issue consisted primarily of the testimony and valuation reports of petitioner's expert, Thomas P. Morrissey (sometimes hereinafter Morrissey), and respondent's expert, Matthew J. Donohue (sometimes hereinafter Donohue).

Both experts appear to agree that around the valuation date the prospects of the economy in general were favorable. Petitioner's expert, in his report, noted that shipyards, such as Marine, which engage primarily in ship repair work, tend to show somewhat erratic records. Additionally, respondent's expert concluded that the shipbuilding and repair industry is highly competitive and has a tendency to experience cycles of high and low levels of activity. The experts agreed that the industry as a whole had reached a peak of profitability in 1966-7 and that there would continue be relatively high levels of activity within the industry as a result of the continuing needs of the military, particularly the Navy, due to the conflict in Southeast Asia. Respondent's expert added the caveat that 'the industry was faced by problems and uncertainties which led many to believe that 1968 and 1969 would not match very favorable operating results achieved by industry members in 1967.'

Because of the nature of the stock involved, both experts followed the guidelines enunciated in section 2031(b) and section 20.2031-2(f), Estate Tax Regs. Unfortunately the final opinions of these experts as to the fair market value of the stock of Marine on the valuation date, exclusive of the investment real property, differed dramatically with petitioner's expert valuing the stock at \$1,216,000, and respondent's expert at \$2,600,000. While these experts

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
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considered similar factors the vast difference in their respective appraisals of approximately \$1,400,000 resulted from the different application of these factors and the emphasis they placed on each of these separate factors.

Both experts relied heavily on the capitalization of earnings of Marine to determine the value of its stock and in doing so considered the price-earnings ratios and other factors relative to prices being paid for the stock of other corporations listed on stock exchanges which they considered were comparable to Marine. In fact, they chose and analyzed a number of the same corporations in establishing the multiples they applied to the earnings of Marine to determine value. Nevertheless, the large gap between the two experts necessitates a discussion of each appraisal.

Petitioner's expert, Morrissey, in arriving at the fair market value of the stock of Marine, used three basic approaches: (1) capitalization of earnings; (2) capitalization of dividends; and (3) the application of a ratio based on the relationship of market price to book value. After Morrissey arrived at three separate valuation figures, he averaged these amounts together counting the capitalization of earnings approach three times and the other two approaches once.

In establishing a valuation under the earnings approach, Morrissey readjusted the net income of Marine by estimating a salary for decedent at \$50,000 per annum. He also estimated interest charges at a rate of 6 percent on the noninterest-bearing debt which Marine owed to decedent. These additional estimated expenses lowered the net income of Marine to the following amounts:

FYE Sept. 30	Adjusted net income
1962	\$(23,996)
1963	3,312
1964	78,166
1965	108,013
1966	425,494
1967	212,646

Morrissey next determined price-earnings multiples for companies which he considered comparable to Marine. He established yearly price-earnings ratios for each com-

pany by dividing the yearly earnings by the average price of the stock during that year. The following table of price-earnings ratios was constructed by Morrissey:

[Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table.]

.....
 ***** This is piece: 1

EARNINGS PER SHARE AND PRICE EARNINGS MULTIPLES	
OF FIVE COMPARABLE COMPANIES	
2	Average
	Price
6	Nine Months

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		Earnings per share						Earnings		
8								September 30,		
9	Company	Listed	1962	1963	1964	1965	1966	1967		
10			\$	\$	\$	\$	\$	\$	\$	
11	American Shipbuilding Company (Inc)	NYSE	(0.48)	0.29	0.35	1.17	1.63	1.64 - 6/30/67	29.81	
12	Campbell Machine, Inc.	ASE	0.34	0.44	0.59	0.98	2.29	2.22 - 6/30/67	19.88	
13	Layington Shipbuilding Company	OTC	1.53	(1.21)	0.44	3.13	5.85	4.90 - 6/30/67	34.75	
14	Maryland Shipbuilding & Drydock Company	OTC	0.97	(2.66)	3.07	4.03	4.48	4.48 - 12/31/66	32.50	
15	Todd Shipyards Corporation	NYSE	1.95	1.64	(0.01)	5.22	6.24	6.24 - 3/31/67	46.98	
16								Price:Earnings Multiples		
17								Based on Latest		
18								12 Months Earnings and		
19								Average Price		
20			Price:Earnings Multiples Based on Average Annual						Nine Months	
21			Market Prices and Year-End Earnings Per Share						Based	
22									September 30,	
23			1962	1963	1964	1965	1966	1967-68	1964-65	
24									1967	

T.C. Memo. 1975-141, 1975 WL 2771 (U.S. Tax Ct.), 34 T.C.M. (CCH) 648, T.C.M. (P-H) P 75,141, 1975 PH TC Memo 75,141
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25	American Ship Building Company (The)	Deficit	19.2 ^a	18.2 ^a	9.0	8.0			13.5 ^a	
26	Campbell Machine, Inc.		9.2	6.0	5.3	4.8	4.0		9.5	
27	Loring Ship Building Company	Deficit	4.6	14.8	5.0	4.4			7.1	
28	Maryland Ship-building & Dry-dock Company		18.3 ^a	Deficit	5.7	5.8	5.2		6.6	
29	Todd Shipyard Corporation		11.7	14.9 ^a	Deficit	5.7	6.1		6.1	
30	Average, excluding atypical ratios		8.5	6.0	5.5	6.1	5.5	6.3	5.7 7.3	
31	Average, excluding atypical ratios and									
32	excluding American Ship Building and Todd		6.9	6.0	5.5	5.2	4.5	5.6	5.1 7.7	
33	Notes:									
34	Source: Appendix C. Computations by Standard Research Consultants.									

FNa Excluded from averages as atypical, Parentheses indicate red figures.

As stated in a footnote in the table, Morrissey excluded certain ratios which he considered atypical and he also eliminated American Ship Building Company and Todd Shipyards Corp. from consideration claiming that these firms were not comparable. Petitioner's expert was left with three comparables whose average price-earnings

ratio for 1964, 1965, and 1966 were 5.5, 5.2, and 4.5, respectively. The overall average for this 3-year period was 5.1.

Morrissey concluded that based on all relevant factors, the appropriate multiple to be used in capitalizing the historical earnings of Marine should be 5.0. He also determined that the earnings for the latest 3 years and for the latest year were the most significant in view of the upward trend of earnings. Consequently, when the 5.0 multiple was

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applied to the latest 3-year average adjusted net income and latest year net income of Marine and the two resulting figures were then averaged together, Morrissey obtained

the following fair market value based on capitalization of earnings:

Latest 3-year (1965-67)		
average earnings of		
\$248,717 X 5		= \$1,243,585
Latest fiscal year (1967)		
earnings of		
\$212,646 X 5		= \$1,063,230
Indicated fair market		
value on earnings basis		
(average)		= \$1,153,407

Under his dividend approach to fair market value, Morrissey created the following table of dividend yields and

dividend payout ratios of his five comparable companies:

**DIVIDEND YIELDS AND DIVIDEND PAYOUT RATIOS
FIVE COMPARABLE COMPANIES**

Company	1962-66				
	1962	1963	1964	1965	1966
	%	%	%	%	%
Dividend Yields					
American Ship-building Company (The)	Nil	Nil	2.0	1.7	4.2
Campbell Machine, Inc.	3.5	5.7	6.1	4.1	3.5
Levingston Ship-building Company	Nil	2.0	Nil	1.6	2.9
Maryland Ship-building & Dry-dock Company	7.0	3.9	3.4	4.0	4.3
Todd Shipyards Corporation	6.1	5.7	5.2	4.7	3.7
Average ^a	5.5	4.3	4.2	3.2	3.7
Dividend Payout Ratios					
American Ship-building Company (The)	Nil	Nil	35.7	15.0	33.7
Campbell Machine, Inc.	32.4	34.1	32.2	19.4	14.2

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Levingston Ship-building Company	Nil	^d	Nil	8.0	12.8
Maryland Ship-building & Dry-dock Company	128.9 ^e	^d	19.5	23.6	22.3
Todd Shipyards Corporation	71.8 ^c	85.4 ^c	^d	26.8	22.4
Average ^b	32.4	34.1	29.1	18.6	21.1
San Diego Marine Construction Co.	Nil	Nil	Nil	Nil	Nil

Notes:

FNa Of companies paying dividends.

FNb Excluding atypical ratios.

FNc Considered as atypical.

FNd Deficit earnings.

Based on these computations, dividend yield averaged between a high of 5.5 percent in 1962 to a low of 3.2 percent in 1965. Average dividend payout ratio, excluding those which Morrissey deemed atypical, ranged from a high of 34.1 percent in 1963 to 18.6 percent in 1965. Although Marine did not pay any dividends during these years, Morrissey made the assumption that Marine had a dividend paying capacity of 25 percent on the average earnings for the last 3 years (1965-67) of \$248,717, or \$62,179. He also assumed a dividend yield of 5 percent thereby obtaining a fair market value under the dividend approach of \$1,243,580.

Finally, in considering the question of fair market value as related to the book value of a company, Morrissey concluded that there is generally a relationship between the percent earned on common equity and the ratio of market price to book value, i.e., the more a company earns on its common equity, the higher its stock tends to sell in relationship to book value. Following this theory, petitioner's expert devised the following chart for the comparable companies and Marine:

RELATIONSHIP OF PERCENT EARNED ON AVERAGE COMMON STOCK EQUITY AND RATIO OF MARKET PRICE TO BOOK VALUE						
COMPARABLE COMPANIES						
1962-67						
					Latest Available 1967 Data Related to Average	
Five-Year (1962-66) Averages			Market Price Nine Months Through September, 1967			
Percent Earned on Average		Ratio of	Percent Earned on Average		Percent Earned on Average	
			Ratio of		Ratio of	

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Company	Common	Market	Common	Market	Common	Market
	Stock Equity	Price to Book Value	Stock Equity	Price to Book Value	Stock Equity	Price to Book Value
	%	%	%	%	%	%
Campbell Machine, Inc.	26.3	125.6	32.7	130.0	48.1	365.9
Levingston Shipbuilding Company	9.8	58.7	15.6	74.7	19.6	131.5
American Ship Building Company (The)	5.7	81.9	10.1	93.6	13.7	177.2
Maryland Shipbuilding & Drydock Company	4.7	48.2	9.3	51.5	9.8	64.1
Todd Shipyards Corporation	4.7	44.9	5.9	48.5	9.4	54.9
San Diego Marine Construction Co.	4.0		6.9		6.3	

Sources: Appendix C, Table No. 6, Exhibit No. 8. Computations by Standard Research Consultants.

Considering Marine's earnings rate in comparison to the alleged trends for the comparable companies, Morrissey determined a ratio of market value to book value for Marine of 40 percent would be appropriate in determining the price at which the stock would sell if it were freely traded. By applying the 40 percent to Marine's book value at September 30, 1967, of \$3,442,000, petitioner's expert arrived at a fair market value of \$1,376,800.

entire corporation, this factor should not be controlling because there was no indication of an intention to liquidate and a substantial amount of the company's fixed assets investment was in leasehold improvements which could not be liquidated.

It was Morrissey's position that although the stock in question constituted 100 percent of the outstanding stock of Marine and carried with it the authority to liquidate the

After arriving at the three separate fair market value figures, Morrissey averaged them together assigning three times the weight to the value obtained under the earnings approach. The following table represents Morrissey's final calculations of the fair market value of the Marine stock:

FAIR MARKET VALUE			
OF			
CAPITAL STOCK			
OF			
SAN DIEGO MARINE CONSTRUCTION CO.			
SEPTEMBER 24, 1967			
Valuation Approach	Value	Weight	Total
Earnings based on:			

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Three-year (1965-67) average	1,243,580		
Fiscal 1967	1,063,230		
Average	1,163,407	3	3,460,221
Dividends	1,243,580	1	1,243,580
Book value	1,376,800	1	1,376,800
Total			6,080,601
Indicated fair market value (\$1,216,120 rounded)			

Respondent's expert, Donohue, used two approaches in reaching his determination of the fair market value of the Marine stock: (1) Capitalization of earnings, and (2) what could possibly be termed capitalization of cash flow.

Donohue first created a chart which purportedly showed for a 10-year period revenues, adjusted earnings, depre-

ciation, and cash flow of Marine. In determining the adjusted earnings of Marine, Donohue did not further decrease this amount by either an estimated salary for decedent or estimated interest on decedent's loan to Marine. Cash flow as defined by Donohue was the addition of depreciation deductions to earnings. Donohue's table is as follows:

Summary of Revenue, Earnings and Cash Flow
9/30/58 - 9/30/67

Fiscal Year	Revenue	Earnings (Adjusted) (000)	Depreciation	Cash Flow
1967	\$6,174	\$248	\$214	\$462
1966	6,157	462	170	632
1965	4,031	144	146	290
1964	2,888	117	138	255
1963	3,691	45	272	317
1962	2,947	65	225	290
1961	2,328	80	69	149
1960	2,108	93	62	155
1959	1,608	42	60	102
1958	2,079	71	56	127
Five-year average		203	188	391
Ten-year average		137	141	278

Next, respondent's expert analyzed other companies in order to develop multiples. For comparison purposes, he chose six companies whose stocks are publicly traded:

(1) American Ship Building Co.

(2) Campbell Machine, Inc.

(3) Levingston Shipbuilding Co.

(4) Maryland Shipbuilding and Drydock Co.

(5) Todd Shipyards Corp.

(6) St. Louis Shipbuilding-Federal Barge, Inc.

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Donohue concluded that of these six companies, American Ship Building Co. and Campbell Machine, Inc., were not proper comparables. Consequently, he based his analysis on the other four.^{EN3}

price-earnings and price-cash flow multiples for the companies which he considered comparable with Marine. Donohue developed his price-earnings and price-cash flow ratios by dividing the selling price of the stock of each corporation at date of death over a set number of years. In doing so Donohue developed the following table which he included in and referred to in his appraisal report:

To establish a valuation under the ratio of price to earnings and cash flow approach, Donohue also computed

[Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table.]

 ***** This is piece: 1

-Ratios - Market Price/to -										
Dividend yield										
	Net				Latest	10-year	5-year			
	tangible	Latest	10-year	5-year	year	average	average	Latest	10-year	
	asset	year	average	average	cash	cash	cash	year	average	
	value	earnings	earnings	earnings	flow	flow	flow	dividends	dividends	
1	Comparative Corporations to									
2	San Diego Marine Construction Co.									
3										
4										
5										
6										
7										
8										
9	American Ship-building Co.	247.62	18.64	52.24	30.23	10.78	19.55	14.38	2.0	0.7
10	Campbell Machine Inc.	359.27	9.01	33.98	22.25	8.38	-	19.71	1.6	-
11	Levingston Ship-building Co.	128.71	6.99	22.86	13.43	4.87	10.72	7.97	3.6	1.4
12	Maryland Ship-building & Dry-dock Co.	72.58	7.43	11.47	16.28	5.62	7.09	8.71	3.1	4.3
13										
14	St. Louis Ship-	160.66	6.64	-	13.15	4.48	-	7.45	2.5	-

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	building -									
15	Federal Barge, Inc.									
16	Todd Shipyards Corp.	68.37	7.57	24.46	15.69	5.17	11.61	8.61	3.0	3.1
17	Total	1,037.21	56.28	145.01	111.03	39.30	48.97	66.83	15.8	9.5
18	Averages									
19	Arithmetic	172.87	9.38	29.00	18.51	6.55	12.24	11.14	2.6	2.4
20	Median	144.69	7.50	24.46	15.99	5.40	11.17	8.66	2.8	2.3

FN1 Information for 10-year averages not available.

Donohue believed that the most significant tests of value would come from 5 years' average production of earnings. After eliminating American Shipbuilding and Campbell Machine, Inc., Donohue found he had price-earnings ratios for the four other companies which ranged between 13 to 16. He computed Marine's latest 5-year average income as \$203,000 and when he applied the four price-earnings ratios to this figure he obtained values which ranged between \$2,639,000 to \$3,248,000.

Donohue also used another method of valuation which could be characterized as capitalization of cash flow. Cash flow, as used by Donohue, was the earnings plus depreciation deductions. First, respondent's expert established the cash flow for Marine and the other six companies for each year from 1958 through 1967. He then established price-cash flow ratios for the six comparative companies by dividing their respective market prices at the date of death by the cash flow of each company for the latest year, for a 10-year period and for a 5-year period. The following is the result of these calculations:

	Latest Year Cash Flow	10-Year Average Cash Flow	5-Year Average Cash Flow
American Shipbuilding Co.	10.78	19.55	14.38
Campbell Machine Inc.	8.38		19.71
Levingston Shipbuilding Co.	4.87	10.72	7.97
Maryland Shipbuilding & Drydock Co.	5.62	7.09	8.71
St. Louis Shipbuilding - Federal Barge, Inc.	4.48		7.45
Todd Shipyards Corp.	5.17	11.61	8.61
Total	39.30	48.97	66.83
Averages -			
Arithmetic	6.55	12.24	11.14
Median	5.40	11.17	8.66

FN1 Information for 10-year averages not available.

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Donohue again excluded American and Campbell and chose the 5-year average cash flow as most significant. He computed Marine's 5-year average cash flow as \$391,000 and applied to this figure price-cash flow ratios between 7-1/2 and 8-1/2 thereby obtaining values which ranged between \$2,933,000 and \$3,324,000.

Finally, respondent's expert listed the following factors which were instrumental in his final determination of the value of the Marine stock:

- (1) The interest valued was a controlling interest;
- (2) The shipbuilding industry is highly competitive, thereby attaching a higher risk to investment;
- (3) The general condition of the industry was good but a down-turn was predicted;
- (4) Marine's earnings peaked in 1966 and showed a down-turn in 1967;
- (5) Marine's net tangible asset value exclusive of investment real estate was \$3.1 million;
- (6) Long-term debt was relatively small;
- (7) Executive salaries were understated; and
- (8) Marine compared favorably with other industry members.

Donohue concluded that the fair market value of the stock on the valuation date was \$2,600,000.

We recognize that the valuation process is not an exact science. By placing this case before us, these parties are asking us to establish a true fair market value for the property on the valuation date. As we have stated previously, this difficult task could have been better resolved through a discussion and bargaining process involving the acknowledge experts of both the petitioner and respondent whom we believe should be better equipped to reach a proper result. See *Estate of Maurice Gustave Heckscher*, supra. Nonetheless, since this unwelcomed onus has been placed upon this Court, we have, in the exercise of our 'Solomon-like wisdom,' *Morris T. Messing*, 48 T.C. 502 (1967), arrived at our determination of fair market value,

as reflected in our ultimate finding of fact, by weighing all of the facts and circumstances contained in the entire record.

Since Marine was an operating company, both experts accorded primary significance to Marine's earning capacity in valuing its stock. We agree with this approach in this case but since the two experts reached such diverse results with the same approach it is obvious that we, as well as knowledgeable investors, should analyze the variables in the expert's approaches and make our own determination as to how best to use the various factual elements that enter into the computation under the existing circumstances. We must also decide what other factors should be considered, and the weight to be given them, in our search for a realistic, though hypothetical, fair market value.

It appears from a comparison of the two approaches that the single factor which causes the largest divergence in the expert's results is the price to be used in determining the price-earnings ratio of the comparable companies. Donohue used the stock exchange price on the valuation date and applied it to the average earnings over the latest 5 years of the comparable companies to arrive at a multiple of 13 to 16 to be applied to the average of the latest 5 year's earnings of Marine. Morrissey, on the other hand, determined the average price of the comparable's stock for each year taken into consideration and applied those prices to the earnings of the comparables for each of those years to develop his price-earnings ratios. He then totaled these multiples and divided the total by the number of years considered to arrive at the price-earnings ratio he determined for each of the comparables. This reflected multiples of slightly above or below 5 for the various comparables and he decided that a multiple of 5 should be applied to the average of Marine's latest 3 years' earnings, and its latest year's earnings, to determine fair market value on the earnings approach.

We prefer Morrissey's method of arriving at the multiple to be used in determining the value of this stock. In times of wide speculation and resulting fluctuations in the stock market we are extremely doubtful that the price at which a stock is traded on the stock exchange on any particular day is a true reflection of what an investor would pay for the stock if he was looking primarily to the historical earnings of the corporation to determine a fair price. We believe such an investor would give more weight to price-earnings ratio of comparable stocks during each of the

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years under consideration in determining a multiple that he can apply to the historical earnings of a corporation whose stock he is buying to determine the price he would pay for that stock.

However, we cannot ignore entirely the multiples arrived at by Donohue. We think they are obviously too high for use with respect to a corporation engaged in a very competitive, high-risk, and volatile business. The greater the risk, the shorter the time an investor would be willing to count on to recover his investment out of a corporation's earnings, and the smaller the multiples he would use. We conclude that Donohue's multiples are too high despite the fact that he claims support for the value produced by their uses in his cash-flow analysis. We accept the fact that a cash-flow analysis may be a useful supplementary tool to be used by an appraiser or investor to determine whether there are factors in a corporation's financial condition not revealed by an analysis of earnings that would make him hesitate to accept the indicated value, but we do not believe the cash-flow analysis used by Donohue would be used per se by investors to determine value. We find ample support for this conclusion in Exh. 48 'Cash Flow' Analysis and the Funds Statement, by Perry Mason, introduced into evidence by petitioner but relied on by both parties on brief.

Nevertheless, giving due weight to Donohue's appraisal and to other factors which we believe should be taken into consideration, we believe the multiple of 5 developed by Morrissey is too low.

In addition to the comparable companies and their respective price-earnings ratios, we believe the following factors would also be critical in the development of a proper multiple if the fair market value of Marine's stock is to be stated in terms of price-earnings ratios:

(1) The interest being valued is a 100-percent interest. This should add to the value of decedent's stock because of the unencumbered control it gives for determining what will be done with the business.

(2) The lease from the Port Authority was one of the most important assets of Marine and the existing lease was due to expire on January 31, 1969. There was no assurance at the time of decedent's death that this lease would be renewed; and it was recognized that, if renewed, Marine would be required to spend a considerable sum to upgrade the improvements on the property;

(3) At the valuation date, Marine was experiencing a strike, which began in June 1967 and ended after decedent's death;

(4) Decedent appears to have been the guiding genius of Marine and he apparently kept such tight reins on the business that neither of his sons could develop much interest in the business;

(5) Marine's operation was relatively small in comparison with other companies in the industry and its facilities were rather limited;

(6) Marine's adjusted book value at September 30, 1967, was \$3,442,000.

We have concluded that based on all the available evidence a hypothetical buyer of decedent's stock in Marine at the time of decedent's death would be willing to pay 7 times the earning capacity of Marine.

There is also a difference in the experts' opinions of the earning capacity of Marine, but the difference is not so great as to cause us much concern. By taking the average of the latest 5 years of Marine's earnings, with no adjustments for salaries or interest, Donohue arrived at a figure of \$203,000 as Marine's earning power. Strangely enough, Morrissey arrived at the higher figure of \$248,000 as Marine's earning power despite adjusting its reported income downward for salaries and interest. This was because he concluded that the latest 9 months' earnings and the average of the latest 3 years' earnings would better reflect Marine's potential earnings in the future. We would take a middle position on this and use Marine's earnings over the latest 4 years as a guide to prognosticate the future earnings. A turnaround in Marine's profitability appears to have occurred in 1964 and despite the falloff in Marine's profits in 1967 when compared to 1966, the prospects of continued good business activity in the industry seem well founded. Giving special emphasis to its latest 4 years' earnings, but without simply relying on the mathematical average of those years, we conclude that a reasonable earning capacity for Marine to be used in arriving at a valuation figure through the capitalization of earnings would be \$240,000. As stated by the Court of Claims in Central Trust Company v. United States, 305 F.2d 393, 404:

'Prior earnings records usually are the most reliable guide as to the future expectancy, but resort to arbitrary five-or-ten-year averages without regard to current trends or fu-

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ture prospects will not produce a realistic valuation. * * *

By applying our multiple of 7 to this earning capacity we arrive at a figure of \$1,680,000 which, in our best judgment, was the fair market value of decedent's stock of Marine at the time of his death.

In reaching our conclusion we have given little weight to petitioner's theory of capitalizing assumed dividend paying capacity because we do not believe it is relevant here. Marine paid no dividends until it became a subchapter S corporation and then it distributed all of its earnings. We have not overlooked the fact that Marine had a book value of \$3,442,000 at September 30, 1967, but we deem it quite unlikely that such a value could have been realized if the company had been liquidated; furthermore, there was no indication in the evidence that there was any intent to liquidate the company at the time of decedent's death. Nor have we ignored completely the fact that Marine's assets were sold to Campbell for approximately \$4,600,000 in 1972. However, this sale occurred about 5 years after decedent's death after Marine had obtained a renewal lease with options to extend it to 50 years, and after Marine had spent about \$1,800,000 for improvements to the property. Furthermore, not much cash was received on the sale and the sale took place because of Campbell's special need of the facilities at that time, so we have given little weight to this factor.

Value of the investment real estate.

Our next task is to determine the fair market value at the date of decedent's death of the real property owned by Marine located at 201-251 West Broadway in San Diego, Calif.

Petitioner offered as evidence in support of its position that the value of the property was \$800,000 the appraisal report and testimony of its expert, Emmett J. McKanna. McKanna had been commissioned by the General Services Administration in 1968 to render an opinion on the fair market value of eleven parcels of real estate, including subject property, in connection with a study of possible sites for a Federal building project. McKanna's appraisal report and opinion reflected a value as of September 15, 1968, approximately 1 year after decedent's death. McKanna employed the following three generally accepted approaches in valuing real property:

(1) The cost approach;

(2) The income approach, and

(3) The comparative market approach.

Using these approaches he arrived at a fair market value for the subject real estate of \$850,000 as of September 15, 1968.

McKanna's appraisal report appears to be a well-documented study of the subject property. McKanna defined the highest and best use of land concept, which is an important ingredient in land valuations, as the most profitable Likely, and legal use to which the property is adapted and for which there is demand. In his report McKanna stated;

Highest and best use of the property is considered to be a combination commercial and retail usage in line with the existing (sic) usages of the building. This estimate is made in light of the existing improvements and is in keeping with other usages of property in the neighborhood.

We will forego a detailed analysis of McKanna's methods of analysis because respondent's primary attack on McKanna's appraisal was disagreement with his conclusion as to the highest and best use of the property. Furthermore, McKanna's evidence was the only evidence offered which we would consider to be an expert's opinion of value.

Respondent's only evidence of value offered at the trial was the testimony of Harold Pierce, an estate and gift tax agent for the Internal Revenue Service who had prepared the report on which the Commissioner determined the fair market value of this property in his notice of deficiency. We do not question Pierce's qualifications as an expert real estate appraiser, but his testimony was limited to an explanative of how he arrived at the valuation figure used in his report, which was a mathematical calculation from what we consider to be unjustified assumptions based on hindsight. Pierce's report was prepared in late 1969 or 1970. He testified that he did not appraise this real estate 'in the sense of making a formal appraisal report * * *'. Pierce concluded that the property had fair market value as of the date of decedent's death of While respondent argues that Pierce concluded that the highest and best use of this property was for an office building, we believe it is clear from Pierce's testimony and his method of determining the value of this property that he concluded its

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highest and best use was for the Federal courthouse and office building that is presently being constructed on the property. By the time Pierce made his report the site for the Federal building had become fixed and Pierce apparently thought the project had been approved prior to decedent's death. The evidence is to the contrary; the project itself was not approved by Congress until May of 1968 and the site was not actually settled until sometime after that. There was no assurance on the valuation date that subject property would be used for a Federal office building and a valuation based on the assumption that it would be used for that purpose was neither justified nor well founded.

Pierce's assumption also led him to use a method for determining the value of this property which is questionable. While Pierce testified that he took into consideration sales of comparable properties he offered no evidence about the comparables he used. It appears that Pierce relied primarily on the transactions by which the Halls acquired the remainder of the property needed by the Federal government, exchanged it and subject property for the Warren tract which was owned by the government, and then sold the Warren tract to Swan Constructors, Inc., in November of 1969.

The Halls acquired the remainder of the land needed by the government for a total of \$675,000. After the exchange they sold the Warren tract for \$2,300,000. Pierce subtracted the \$675,000 and a \$200,000 real estate commission paid by the Halls from the \$2,300,000 sales price of the Warren tract and attributed the balance of \$1,425,000 to the Broadway property originally owned by Marine. He then discounted that figure by about 6 percent for each of the years between the valuation date and the date of the sale to arrive at his value of \$1,100,000 for the Broadway property as of the date of decedent's death. This is not an acceptable method for determining the fair market value of subject property as of the date of decedent's death and we can give it no weight.

We are thus left with McKanna's appraisal as the only reliable evidence of fair market value. His appraisal approach was sound and in accord with generally accepted appraisal methods and we have no reason to question the validity of the comparables he used. We accept his appraisal figure of \$850,000 as the fair market value of the property as of September 24, 1967. Petitioner would have us discount this figure by 6 percent for the claimed increase in value of the property between the valuation date and McKanna's appraisal date. McKanna did not testify

that a 6-percent discount should be applied to his valuation figure and we have no competent evidence that would justify a 6-percent discount.

Furthermore, we believe some consideration should have been given to the possibility that the property might be used for a Federal or other office building location. The property was well located in downtown San Diego and the building on the property was a one-story structure about 50 years old. We believe there was a likelihood that in a growing city like San Diego this property would be converted to a more profitable use than the commercial and retail use for which it was being used in September of 1967. Consideration of this factor would tend to raise the value even at the date of decedent's death. So we will not apply a discount to McKanna's appraised value but will accept it as the fair market value of subject property on the valuation date.

Adding the \$850,000 value of the real estate to the \$1,680,000 we have found as the value of the stock exclusive of the real estate, we conclude that the total value of decedent's stock in Marine at the date of his death was \$2,530,000.

Decision will be entered under Rule 155.

FN1. Some of this land was encumbered by leases but they were apparently eliminated prior to the ultimate exchange between decedent's heirs and the Federal government.

FN2. All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise stated.

FN3. Parenthetically, we note that petitioner's expert studied five of the six corporations examined by respondent's expert, the only exception being St. Louis Shipbuilding-Federal Barge, Inc.; however, petitioner's expert excluded American Shipbuilding and Todd Shipyards Corp. as comparables.

Tax Court 1975.
Estate of Hall v. C.I.R.
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ARTICLES OF INCORPORATION

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STAR AND CRESCENT BOAT CO.

FILED

in the office of the Secretary of State
OF THE STATE OF CALIFORNIA

MAR 30 1925

FRANK C. JORDAN
SECRETARY OF STATE
By *Frank C. Jordan*

Ralph E. Jenney
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San Diego California

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HALL

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ARTICLES OF INCORPORATION

o f

STAR AND CRESCENT BOAT CO.

Ralph E. Jenney
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614 Spreckels Building
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ARTICLES OF INCORPORATION

o f

STAR AND CRESCENT BOAT CO.

KNOW ALL MEN BY THESE PRESENTS:

We, the undersigned, all of whom are residents and citizens of the State of California, do hereby voluntarily associate ourselves for the purpose of forming a corporation under the laws of the State of California.

And we hereby set forth, declare and certify:-

FIRST

The name of said corporation is STAR AND CRESCENT BOAT CO.

SECOND

The objects and purposes for which, and for any of which, this corporation is formed are to do all or any of the things herein set forth, to the same extent as natural persons might or could do, viz:-

To build, rebuild, alter, lease, buy, sell, exchange, hold, improve, mortgage, hypothecate, repair, operate, manage, conduct and/or generally deal in and with ferries, vessels, lighters, tugs, dry docks, marine ways, sight-

seeing cars, automobiles, trucks and/or other vehicles, aeroplanes, balloons, hydroplanes, dirigibles, and/or other means or ways of transportation:

To buy, build, rebuild, alter, tear down, lease, sell, exchange, hold, improve, mortgage, hypothecate, operate, manage, conduct and/or generally deal in and with warehouses, store-rooms, storage buildings, factories, office buildings, store buildings, dwelling houses, apartment houses, elevators, hotels, institutions, wharves, barns, docks, piers, basins, ships, machinery, and other structures of any material or kind whatsoever, or any part thereof or any interest of any sort therein:

To manufacture, create, ship, transport, import and/or export, goods, wares, and merchandise of any and every nature, class and description; to engage in freighting, lighterage, dredging, wharfage, and warehouse business, to load and unload vessels of all kinds and descriptions:

To buy, contract for or otherwise acquire, hold, own, lease, mortgage, hypothecate, pledge, sell, assign, and transfer, or otherwise dispose of, or turn to account, to

invest, trade, deal in and with, goods, wares and merchandise, and real and personal property of every nature, class and description, and any interest of any nature whatsoever therein, and any rights, licenses, easements, franchises, or privileges connected therewith, without restriction as to location, and without limit as to amount:

To acquire, and to pay for in cash, stock, bonds or other security or property of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association, corporation, or trusteeship; and to carry on any business, concern, or undertaking of any nature whatsoever:

To apply for, acquire, hold, use, register, sell, develop, assign, lease, grant licenses in respect of, mortgage, hypothecate, or otherwise dispose of or deal with letters patent of the United States and/or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, brands, labels, trademarks and trade names, relating to or useful in connection with any business of this corporation:

To enter into, make, perform, and carry out contracts of any and every kind for any lawful purpose, without limit as to amount, with any person, firm, association or corporation:

To borrow money, and to make, draw, accept, endorse, discount, execute, guarantee and issue promissory notes, bills of exchange, warrants, bonds, debentures, obligations and evidences of indebtedness, of any and every kind and nature whatsoever, negotiable or non-negotiable, transferable or non-transferable, without limit as to amount; and to mortgage, hypothecate, pledge and otherwise charge any and all of its properties, rights, privileges and franchises to secure the payment thereof, or any part thereof:

To lend money; to subscribe for, purchase or otherwise acquire, and to hold for investment or otherwise, for such time as may be desired, with the same rights, powers and privileges of ownership therein as may be permitted to natural persons, (including the right to vote the same, if any), and to use, sell, assign, exchange, transfer, mortgage, pledge or otherwise deal with or dispose of, the shares, stocks, bonds, debentures, notes, scrips, certificates of indebtedness, and/or other obligations, securities or evidences of indebtedness of any

corporation, firm, association, company, and/or trusteeship of any and every nature whatsoever, wheresoever organized or existing, and whether now or hereafter organized; to merge or consolidate with any corporation, firm, association, company or trusteeship in such manner as may be permitted by law; to aid in any manner any person, corporation, firm, association, trusteeship and/or partnership, whose obligations, stocks, bonds or other debts are held or in any manner guaranteed by the corporation, or in which the corporation is any way interested; to guarantee the payment of dividends upon any stock, or the principal or interest, or both, of any bonds or other obligations, and/or the performance of any contracts:

To have one or more offices; to carry on all or any of its operations and business, and, without restriction or limit as to amount or location, to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

To organize, conduct and maintain an agency for the selling of policies of insurance issued by any Insurance Company or Companies, domestic or foreign, and to act as agent for any insurance company of any kind, doing any sort of insurance business of any nature whatsoever; to act as agent, broker or representative of the owner or other person, firm, association, corporation or other form of business organization, having or claiming to have any interest of any nature whatsoever, in real, personal and/or mixed property;

To remunerate any person, firm, corporation, or other form of business organization for services rendered or to be rendered in selling, pledging or guaranteeing the disposal of the shares of the capital stock of this corporation, and/or any notes, bonds or other obligations or evidences of indebtedness of this corporation that may be issued from time to time, and/or any other property of this corporation, real, personal, or mixed:

To do and perform every act and thing necessary, suitable or proper to carry out the above enumerated purposes, or any above enumerated purpose, or to attain any of the objects, or further any of the powers herein set forth,

either alone or in association with any corporation, company, firm, trusteeship, or individual, and to do any other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the business or powers herein enumerated, or any part or parts thereof, whether the said acts or things are done in the State of California, United States of America, or in any other states, jurisdictions, districts, territories, and/or colonies of the United States of America, and/or in any foreign country or countries, provided the same be not inconsistent with the laws relative thereto; and to have, enjoy and exercise all the rights, powers and privileges which are now, or which may hereafter, be conferred upon corporations, organized under the act hereinafter referred to or under the same statutes, and to do any and all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

THIRD

The place where the principal business of said Corporation is to be transacted is in the City of San Diego, County of San Diego, State of California.

FOURTH

The term for which said Corporation is to exist is Fifty (50) years from and after the date of its incorporation.

FIFTH

The number of directors of this Corporation shall be Three (3) and the names and residences of those who are appointed for the first year are as follows:

<u>NAME</u>	<u>WHOSE RESIDENCE IS IN OR AT</u>
O. J. Hall	San Diego, California
Ralph J. Chandler	Los Angeles, California
George Burnham	San Diego, California

SIXTH

The amount of Capital Stock of said Corporation is One Hundred Thousand Dollars (\$100,000.00) and the number of shares into which it is divided is One Thousand (1,000) Shares of the par value of One Hundred Dollars (\$100.00) each.

SEVENTH

The amount of said Capital Stock which has already been subscribed is Three Hundred Dollars (\$300.00), and the following are the names of the persons by whom the same has been subscribed and the number of shares subscribed by each.

<u>NAME OF SUBSCRIBER</u>	<u>NUMBER OF SHARES SUBSCRIBED</u>	<u>AMOUNT</u>
O. J. Hall	One	\$100.00
Ralph J. Chandler	One	100.00
George Burnham	One	100.00

IN WITNESS WHEREOF, we have hereunto set our hands on this 19th day of March, 1925.

W. J. Hall

Ralph J. Chandler

George Burnham

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 19th day of March,
1925, before me, RALPH E. JENNEY, a Notary Public
in and for said County and State, residing there-
in, duly commissioned and sworn, personally ap-
peared O. J. HALL, RALPH J. CHANDLER, and GEORGE
BURNHAM, known to me to be the persons whose names
are subscribed to the within instrument, and
acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my notarial seal the
day and year in this Certificate first
above written.

Ralph E. Jenney
Notary Public in and for said County and
State.

CERTIFICATE OF WINDING UP AND DISSOLUTION

113516
FILED (2)

OF D 5021

In the office of the Secretary of State
of the State of California

STAR AND CRESCENT BOAT CO.
a California corporation

JUN 13 1957
FRANK N. JORDAN, Secretary of State
By *Allen S. Hynes*
Deputy

The undersigned, O. J. Hall and O. J. Hall, Jr., do hereby certify and state that they are a majority of the Board of Directors of STAR AND CRESCENT BOAT CO., a California corporation, and they do further hereby certify and state:

ONE: That STAR AND CRESCENT BOAT CO., is a corporation duly organized and existing under and by virtue of the laws of the State of California; that the Board of Directors of said corporation consists of three (3) directors and that the undersigned are two (2) of said directors and constitute a majority of said Board of Directors.

TWO: That on the 14th day of January, 1957, a certificate, signed and verified in accordance with Section 4603 of the California Corporations Code, was duly filed in the office of the Secretary of State of the State of California, stating, among other things, that said corporation had elected to wind up and dissolve; that a copy of said certificate, duly certified by said Secretary of State, was thereafter on the 26th day of April, 1957, duly filed in the office of the County Clerk of the County of San Diego, State of California, being the County in which the principal office of said corporation is located.

THREE: That the Directors of said corporation have heretofore caused written notice of the commencement of the proceeding for such voluntary winding up and dissolution of said corporation to be given by mail to all its shareholders and to all its known creditors and claimants whose addresses appear on the records of said corporation, in accordance and full compliance with the provisions of Section 4605

of the California Corporations Code.

FOUR: That said corporation has been completely wound up.


FIVE: That said corporation's known debts and liabilities have been actually paid or adequately provided for by the assumption of payment of all such unpaid debts and liabilities in good faith, by O. J. Hall, who is a financially responsible person, whose business address is 656 Spreckels Building, San Diego 1, California, and whose residence address is 635 San Elijo Street, San Diego 6, California, pursuant to an agreement dated April 30, 1957, between said corporation, said Star and Crescent Boat Co. and said O. J. Hall, by virtue of which said O. J. Hall assumed the payment of and became responsible for all of the debts and liabilities of said corporation, said Star and Crescent Boat Co., remaining unpaid as of the close of business April 30, 1957.

SIX: That all of the known assets of said corporation, said Star and Crescent Boat Co., have been distributed to its sole shareholder, said O. J. Hall, constituting the holder and owner of all of the issued and outstanding shares of stock and representing all of the voting power of said corporation, said Star and Crescent Boat Co.


SEVEN: That all taxes imposed on said corporation under the Bank and Corporation Tax Law have been paid. That the Franchise Tax Board of the State of California, under date of May 21, 1957, issued its certificate of satisfaction or Tax Clearance Certificate wherein it is recited and certified that all taxes imposed on said corporation, said Star and Crescent Boat Co., under the Bank and Corporation Tax Law have been paid or secured, for the period up to and including June 30, 1957; that said certificate of satisfaction or Tax Clearance Certificate is filed herewith with the Secretary of State

of the State of California.

IN WITNESS WHEREOF, the undersigned have executed this certificate
on the 11 day of June, 1957.



(O. J. Hall)



(O. J. Hall, Jr.)

Constituting a majority of the Board
of Directors of STAR AND CRESCENT
BOAT CO., a California corporation.

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13 Attorneys for Defendant/Counter-Claimant,
14 Cross-Claimant/Cross-Defendant
SAN DIEGO UNIFIED PORT DISTRICT

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 CITY OF SAN DIEGO,

18 Plaintiff,

19 v.

20 NATIONAL STEEL & SHIPBUILDING
COMPANY; et al.,

21 Defendants.

22
23 AND RELATED COUNTER ACTION

24 THE SAN DIEGO UNIFIED PORT
25 DISTRICT, a public agency,

26 Cross-Claimant,

27 v.

28 NATIONAL STEEL & SHIPBUILDING

Case No. 09 CV 2275 W WVG

**FIRST AMENDED CROSS-CLAIMS OF
THE SAN DIEGO UNIFIED PORT
DISTRICT FOR:**

**Cost Recovery, CERCLA § 107;
Contribution, CERCLA § 113 and Oil
Pollution Act §§ 2702 and 2709;
Federal Declaratory Relief;
Contribution and Indemnity, Health & Safety
Code § 25300 et seq.;
Declaratory Relief, Health & Safety Code
§ 25300 et seq.;
Cost Recovery, Water Code § 13304;
Declaratory Relief;
Equitable Indemnity;
State Contribution;
Continuing Public Nuisance;
Continuing Public Nuisance Per Se;
Continuing Private Nuisance;
Negligence;
Negligence Per Se;**

Case No. 09 CV 2275 W WVG
FIRST AMENDED CROSS-CLAIMS OF THE
SAN DIEGO UNIFIED PORT DISTRICT

1 COMPANY; NATIONAL STEEL &
2 SHIPBUILDING CORPORATION;
3 NATIONAL IRON WORKS; MARTINOLICH
4 SHIP BUILDING COMPANY; SOUTHWEST
5 MARINE, INC.; BAE SYSTEMS SAN DIEGO
6 SHIP REPAIR, INC.; SAN DIEGO MARINE
7 CONSTRUCTION COMPANY; STAR AND
8 CRESCENT BOAT COMPANY; STAR AND
9 CRESCENT INVESTMENT COMPANY;
10 STAR AND CRESCENT FERRY COMPANY;
11 SAN DIEGO MARINE CONSTRUCTION
12 CORPORATION; MCCSD; CAMPBELL
13 INDUSTRIES; SAN DIEGO GAS &
14 ELECTRIC; UNITED STATES NAVY; CITY
15 OF SAN DIEGO, and ROES 1-100, inclusive,

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Cross-Defendants.

**Continuing Trespass;
Express Contractual Indemnity;
Breach of Contract**

DEMAND FOR JURY TRIAL

1 70. The Port District is informed and believes, and thereon alleges, that the primary
2 categories of materials used at the Martinolich leasehold include, but are not limited to, abrasive
3 grit (sometimes consisting of slag collected from coal-fired boilers and containing iron, aluminum,
4 silicon, calcium oxides, copper, zinc, and titanium), paint (containing copper, zinc, chromium,
5 lead, and tributyltin fluoride or tributyltin oxide), and miscellaneous materials (including oils,
6 lubricants, grease, fuels, weld, detergents, cleaners, rust inhibitors, paint thinners, hydrocarbon and
7 chlorinated solvents, degreasers, acids, caustics, resins, adhesives/cement/sealants, and chlorine).

8 71. The Port District is informed and believes, and thereon alleges, that the primary
9 categories of waste generated by Martinolich's operations include, but are not limited to, abrasive
10 blast waste including spent grit, spent paint (containing copper and tributyltin antifouling
11 components, zinc, chromium, and lead), marine organisms, and rust; fresh paint; bilge waste/other
12 oily wastewater (containing petroleum products, detergents and cleaners); blast wastewater
13 (containing spent abrasive, paint, rust, marine organisms, and rust inhibitors such as diammonium
14 phosphate and sodium nitrate); oils; waste paints/sludges/solvents/thinners; construction/repair
15 waste and trash; and miscellaneous wastes (including lubricants, grease, fuels, sewage, boiler
16 blowdown, condensate, discard, acid wastes, caustic wastes, and aqueous wastes).

17 72. The Port District is informed and believes, and thereon alleges, that waste,
18 including hazardous substances and hazardous waste, was discharged and/or released from the
19 Martinolich leasehold directly into San Diego Bay and/or into the City's MS4 which, in turn,
20 discharged and/or released said hazardous waste and hazardous substances directly into San Diego
21 Bay at the Shipyard Sediment Site.

22 • San Diego Marine Construction Company and The Star And Crescent Companies

23 73. The Port District is informed and believes, and thereon alleges, that from about
24 1914 to 1963, the San Diego Marine Construction Company, the Star and Crescent Boat
25 Company, a division of San Diego Marine Construction Company, the Star and Crescent Boat
26 Company; Star and Crescent Investment Company, and/or the Star and Crescent Ferry Company
27 (sometimes collectively, the "SDMCC Defendants") leased tidelands property from the City at and
28 near the Shipyard Sediment Site, upon which the SDMCC Defendants owned and operated a ship

1 repair and construction facility for the U.S. Navy and commercial customers. The Port District is
2 informed and believes, and thereon alleges, that from about February 1963, when the Port District
3 statutorily assumed its responsibilities as trustee for the San Diego Bay tidelands and inherited the
4 tidelands leases from the City, until about July 1972, when the lease was surrendered, San Diego
5 Marine Construction Company leased the land on which its facilities operated from the Port
6 District under written leases.

7 74. The Port District is informed and believes, and thereon alleges, that the SDMCC
8 Defendants' activities and industrial processes included, but were not limited to, surface
9 preparation and paint removal, paint application, tank cleaning, mechanical
10 repair/maintenance/installation, structural repair/alteration/assembly, integrity/hydrostatic testing,
11 paint equipment cleaning, engine repair/maintenance/installation, steel fabrication and machining,
12 electrical repair/maintenance/installation, hydraulic repair/maintenance/installation, tank
13 emptying, fueling, shipfitting, carpentry, and refurbishing/ modernization/cleaning. The Port
14 District is informed and believes, and thereon alleges, that the SDMCC Defendants' facilities for
15 these activities and processes included, but were not limited to, floating dry docks, marine
16 railways and cranes enabling ships to be launched or repaired. In addition, the Port District is
17 informed and believes, and thereon alleges, that all surface water runoff from the SDMCC
18 Defendants' leasehold discharged directly into San Diego Bay.

19 75. The Port District is informed and believes, and thereon alleges, that the primary
20 categories of materials used at the SDMCC Defendants' leasehold include, but are not limited to,
21 abrasive grit (sometimes consisting of slag collected from coal-fired boilers and containing iron,
22 aluminum, silicon, calcium oxides, copper, zinc, and titanium), paint (containing copper, zinc,
23 chromium, lead, and tributyltin fluoride or tributyltin oxide), and miscellaneous materials
24 (including oils, lubricants, grease, fuels, weld, detergents, cleaners, rust inhibitors, paint thinners,
25 hydrocarbon and chlorinated solvents, degreasers, acids, caustics, resins,
26 adhesives/cement/sealants, and chlorine).

27 76. The Port District is informed and believes, and thereon alleges, that the primary
28 categories of waste generated by the SDMCC Defendants' operations include, but are not limited

1 the Shipyard Sediment Site, the City's Complaint, and for any and all other claims arising out of or
2 relating to the contamination at or into the Shipyard Sediment Site, including, but not limited to,
3 all expenses and costs (including reasonable attorneys' fees and expert fees), pursuant to their
4 respective leases and TUOPs as alleged herein.

5 14. Against Campbell, BAE Systems, SDG&E, NASSCO and SDMCC, and each of
6 them, for damages arising from their respective breaches of contract in an amount according to
7 proof at trial.

8 15. Against all Cross-Defendants for prejudgment interest, and costs in an amount to be
9 determined at the time of trial;

10 16. Against all Cross-Defendants for the Port District's reasonable costs and expenses
11 of litigation, including reasonable attorneys' fees, expert witness fees, consulting fees, and related
12 expenses; and

13 17. Against all Cross-Defendants for such other and further relief as the Court deems
14 just and proper.

15 Dated: February 25, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

17 By: /s/ Sandi L. Nichols

Sandi L. Nichols
Kathryn D. Horning
Attorneys for Defendant/Counter-Claimant/
Cross-Claimant/Cross-Defendant
The San Diego Unified Port District

20 **DEMAND FOR JURY TRIAL**

21 Cross-Claimant, the San Diego Unified Port District, hereby demands a jury trial as
22 provided by Rule 38(a) of the Federal Rules of Civil Procedure.

23 Dated: February 25, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

25 By: /s/ Sandi L. Nichols

26 Sandi L. Nichols
Kathryn D. Horning
Attorneys for Defendant/Counter-Claimant/
Cross-Claimant/Cross-Defendant
The San Diego Unified Port District

L E A S E .

THIS INDENTURE, made and entered into this 5th day of April, A. D. 1919, by and between The City of San Diego, a municipal corporation in the County of San Diego, State of California, hereinafter designated as the City, and the San Diego Marine Construction Company, a corporation, organized and existing under and by virtue of the laws of the State of California, hereinafter designated as the Lessee.

WITNESSETH:

That the said City does by these presents demise and lease unto the said Lessee all those lands bordering and extending into the Bay of San Diego and being a portion of those lands conveyed to the City of San Diego by the State of California through the provisions of that certain Act of the Legislature of the State of California, entitled as follows: "An Act conveying certain tide lands and land lying under inland navigable waters situated in the Bay of San Diego to the City of San Diego in furtherance of navigation and commerce and the fisheries, and providing for the government management and control thereof", approved on the first day of May, 1911, and more particularly described as follows, to-wit:

Beginning at a point where the easterly line of Sampson Street extended southerly intersects the mean high tide line of the Bay of San Diego; thence south 39° west about 1250 feet along said easterly line of Sampson Street extended to an intersection with the United States pier-head line of the Bay of San Diego; thence north 56° 31' west 200 feet along said pier-head line; thence north 39° east about 1220 feet along a line parallel to the said easterly line of Sampson Street to an intersection with the mean high tide line of the Bay of San Diego; thence along said mean high tide line in a southeasterly direction to the point of beginning.

To have and to hold the said premises and each and every part and parcel thereof unto the said Lessee for the term of ten (10) years from and after the first day of March, 1915, at a monthly rental of Twenty-five (\$25.00) Dollars, payable monthly in advance in gold coin of the United States, at the office of the CHIEF CLERK, of said City of San Diego, on the first day of each and every month during said term; but the right of the Common Council to change or increase said rent, at any time, or as often as the Common Council may be advised, is hereby expressly reserved to the City; provided, however, that said City shall never charge for the use of said premises any unreasonable rate or toll, nor make nor suffer to be made any unreasonable charge, burden or discrimination upon or against said Lessee; and the said Lessee in accepting this lease, acknowledges the right of the said City to readjust and increase the rental at any time as hereinabove provided.

And it is hereby agreed between the parties to this lease that it is granted and accepted upon the further terms and conditions hereinafter provided, to-wit:

(1) That said premises shall be used as follows:

For the erection and maintenance of a building thereon for the purpose of carrying on and maintaining a marine ways, repairing boats and construction and launching of all kinds of water craft, with the right to construct and maintain thereon wharves and other structures necessary or convenient for the purpose above mentioned, the said wharves, buildings or other structures to be so constructed to meet with the approval of the Superintendent of Police and Harbor Affairs of the City of San Diego.

(2) That said Lessee shall have the right and privilege of reclaiming and filling in with material taken from the bottom of the bay, and not with any material brought in from outside of the Bay, all or any portion of said premises hereby leased; and provided further that no work shall be done upon nor use made of said premises that will materially decrease the amount of tidal waters of the Bay of San Diego.

(3) That nothing herein contained shall limit the power of the City of San Diego to build, maintain, own and operate any railroad or railroads across said premises, or to hereafter grant franchises to any person or corporation for the construction, maintenance and operation of any railroad or railroads across said premises, provided that such person or corporation, granted such franchise by the City, shall bear all expense of making any crossing or crossings and their equitable share in the costs of maintaining the same, the said Lessee to remove at its own cost and expense from any such premises so granted for railroad purposes, any buildings or materials which it may have erected or placed thereon; provided, however, that said Lessee shall not be disturbed in the possession and use of said premises to any greater extent than is necessary for the construction and maintenance of such railroad.

(4) That said City reserves the right to erect seawalls and docks and wharves along, in front of, or over said demised premises, and the right to lay water pipe across said property and to make such other improvements for the development of the facilities of the Bay of San Diego for the purposes of navigation, commerce and the fisheries, and of the dockage of vessels on said premises, at any time and in such manner as may be provided in any general plan for harbor improvements adopted by said City; provided, only that said Lessee shall not be disturbed in the possession and use of said premises to any greater degree than is necessary in the carrying out and completion of said general plan of improvements.

(5) That the said lease shall not be assignable or transferable, nor shall the said Lessee have the right to sublet the leased premises, or any part thereof.

(6) That the Lessee will pay the rent herein provided or such further or different rate as may be provided, as the same shall accrue.

(7) In the event that the said Lessee shall fail to carry on the said business, as hereinabove provided, and shall fail to maintain on the premises such wharves and other structures necessary or convenient for carrying on said business, or to the fulfilling in any way of the uses and purposes for which said premises are leased as above stated, then this obligation shall terminate and be void, and the said Lessee shall remove from the said demised premises and shall have no other right or claim thereto; provided, that nothing herein contained shall prevent the Common Council of the City of San Diego from changing, modifying or annulling this lease by ordinance at any time, as in its judgment may seem proper; and the said Lessee in accepting this lease hereby acknowledges the right of said Common Council to change, modify or annul this lease at any time, as herein provided.

IN WITNESS WHEREOF, a majority of the members of the Common Council of the City of San Diego have hereunto set their hands on behalf of the City of San Diego, and the said Lessee has hereunto affixed its corporate name and seal by its proper officers therunto duly authorized, the day and year first hereinabove written.

THE CITY OF SAN DIEGO

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
Members of the Common Council

San Diego Marine Construction Company

By *[Signature]*

ATTEST:
[Signature]
Clerk
[Signature]
Deputy

I hereby approve the form of the foregoing lease, this

5th day of April, 1915.

T. D. COBROVE, City Attorney

By *[Signature]*
Deputy City Attorney.

COPY

LEASE.

THIS INDENTURE OF LEASE, made and entered into this 12th day of May, 1925, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, acting by and through the Harbor Commission of said City of San Diego, hereinafter referred to as the City, and SAN DIEGO MARINE CONSTRUCTION CO., a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter designated as the Lessee, WITNESSETH:

That the City does by these presents demise and lease unto the said Lessee all those lands bordering and extending into the Bay of San Diego, and being a portion of those lands conveyed to The City of San Diego by the State of California, under the provisions of that certain Act of the Legislature, entitled: "An Act conveying certain tide lands and lands lying under inland navigable waters situated in the Bay of San Diego to The City of San Diego in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof", approved on the 1st day of May, 1911; said lands herein leased to said Lessee being particularly described as follows, to-wit:

Beginning at a point where the easterly line of Sampson Street extended southerly intersects the Mean High Tide Line of the Bay of San Diego; thence south 29° west about 1250 feet along said easterly line of Sampson Street extended to an intersection with the United States Pierhead Line of the Bay of San Diego; thence north 56°51' west 200 feet along said Pierhead Line; thence north 29° east about 1220 feet along a line parallel to the said easterly line of Sampson Street to an intersection with the Mean High Tide Line of the Bay of San Diego; thence along said Mean High Tide Line in a southeasterly direction to the point of beginning;

To have and to hold the said premises, and each and every part and parcel thereof, unto the said Lessee, for a term ending February 28th, 1930, at a rental of forty-five dollars (\$45.00) per month, payable month-

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ly in advance in gold coin of the United States, at the office of the Harbor Master and Wharfinger of The City of San Diego, or to such other City official as the Common Council of said City may designate.

The right of the Common Council of The City of San Diego, and of the Harbor Commission of said City, to change or increase said rent at any time is hereby expressly reserved to the City, and the said Lessee, in accepting this lease, acknowledges the right of said City to readjust and increase the rental at any time as hereinabove provided.

Neither the whole nor any part of this lease shall be assignable or transferable, nor shall the Lessee have the right to sublet the leased premises or any part thereof without the consent of the Common Council, evidenced by ordinance duly and regularly adopted and approved.

The Common Council of said City and the People of said City hereby reserve the right and privilege, by ordinance duly adopted, to terminate, annul, change or modify this lease in such manner as in their judgment may seem proper.

It is further provided that the Harbor Commission of said City shall have power to change the boundaries of said leased premises to conform to any adopted plan of harbor improvements, should the harbor improvements planned extend far enough to cover the premises hereby leased, during the term of this lease.

In addition to the foregoing provisions it is hereby agreed by the parties to this lease that the same is granted and accepted upon the further terms and conditions hereinafter provided, to-wit:

1. That said premises shall be used for the purpose of carrying on and maintaining marine ways, and the construction, launching and repair of marine craft; and any and all buildings erected on said leased land shall conform to the general type of architecture as prescribed or as may be prescribed for the section of the water front within which said leased lands lie, and shall be erected and maintained in such manner as may be required by the Harbor Commission of The City of San Diego.

2. The City of San Diego hereby specifically reserves, over the

lands mentioned in this lease, a continuous right-of-way for a municipal belt line of railway tracks, which said right-of-way shall be not less than one hundred feet in width, and shall be at such point or points on said lands as the Common Council of said City may hereafter determine, and shall be so located as to practically parallel the United States Bulkhead Line, it being specifically agreed and understood by the parties hereto that nothing in this lease contained is intended, or shall in any manner be construed to in any way interfere with the right of said City to construct railway tracks over said right-of-way.

That nothing herein contained shall limit the power of The City of San Diego to build, maintain, own and operate any railroad or railroads across said right-of-way so reserved for railroad purposes, or to hereafter grant franchises to any person or corporation for the construction, maintenance and operation of any railroad or railroads across said right-of-way; PROVIDED, that such person or corporation granted such franchise by the City shall bear all expenses of making any crossing or crossings and their equitable share in the cost of maintaining the same. The said Lessee to remove at its own cost and expense from any such right-of-way so reserved for railroad purposes, any buildings or materials which it may have erected or placed thereon; PROVIDED, however, that said Lessee shall not be disturbed in the possession and use of said premises to any greater extent than is necessary in the construction and maintenance of such railroad.

3. That said City reserves the right to erect seawalls and docks and wharves along, in front of or over said demised premises, and the right to lay water pipes across said lands and to make such other improvements for the development of the facilities of the Bay of San Diego for the purpose of navigation and commerce and the fisheries, and of the dockage of vessels on said premises at any time and in such manner as may be provided in any general plan of harbor improvement adopted by said City; PROVIDED only that said Lessee shall not be disturbed in the possession and use of said premises to any greater degree than is necessary in the carrying out and completion of said general plan of

improvements.

4. It is expressly understood that The City of San Diego shall not bear any of the costs of any dredging whatever from the said premises to deep water channel, which will be necessitated by reason of filling done by said The City of San Diego.

5. It is further stipulated and agreed that this lease is made upon the express condition that the said Lessee will make such provisions for the disposal of surface storm waters emptying into the Bay of San Diego, at any point where said described tide lands would be reclaimed by the Lessee of said tide lands, as may be required of it by the Harbor Commission of The City of San Diego. It is further understood and agreed that the cost of making such provisions for the disposal of such storm waters shall be borne wholly by the said Lessee.

6. In the event the Lessee shall fail to establish and maintain the business heretofore mentioned upon said demised land, or shall fail to fulfill in any manner the uses and purposes for which the said premises are leased, as above stated, or shall fail or refuse to perform the obligations by it in this lease undertaken, then this lease shall terminate and said Lessee shall have no further rights thereunder, and the said Lessee shall remove from said demised premises and shall have no further right or claim thereto, and the Common Council of said City shall immediately thereupon, without recourse to the courts, have the right immediately to take possession of said property, and said Lessee shall forfeit all rights and claims thereunder and thereto, and said Lessee, in accepting this lease, hereby acknowledges the right of said Common Council to take possession of said premises immediately upon the neglect or refusal of said Lessee to comply with the terms and conditions hereinbefore mentioned.

IN WITNESS WHEREOF, a majority of the members of the Harbor Commission of The City of San Diego have hereunto set their hands, as and for the act of said City, and the Lessee has caused its corporate name to be subscribed and its corporate seal to be affixed hereto, the day and year

first hereinabove written.

THE CITY OF SAN DIEGO.

By M. A. Graham

W. C. Crandall

L. W. Selton Jr.
Members of the Harbor Commission
of The City of San Diego.

Lessor.

(Seal)

SAN DIEGO MARINE CONSTRUCTION CO.

By O. J. Hall
Manager.

Lessee.

I hereby approve the form of the foregoing Lease, this 29th day
of April, 1925.

S. J. HIGGINS, City Attorney.

By Arthur F. H. Wright
Deputy City Attorney.

Harbor

LEASE.

THIS INDENTURE OF LEASE, made and entered into this 9th day of April, 1930, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, acting by and through the Harbor Commission of said City pursuant to Ordinance No. 12769 of the ordinances of said City, approved March 24th, 1930, as Lessor, and SAN DIEGO MARINE CONSTRUCTION COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter designated as the Lessee, WITNESSETH:

That the City does by these presents demise and lease unto the said Lessee all those lands bordering and extending into the Bay of San Diego, and being a portion of these lands conveyed to The City of San Diego by the State of California, under the provisions of that certain Act of the Legislature of the State of California, entitled, "An Act conveying certain tide lands and lands lying under inland navigable waters situate in the Bay of San Diego to the City of San Diego in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof," approved on the first day of May, 1911, and as subsequently amended, more particularly described as follows, to-wit:

Beginning on the mean high tide line of the Bay of San Diego, as said mean high tide line was established by that certain Superior Court Action numbered 35479, at a point where a southeasterly prolonged line, distant 50 feet southeasterly and parallel to the southeasterly line of Sampson Street intersects; thence south 39° 15' 55" west parallel to the line of Sampson Street and the production thereof to a point on the United States Pierhead line as established in 1912; thence north 56° 51' west along said pierhead line a distance of 301.72 feet to a point; thence north 39° 15' 55" east to a point on the aforementioned mean high tide line; thence southeasterly along the mean high tide line to the point of beginning; being a strip of land 300 feet in width extending from the mean high tide line to the U. S. Pierhead Line.

TO HAVE AND TO HOLD the said premises and each and every parcel thereof unto the said Lessee, for a period of years ending on the 24th day of April, 1950, unless sooner terminated as herein provided, at the following rentals:

Sixty dollars (\$60.00) per month, payable in advance on the first day of each and every month, for the first five (5) years of said term, and/or until a new or different rental is fixed.

The right of the Common Council of The City of San Diego, and of the Harbor Commission of said City, to adjust the rental above provided, at the end of said five-year period, and/or at the end of each five-year period thereafter during the remainder of said term, is hereby expressly reserved to said City; provided, however, that the rental for the second five-year period of said term shall not exceed the sum of ninety dollars (\$90.00) per month, for the third five-year period of said term shall not exceed the sum of one hundred twenty dollars (\$120.00) per month, and for the last five-year period of said term shall not exceed the sum of one hundred fifty dollars (\$150.00) per month. And said Lessee, in accepting this lease, acknowledges the right of the Common Council and the Harbor Commission of said City to readjust and increase the rental of said premises as herein provided.

Neither the whole, nor any part of this lease shall be assignable or transferable, nor shall the Lessee have the right to sublet the leased premises, or any part thereof, without the consent of the Common Council evidenced by ordinance duly and regularly adopted and approved.

The Common Council of said City, and the Harbor Commission of said City, and the people of said City, hereby reserve the right and privilege to annul, change or modify this lease in such manner as may seem proper, upon the payment to said Lessee of reasonable compensation for damages occasioned by

said annulment, change or modification. The reasonable compensation herein provided to be paid to the Lessee shall be based upon and limited to compensation for the actual value of such buildings, structures and physical improvements placed upon the demised premises by the Lessee, as are required, authorized or permitted under the terms of this lease, and shall not be held to include compensation to said Lessee for any damage to, interference with, or loss of business or franchise occasioned by any such amendment, change or modification.

In addition to the foregoing provisions, it is hereby agreed by the parties to this lease that the same is granted and accepted upon the further terms and conditions hereinafter provided, to-wit:

(1) That the demised premises shall be used only and exclusively for the purpose of conducting and maintaining thereon a general boat building and boat-repairing business, with the right to construct and maintain thereon such marina ways, machine shops, carpenter shops, wharves, or other structures as may be necessary or convenient for conducting and carrying on the said business.

(2) That all plans for buildings, structures, wharves and improvements to be erected or placed upon said leased premises shall comply with all the ordinances of The City of San Diego, and shall be subject to the approval of the said Harbor Commission.

(3) The business of said Lessee to be conducted upon said premises shall be that of a general boat-building and boat-repairing business.

(4) That in the event a bulkhead is built and dredging done in the vicinity of said leased lands before the expiration of the term of this lease, the Lessee shall remove any and all structures, including wharves and ways erected on said premises, at its own cost and expense.

(5) It is expressly understood and agreed by said Lessee that the Common Council of The City of San Diego and the Harbor Commission of said City may at any time change the boundaries of the premises leased, and may open streets through said premises, in accordance with any plan of harbor improvement adopted by the Common Council of said City, and that the Lessee will remove any structures or buildings from said demised premises as interfere with the carryint out of the adopted harbor plan in any way whatsoever, at its own expense, and without any claim or right to damages or compensation therefor.

(6) At no time during the life of this lease shall The City of San Diego be required to make any improvement on or for the benefit of the said leased lands hereinabove described

(7) It is further stipulated and agreed that this lease is made upon the express condition that the said Lessee will make such provisions for the disposal of surface storm waters emptying into the Bay of San Diego, at any point where said described tide lands would be reclaimed by the Lessee of said tide lands, as may be required of it by the Harbor Commission of The City of San Diego. It is further understood and agreed that the cost of making such provision for the disposal of such storm waters shall be borne wholly by the said Lessee.

(8) In the event that the Lessee shall fail to establish and maintain a general boat-building and boat-repairing business upon the said demised land, or shall fail to fulfill in any manner the uses and purposes for which the said premises are leased, as above stated, or shall fail or refuse to perform the obligations by it under this lease undertaken, then and in that event this lease shall terminate, and said Lessee shall have no further rights thereunder, and the said Lessee shall remove from said demised premises and shall have no further right or claim thereto, and the said City shall immediately thereupon,

without recourse to the courts, have the right to take possession of said property, and said Lessee shall forfeit all rights and claims thereto and thereunder; and said Lessee in accepting this lease, hereby acknowledges the right of said City to take possession of said premises immediately upon the neglect or refusal of said Lessee to comply with the terms and conditions hereinbefore mentioned.

(9) Reference is hereby made to all laws as now existing, and as hereafter amended or enacted applicable to the leasing of tide lands by The City of San Diego, and by such reference all restrictions or conditions imposed, or reservations made thereby, are made a part of this lease, with like effect as though the same were expressly set forth herein.

IN WITNESS WHEREOF, a majority of the members of the Harbor Commission of The City of San Diego have hereunto subscribed their names, as and for the act of said City, and the said Lessee has caused these presents to be executed, and its corporate name and seal to be hereunto subscribed, by its proper officers thereunto duly authorized, the day and year first hereinabove written.

THE CITY OF SAN DIEGO,
Lessor.

By M. A. Graham

J. C. McClure

(Seal)
ATTEST:

Allen H. Wright, City Clerk, Rufus Choate

By Fred W. Luch San Diego Marine Construction Co.
Agent Lessee.

By O. J. Hall Gen. Mgr.

ATTEST:

I hereby approve the draft of the foregoing Lease, this
23 day of April, 1930.

M. W. Cabeling
City Attorney.

By A. C. Hopkins
Deputy City Attorney.

THIS INDENTURE OF LEASE, made and entered into this 1st day of February, 1944, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, acting by and through the Harbor Commission of said City, as Lessor, hereinafter sometimes called the City, and SAN DIEGO MARINE CONSTRUCTION COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter designated as the Lessee, WITNESSETH:

That the City, lessor as aforesaid, does by these presents demise and let unto the lessee, upon the terms and conditions, and for the purposes and uses hereinafter recited, and the lessee hereby hires and accepts from the City, upon the terms and conditions and for the uses and purposes hereinafter recited, all those lands bordering and extending into the Bay of San Diego, and being a portion of those lands conveyed to The City of San Diego by the State of California under the provisions of that certain Act of the Legislature, entitled, "An Act conveying certain tidelands and lands lying under inland navigable waters situated in the Bay of San Diego to the City of San Diego, in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof," approved on the first day of May, 1911, and as subsequently amended, more particularly described as follows, to-wit:

PARCEL NO. 1:

Beginning at a point on the U. S. Bulkhead Line, as said Bulkhead Line is now established for the Bay of San Diego, distant 72.12 feet northwesterly from Government Station No. 186, said point being on the northwesterly line of that five-foot strip of tideland permit area leased to the Richfield Oil Company for a pipeline right-of-way; thence north $96^{\circ} 51'$

west along the said U. S. Bulkhead Line a distance of 872.12 feet, more or less, to the most southerly corner of that tideland area leased to the San Diego Gas & Electric Company; thence at right angles north 33° 09' east following along the southeasterly line of said area leased to San Diego Gas & Electric Company a distance of 408.86 feet to a point; thence south 55° 04' 50" east a distance of 393.49 feet to a point; thence south 33° 09' west a distance of 2.9 feet to a point; thence south 55° 04' 50" east a distance of 68.47 feet to the point of beginning of a curve concave to the northeast and having a radius of 2091.18 feet; thence southeasterly along the arc of said curve an arc distance of 421.59 feet to a point from which the center of said curve bears north 23° 22' 06" east, said point also being on the northwesterly boundary line of that said five-foot strip of tideland permit area leased to the Richfield Oil Company; thence south 34° 26' 20" west along the northwesterly line of said five-foot strip of tideland permit area to the point or place of beginning, containing 351,194 square feet of tideland area.

PARCEL NO. 2:

Beginning at a point on the U. S. Bulkhead Line, as said Bulkhead Line is now established for the Bay of San Diego, distant 72.12 feet northwesterly from Government Station No. 186; thence at right angles south 33° 09' west a distance of 265 feet to a point; thence at right angles north 56° 51' west a distance of 209.82 feet to a point; thence at right angles south 33° 09' west a distance of 117.51 feet to a point; thence at right angles north 56° 51' west a distance of 200 feet to a point; thence at right angles south 33° 09' west a distance of 317.49 feet, more or less, to a point on the U. S. Pierhead Line, as said Pierhead Line is now established for the Bay of San Diego; thence north 56° 51' west along the said pierhead line a distance of 486.30 feet to a point; thence at right angles north 33° 09' east a distance of 700 feet to an intersection with the said U. S. Bulkhead Line; thence south 56° 51' east along the said U. S. Bulkhead Line a distance of 872.12 feet, more or less, to the point or place of beginning, containing 458,324 square feet of bay area.

The lands hereinabove described being shown on the map or plat attached hereto, marked "Exhibit A," and made a part of this lease.

TO HAVE AND TO HOLD the said premises and each and every part thereof unto the said lessee for a period of twenty-five (25) years, beginning on the 1st day of February, 1944, and ending on the 31st day of January, 1969, unless sooner terminated, as herein provided, at the following rentals:

For the first five (5) years of said term, the sum of one cent (1¢) per square foot per year, for the premises hereinabove described as Parcel No. 1;

For the second five (5) years of said term, the sum of three cents (3¢) per square foot per year, for the premises hereinbefore described as Parcel No. 1;

For the last fifteen (15) years of said term, at a rate to be fixed by the Harbor Commission of said City, which rate shall be not less than three cents (3¢) per square foot per year, nor more than six cents (6¢) per square foot per year, for the premises hereinbefore described as Parcel No. 1;

The sum of one hundred fifty dollars (\$150.00) per month for the premises hereinbefore described as Parcel No. 2.

All rentals hereunder shall be due and payable monthly in advance upon the first day of each and every month during the term of this lease.

Neither the whole, nor any part, of this lease shall be assignable or transferable, nor shall the lessee have the right to sublet the leased premises, or any part thereof, without the consent of the Harbor Commission evidenced by resolution duly and regularly passed and adopted.

If at any time during the term of this lease the tenancy hereunder shall interfere with the use of any of the tidelands of San Diego Bay lying bayward of the bulkhead line as now established for navigation, commerce and fisheries, or in any manner become inconsistent with the trust under which the said tidelands are held from the State of California, the City shall have the right to terminate this lease upon one year's notice and the payment to the lessee of reasonable compensation, which shall be based upon and limited to compensation for the actual value at the time of the termination of this lease of such buildings, structures and physical improvements placed upon the demised premises by the lessee as are authorized or permitted under the terms of this lease, but shall not be held to include or require compensation to be paid in any amount to the lessee for any damage to or interference with the loss of business or franchise occasioned by any such termination.

In addition to the foregoing provisions, it is hereby

agreed by the parties to this lease that the same is granted and accepted upon the further terms and conditions hereinafter provided, to-wit:

(1) That the demised premises hereinabove described as Parcel No. 1 shall be used only and exclusively for the purpose of conducting and maintaining thereon a general boat building and boat repairing business, with the right to construct and maintain thereon such marine ways, machine shop for the repair of marine engines, and other structures as may be necessary or convenient for conducting and carrying on the said business.

That the demised premises hereinabove described as Parcel No. 2 shall be used only and exclusively for the construction and maintenance thereon of a wharf and ship ways, and such other structures necessary or convenient for conducting and carrying on said business.

(2) That all plans for buildings and improvements to be erected or placed upon said leased premises shall comply with all the ordinances of The City of San Diego, and shall be subject to the approval of the Harbor Commission and Planning Commission of said City.

(3) That in the event a bulkhead is built and dredging done in the vicinity of said leased lands before the expiration of the term of this lease, the lessee shall remove any and all structures, including wharves and ways erected on said premises, at its own cost and expense.

(4) That upon the expiration of the term of this lease, or upon the sooner termination thereof, except upon a termination for a cause entitling the lessee to be paid compensation for its buildings, structures and physical improvements placed upon the demised premises, as hereinabove provided, and which compensation shall have been paid to the lessee, the lessee shall have the right and shall be required to remove from said premises such buildings, structures, appliances and appurtenances

as may have been constructed by it on said premises.

(5) At no time during the life of this lease shall The City of San Diego be required to make any improvement on or for the benefit of the said leased lands hereinabove described.

(6) That said City reserves the right to make such improvements for the development of the facilities of the Bay of San Diego for the purpose of navigation and commerce and the fisheries, at such time and in such manner as may be provided in any general plan of harbor improvement adopted by the Council of said City, or by the Harbor Commission of said City, and that the lessee will remove any structures or buildings placed or erected on said demised premises by the said lessee as shall interfere with carrying out the adopted harbor plan in any way whatsoever, at its own cost and expense, and without any claim or right to damages or compensation therefor; provided, only, that said lessee shall not be disturbed in the possession and use of said premises to any greater degree than is necessary in the carrying out and completion of said general plan of improvement.

(7) It is further stipulated and agreed that this lease is made upon the express condition that the said lessee will make such provisions for the disposal of surface storm waters emptying into the Bay of San Diego at any point where said described tidelands would be reclaimed by the lessee, as may be required of it by the Harbor Commission of The City of San Diego. It is further understood and agreed that the cost of making such provision for the disposal of such storm waters shall be borne wholly by the said lessee.

(8) In the event the lessee shall fail to fulfill in any manner the uses and purposes for which the said premises are leased, as above stated, or shall fail or refuse to perform the obligations undertaken by it under this lease, or shall

violate any of the terms or conditions herein expressed, including the prompt payment when the same shall be due of all rentals reserved herein, and shall persist in any such failure or refusal for a period of thirty (30) days after receiving notice from the lessor requiring it to comply with the provisions of this lease in any and all respects wherein the lessee may be in default, then and in that event this lease shall terminate, and said lessee shall have no further rights hereunder, and said lessee shall thereupon forthwith remove from said premises, and shall have no further right or claim thereto, and the said City shall immediately thereupon, without recourse to the Courts, have the right to take possession of said premises, and said lessee shall forfeit all rights and claims thereto and hereunder; and said lessee, in accepting this lease, hereby acknowledges the right of said City to take possession of said premises immediately upon the neglect or refusal of said lessee to comply with the terms and conditions hereinbefore mentioned.

(9) Reference is hereby made to all laws as now existing, and as hereafter amended or enacted, applicable to the leasing of tidelands by The City of San Diego, and by such reference all restrictions or conditions imposed or reservations made thereby are made a part of this lease with like effect as though the same were expressly set forth herein.

It is understood and agreed that upon the taking effect of this lease that certain tideland lease between the parties hereto dated January 1, 1942, shall be in all respects superseded and terminated, save and except as to the payment of any rentals which may have accrued and been unpaid thereunder.

IN WITNESS WHEREOF, a majority of the members of the Harbor Commission of The City of San Diego have hereunto subscribed their names as and for the act of said City, and the

said lessee has caused these presents to be executed, and its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized, the day and year first hereinabove written.

This instrument is executed in duplicate, both of which shall be deemed originals.

THE CITY OF SAN DIEGO
Lessor.

By R. H. VANDEMAN

EMIL KLICKA

Wm. E. HARPER
Members of the Harbor Commission
of The City of San Diego.

SAN DIEGO MARINE CONSTRUCTION COMPANY
Lessee.

By O. J. HALL

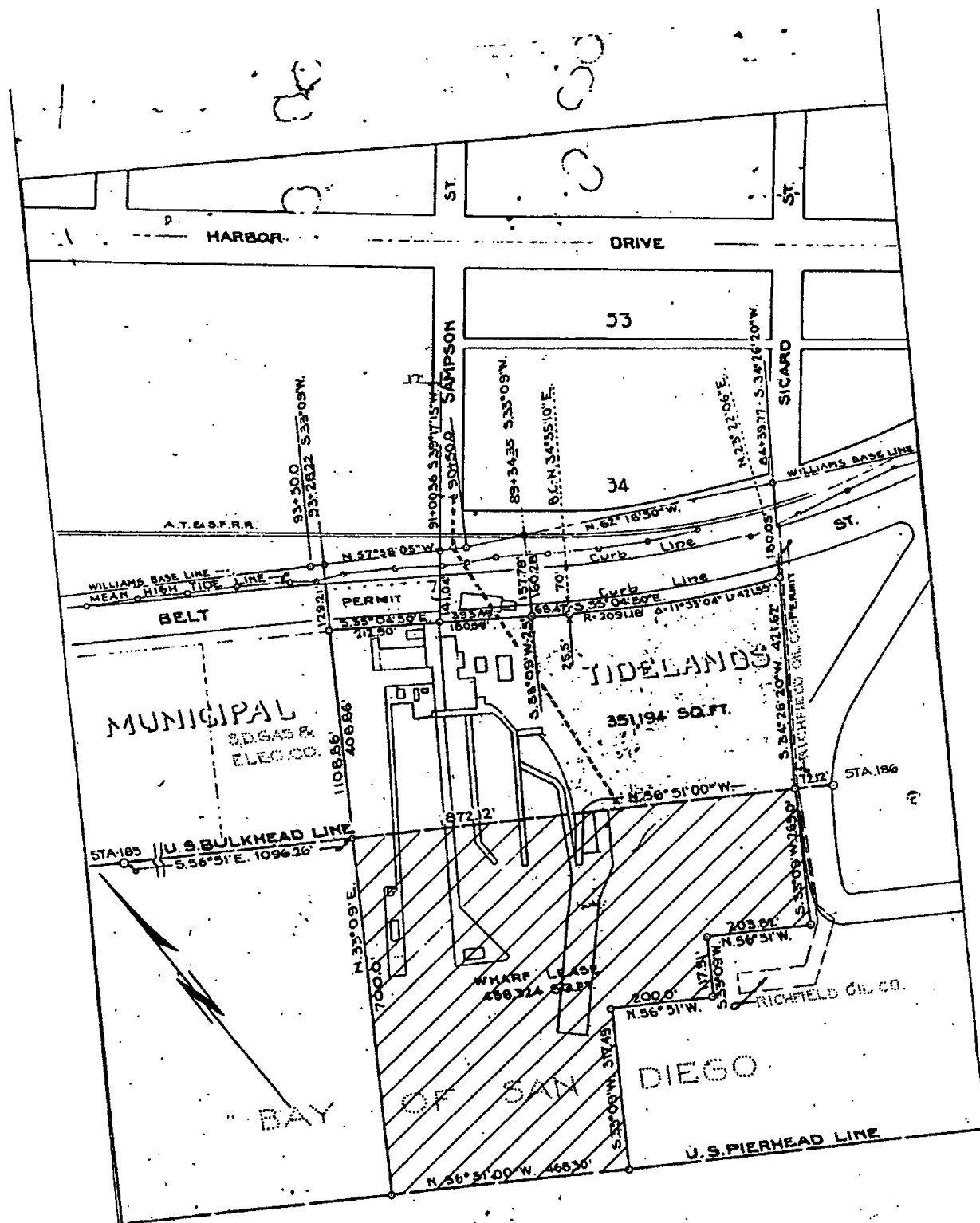
ATTEST: (SEAL)

C. E. HAHN, Ass't. Secty.

I hereby approve the form of the foregoing Lease this
2d day of February, 1944.

J. F. DuPAUL
City Attorney.

By H. B. DANIEL
Assistant City Attorney.



NOTE - Leased Area Shown Shaded.
 Wharf Lease Shown Hatched

Drawn By: W.M.deB.
 Traced By: " "
 Checked By: " "
 Approved By:
 Port Director

HARBOR DEPARTMENT CITY OF SAN DIEGO
 MUNICIPAL TIDELAND LEASE
 SAN DIEGO MARINE CONSTRUCTION CO.

Date: Dec. 31, 1943.
 Scale: 1" = 200'
 DRAWING NO.
73-B-2

Book 80

AGREEMENT FOR AMENDMENT OF TIDELAND LEASE
AMENDMENT NO. 1

FILE No. SD 11-3-10104A1

70.
THIS AGREEMENT, made and entered into in triplicate this 14
day of Dec., 1957, by and between THE CITY OF SAN DIEGO,
a municipal corporation, acting by and through the Harbor Commission
of said City, as "Lessor", sometimes hereinafter called the "City",
and SAN DIEGO MARINE CONSTRUCTION COMPANY, a corporation, organized
and existing under and by virtue of the laws of the State of California,
hereinafter designated as "Lessee", WITNESSETH:

WHEREAS, the said Lessor and the San Diego Marine Construction
Company, a corporation, has heretofore made and entered into a lease
dated February 1, 1944, of certain tidelands in the City of San Diego,
which lease is on file in the Office of the City Clerk of the City of
San Diego, bearing Document No. 346631, and

WHEREAS, said City and said Lessee are mutually desirous of amend-
ing said lease by modifying the area of the leased premises therein
and by providing for the rental and purposes of said modified area, and

WHEREAS, the Lessee is releasing to the City approximately 45,000
sq. ft. for rental to a third party at the City's request, and

WHEREAS, the Lessee is agreeing to relocate a fence to permit the
improvement of Belt Street, which relocation is to be at the Lessee's
own expense; NOW, THEREFORE,

IN CONSIDERATION of the premises and matters and things herein-
after recited and the mutual consent of the parties, said above
described lease is hereby amended in the following respects and no
others:

(1) The description of the premises demised and leased therein
is hereby changed to read as follows; X

PARCEL NO. 1

Beginning at a point on the U.S. Bulkhead Line, as said Bulkhead Line is now established for the Bay of San Diego, distant 72.12 feet northwesterly from Harbor Line Station 228, said point being on the northwesterly line of that five-foot strip of tideland permit area leased to the Richfield Oil Company for a pipeline right-of-way, said point also being the true point or place of beginning; thence north $56^{\circ} 51'$ west along said Bulkhead Line a distance of 872.12 feet more or less to the most southerly corner of that tideland area leased to the San Diego Gas and Electric Company; thence at right angles north $33^{\circ} 09'$ east along the San Diego Gas and Electric Company lease a distance of 408.86 feet; thence south $55^{\circ} 04' 50''$ east a distance of 393.49 feet; thence south $33^{\circ} 09'$ west a distance of 2.50 feet; thence south $55^{\circ} 04' 50''$ east a distance of 68.47 feet to the beginning of a curve concave to the northeast, having a radius of 2091.18 feet, the center of which bears north $34^{\circ} 55' 10''$ east; thence southeasterly along the arc of said curve an arc distance of 269.72 feet to a point which bears south $27^{\circ} 31' 49''$ west from the center of said curve; thence south $34^{\circ} 26' 20''$ west a distance of 286.94 feet; thence at right angles south $55^{\circ} 33' 40''$ east a distance of 150.00 feet; thence at right angles south $34^{\circ} 26' 20''$ west distant 110.94 feet to the true point or place of beginning, containing 306,449 square feet of tideland area.

PARCEL NO. 2

Beginning at the most northerly corner of the hereinabove described Parcel No. 1 said point also being the true point or place of beginning of Parcel No. 2; thence along the area leased by the San Diego Gas and Electric Company north $65^{\circ} 34' 55''$ east a distance of 81.46 feet to a point on a line parallel to and 110.00 feet southwesterly from the center line of the main track of the A.T. & S.P. Ry. Company; thence along said parallel line south $50^{\circ} 40' 35''$ east a distance of 162.93 feet to a point on the southwesterly prolongation of the northwesterly line of Sampson Street in the City of San Diego; thence along said southwesterly prolongation south $39^{\circ} 15' 55''$ west a distance of 10.00 feet to a point on a second parallel line 120.00 feet southwesterly from said main track; thence along said second parallel line south $50^{\circ} 40' 35''$ east a distance of 120.79 feet to the beginning of a first curve concave to the northeast having a radius of 2030.08 feet the center of which bears north $39^{\circ} 19' 25''$ east; thence southeasterly along the arc of said first curve an arc distance of 407.86 feet to a point which bears south $27^{\circ} 48' 45''$ west from the center of said first curve; thence south $34^{\circ} 26' 20''$ west a distance of 33.06 feet to the most easterly corner of said Parcel No. 1, said corner also being a point on a second curve concave to the northeast, having a radius of 2091.18 feet, the center of which bears north $27^{\circ} 31' 49''$ east; thence along said Parcel No. 1 first northwesterly along the arc of said second curve an arc distance of 269.72 feet to a point which bears south $34^{\circ} 55' 10''$ west from the center of said second curve; thence north $55^{\circ} 04' 50''$ west a distance of 68.47 feet; thence north $33^{\circ} 09'$ east a distance of 2.50 feet; thence north $55^{\circ} 04' 50''$ west a distance of 393.49 feet to the true point or place of beginning of Parcel No. 2 containing 31,028 square feet of tideland area.

PARCEL NO. 3

Beginning at the most southerly corner of the hereinabove described Parcel No. 1; said point also being the true point or place of beginning of Parcel No. 3; thence south $33^{\circ} 09'$ west a distance of 265.00 feet; thence north $56^{\circ} 51'$ west a distance of 203.82 feet; thence south $33^{\circ} 09'$ west a distance of 435.00 feet to a point on the U.S. Pierhead Line as said Pierhead Line is now established for the Bay of San Diego; thence along said Pierhead Line north $56^{\circ} 51'$ west a distance of 668.30 feet to the most southerly corner of that water area now leased to the San Diego Gas and Electric Company; thence north $33^{\circ} 09'$ east a distance of 700.00 feet to the most westerly corner of said Parcel No. 1; thence south $56^{\circ} 51'$ east along said Parcel No. 1 a distance of 872.12 feet to the true point or place of beginning of Parcel No. 3 containing 521,822 square feet of water covered area.

PARCEL NO. 4

Beginning at the most northerly corner of the hereinabove described Parcel No. 1; thence along the hereinabove described Parcel No. 2 first north $65^{\circ} 34' 55''$ east a distance of 81.46 feet; thence south $50^{\circ} 40' 35''$ east a distance of 162.93 feet; thence south $39^{\circ} 15' 55''$ west a distance of 10.00 feet; thence south $50^{\circ} 40' 35''$ east a distance of 36.01 feet to the true point or place of beginning of Parcel No. 4; thence north $48^{\circ} 57' 51''$ east a distance of 11.57 feet; thence south $41^{\circ} 02' 09''$ east a distance of 8.00 feet; thence north $48^{\circ} 57' 51''$ east a distance of 5.00 feet; thence south $41^{\circ} 02' 09''$ east a distance of 89.23 feet to a point on the northeasterly side of said Parcel No. 2, said point lying on curve concave to the northeast having a radius of 2030.08 feet the center of which bears north $38^{\circ} 55' 57''$ east; thence northwesterly along said Parcel No. 2 and the arc of said curve an arc distance of 13.86 feet to a point which bears south $39^{\circ} 19' 25''$ west from the center of said curve; thence north $50^{\circ} 40' 35''$ west a distance of 84.78 feet to the true point or place of beginning of Parcel No. 4 containing 768 square feet of tideland area.

The above described premises are those more particularly delineated on Drawing No. 73-B-6 dated March 5, 1951, attached hereto marked Exhibit "B", and by this reference made a part hereof.

(2) The rentals as the same are set forth on Page 3 of said original lease are hereby amended to read as follows:

Beginning on December 1, 1951, and continuing through January 31, 1954, the sum of Three Cents (3¢) per square foot per year for the premises hereinbefore described as Parcels Nos. 1, 2 and 4.

For the last fifteen (15) years of said term, at a rate to be fixed by the Harbor Commission of said City, which rate shall be not less than Three Cents (3¢) per square foot per year nor more than Six Cents (6¢) per square foot per year for the premises hereinbefore described as Parcels Nos. 1, 2 and 4.

The sum of One Hundred Seventy Dollars (\$170) per month for the premises hereinbefore described as Parcel No. 3.

(3) Paragraph 1 on Page 4 is hereby amended to read as follows:

"(1) That the demised premises hereinabove described as Parcels Nos. 1, 2 and 4 shall be used only and exclusively for the purpose of conducting and maintaining thereon a general boat building and boat repairing business with the right to construct and maintain thereon such marine ways, machine shop for the repair of marine engines, and other structures as may be necessary or convenient for conducting and carrying on the said business, and for no other purpose without the consent of the Harbor Commission, evidenced by resolution first had and obtained.

That the demised premises hereinabove described as Parcel No. 3 shall be used only and exclusively for the construction and maintenance thereon of a wharf and ship ways and such other structures necessary or convenient for conducting and carrying on said business, and for no other purpose whatsoever without the consent of the Harbor Commission, evidenced by resolution first had and obtained.

Lessee further agrees that the structures now located on Parcels Nos. 2 and 4 will be removed by Lessee in the event that the roadway is widened and that no permanent structures will be erected on Parcels Nos. 2 and 4 of the demised premises without the express consent of the Harbor Commission, evidenced by resolution first had and obtained."

This Amendment shall become effective as of the 1st day of December, 1951. Except as herein specifically amended, all the terms and conditions of said lease of February 1, 1944 shall remain in full force and effect.

IN WITNESS WHEREOF, the City of San Diego, acting by and through the Harbor Commission of said City has executed the foregoing Agreement for Amendment of Tideland Lease, Amendment No. 1, and the said Lessee has caused this instrument to be executed the day and year first hereinabove written.

I HEREBY APPROVE the form and legality of the foregoing Agreement for Amendment of Tideland Lease, Amendment No. 1 this day of Dec., 1951.

J. F. DuPAUL, (City Attorney
By [Signature]
Deputy City Attorney

THE CITY OF SAN DIEGO,

By [Signature]

[Signature]
[Signature]
Members of the Harbor Commission
of The City of San Diego.

SAN DIEGO MARINE CONSTRUCTION COMPANY

By [Signature]

TRIPPLICATE-ORIGINAL

Doc. # 500149
Filed: 10-28-54

AGREEMENT FOR AMENDMENT OF TIDELAND LEASE

AMENDMENT NO. 2 FILE NO. SD11-3-10104A2

X
THIS AGREEMENT, made and entered into in triplicate this 7th day of October, 1954, by and between the CITY OF SAN DIEGO, a municipal corporation, acting by and through the Harbor Commission of said City, as "Lessor", sometimes hereinafter called the "City", and SAN DIEGO MARINE CONSTRUCTION COMPANY, a corporation, organized and existing under and by virtue of the laws of the State of California, hereinafter designated as "Lessee",

W I T N E S S E T H:

WHEREAS, the said Lessor and Lessee have heretofore made and entered into a lease dated February 1, 1944, of certain tidelands in the City of San Diego, which lease is on file in the Office of the City Clerk of said City, bearing Document No. 346631, and

WHEREAS, said Lessor and Lessee have heretofore made and entered into an Agreement for Amendment of said lease, which amendment is dated December 14, 1951, and is on file in the Office of the City Clerk of said City, bearing Document No. 442854, and X

WHEREAS, said Lessor and Lessee are mutually desirous of amending said lease and its amendment by providing for a review of the rental at certain intervals; NOW, THEREFORE;

In consideration of the premises and matters and things hereinafter recited, and the mutual consent of the parties, said above-described lease and its amendment are hereby amended in the following respects and no others:

Amend #2 Provides for 2 1/2 yr
Rental Reviews

(1) The rentals as the same are set forth on Page 3 of said original lease and Pages 3 and 4 of said Agreement for Amendment of Tideland Lease, Amendment No. 1, are hereby amended to read as follows:

Beginning on February 1, 1954, and continuing through September 30, 1954, the sum of Three Cents (3¢) per square foot per year for the premises described as Parcels Nos. 1, 2 and 4; plus the sum of One Hundred Seventy Dollars (\$170) per month for the premises described as Parcel No. 3.

Beginning October 1, 1954, and continuing through July 31, 1956, the sum of Three Cents (3¢) per square foot per year for the premises described as Parcels Nos. 1, 2 and 4; plus the sum of Two Hundred Dollars (\$200) per month for the premises described as Parcel No. 3.

For each of the successive two and one-half (2-1/2) years of said lease and any extension thereof, a sum to be agreed upon at or before the expiration of each two and one-half (2-1/2) year period of said lease by the Harbor Commission and said Lessee.

In the event that an agreement cannot be reached at any of the times hereinabove mentioned, then the matter shall be determined by submission to a board of arbiters consisting of three members; one arbiter shall be selected by the Harbor Commission and one by the Lessee, and the two arbiters so selected shall select a third. The decision of such board shall be final and both the Lessor and the Lessee shall be bound thereby.

This Amendment shall become effective as of the 1st day of February, 1954. Except as herein specifically amended, all the terms and conditions of said lease of February 1, 1944, and its Agreement for Amendment of December 14, 1951, shall remain in full force and effect.

IN WITNESS WHEREOF, the City of San Diego, acting by and through the Harbor Commission of said City, has executed the foregoing Agreement for Amendment of Tideland Lease, Amendment No. 3, and the said Lessee has caused this instrument to be

executed the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By [Signature]

[Signature]
Members of the Harbor Commission of
the City of San Diego

SAN DIEGO MARINE CONSTRUCTION COMPANY

By [Signature] Pres.

I HEREBY APPROVE the form and legality of the foregoing
Agreement for Amendment of Tideland Lease, Amendment No. 2,
this 7th day of October, 1954.

J. F. DUPAUL, City Attorney

By [Signature]

Deputy City Attorney

TRIPPLICATE-ORIGINAL

Doc # 585781
Filed 3 Feb. 1959

FILE No. SD 11-3-10104A3

AGREEMENT FOR AMENDMENT OF TIDELAND LEASE
AMENDMENT NO. 3

CH

THIS AGREEMENT, made and entered into in triplicate this 20th day of January, 1959, by and between the CITY OF SAN DIEGO, a municipal corporation, acting by and through the Harbor Commission of said City, as "Lessor", sometimes hereinafter called the "City", and SAN DIEGO MARINE CONSTRUCTION COMPANY, a corporation, organized and existing under and by virtue of the laws of the State of California, hereinafter designated as "Lessee", WITNESSETH:

WHEREAS, the said Lessor and Lessee have heretofore made and entered into a lease dated February 1, 1944, of certain tidelands in the City of San Diego, which lease is on file in the Office of the City Clerk of said City, bearing Document No. 346631, and

WHEREAS, said Lessor and Lessee have heretofore made and entered into an Agreement for Amendment of said lease, which amendment is dated December 14, 1951, and is on file in the Office of the City Clerk of said City, bearing Document No. 442854, and

WHEREAS, said Lessor and Lessee have heretofore made and entered into an Agreement for Amendment of said lease, Amendment No. 2, which amendment is dated December 7, 1954, and is on file in the Office of the City Clerk of said City, bearing Document No. 500149, and

WHEREAS, said Lessor and Lessee are mutually desirous of amending said lease and its amendments by modifying the area of the leased premises therein and by providing for the use and purposes of said modified area;

NOW, THEREFORE, in consideration of the premises and matters

Amend #3

Modify
ack

and things hereinafter recited and the mutual consent of the parties, said above described lease and its amendments are hereby amended in the following respects and no others:

1. The description of the premises demised and leased therein is hereby changed to read as follows:

PARCEL NO. 1

Beginning at a point on the U. S. Bulkhead Line, as said Bulkhead Line is now established for the Bay of San Diego, distant 72.12 feet northwesterly from Harbor Line Station 228, said point being on the northwesterly line of that five-foot strip of tideland permit area leased to the Richfield Oil Company for a pipeline right-of-way, said point also being the true point or place of beginning; thence north $56^{\circ} 51'$ west a distance of 872.12 feet more or less to the most southerly corner of that tideland area leased to the San Diego Gas & Electric Company; thence at right angles north $33^{\circ} 09'$ east along the San Diego Gas & Electric Company lease a distance of 408.86 feet; thence north $65^{\circ} 34' 55''$ east a distance of 81.46 feet to a point on a line parallel to and 110.00 feet southwesterly from the centerline of the main track of the Atchison, Topeka and Santa Fe Railway Company; thence along said parallel line south $50^{\circ} 40' 35''$ east a distance of 162.93 feet to a point on the southwesterly prolongation of the northwesterly line of Sampson Street in The City of San Diego; thence along said southwesterly prolongation south $39^{\circ} 15' 55''$ west a distance of 10.00 feet to a point on a second parallel line 120.00 feet southwesterly from said main track; thence along second said parallel line south $50^{\circ} 40' 35''$ east a distance of 120.79 feet to the beginning of a curve concave to the northeast having a radius of 2030.08 feet, the center of which bears north $39^{\circ} 19' 25''$ east; thence southeasterly along the arc of said curve an arc distance of 332.51 feet to a point which bears south $29^{\circ} 56' 21''$ west from the center of said curve; said point being the most northerly corner of that tideland area leased to Ets-Hokin and Galvan Company; thence leaving said curve along the most northwesterly side of the Ets-Hokin and Galvan Company lease south $34^{\circ} 26' 20''$ west a distance of 312.70 feet; thence along the most southwesterly side of the Ets-Hokin and Galvan Company lease south $55^{\circ} 33' 40''$ east a distance of 228.00 feet to a point on the northwesterly line of that five-foot strip of tideland permit area leased to the Richfield Oil Company for a pipeline right-of-way; thence along said right-of-way south $34^{\circ} 26' 20''$ west a distance of 110.94 feet to the true point or place of beginning, containing 313,788 square feet of tideland area.

PARCEL NO. 2

Beginning at the most northerly corner of hereinabove described Parcel No. 1; thence along the hereinabove described Parcel No. 1 first south 50° 40' 36" east a distance of 162.93 feet; thence south 39° 18' 55" west a distance of 10.00 feet; thence south 50° 40' 35" east a distance of 36.01 feet to the true point or place of beginning of Parcel No. 2; thence north 48° 57' 51" east a distance of 11.57 feet; thence south 41° 02' 09" east a distance of 8.00 feet; thence north 48° 57' 51" east a distance of 5.00 feet; thence south 41° 02' 09" east a distance of 89.23 feet to a point on the northeasterly side of said Parcel No. 1, said point lying on a curve concave to the northeast having a radius of 2030.08 feet, the center of which bears north 39° 55' 57" east; thence northwesterly along said Parcel No. 1, and the arc of said curve, an arc distance of 13.86 feet to a point which bears south 39° 19' 28" west from the center of said curve; thence north 50° 40' 35" west a distance of 84.78 feet to the true point or place of beginning of Parcel No. 2 containing 768 square feet of tideland area.

PARCEL NO. 3

Beginning at the most southerly corner of the hereinabove described Parcel No. 1; said point also being the true point or place of beginning of Parcel No. 3; thence south 33° 09' west a distance of 265.00 feet; thence north 56° 51' west a distance of 203.82 feet; thence south 33° 09' west a distance of 435.00 feet to a point on the U. S. Pierhead Line as said Pierhead Line is now established for the Bay of San Diego; thence along said Pierhead Line north 56° 51' west a distance of 668.30 feet to the most southerly corner of that water area now leased to the San Diego Gas & Electric Company; thence north 33° 09' east a distance of 700.00 feet to the most westerly corner of said Parcel No. 1; thence south 56° 51' east along said Parcel No. 1 a distance of 872.12 feet to the true point or place of beginning of Parcel No. 3 containing 921,622 square feet of water covered area.

The above-described premises are those more particularly delineated on Drawing No. 593-B, dated 9 December 1958, attached hereto, marked Exhibit "C", and by this reference made a part hereof.

2. That paragraph (1) on page 4 of said original lease, as previously amended by paragraph (3) on page 4 of said Amendment No. 1, is hereby amended to read as follows:

(1) That the devised premises hereinabove described as Parcels No. 1 and 2 shall be used only and exclusively for the purpose of conducting and maintaining thereon a general boat building and boat repairing business with

the right to construct and maintain thereon such marine ways, machine shop for the repair of marine engines and other structures as may be necessary or convenient for conducting and carrying on said business and for no other purpose whatsoever without the consent of the Harbor Commission, evidenced by resolution, first had and obtained.

That the demised premises hereinabove described as Parcel No. 3 shall be used only and exclusively for the construction and maintenance thereon of a wharf and ship ways and such other structures necessary or convenient for conducting and carrying on said business and for no other purpose whatsoever without the consent of the Harbor Commission, evidenced by resolution, first had and obtained.

This Amendment shall become effective as of the 1st day of February, 1959, and except as herein specifically amended, all the terms and conditions of said lease of February 1, 1944, and its subsequent agreements for amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the City of San Diego, acting by and through the Harbor Commission of said City, has executed the foregoing Agreement for Amendment of Tideland Lease, Amendment No. 3, and the said Lessee has caused this instrument to be executed the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By

[Signature]
[Signature]
Members of the Harbor Commission
of the City of San Diego

SAN DIEGO MARINE CONSTRUCTION
COMPANY

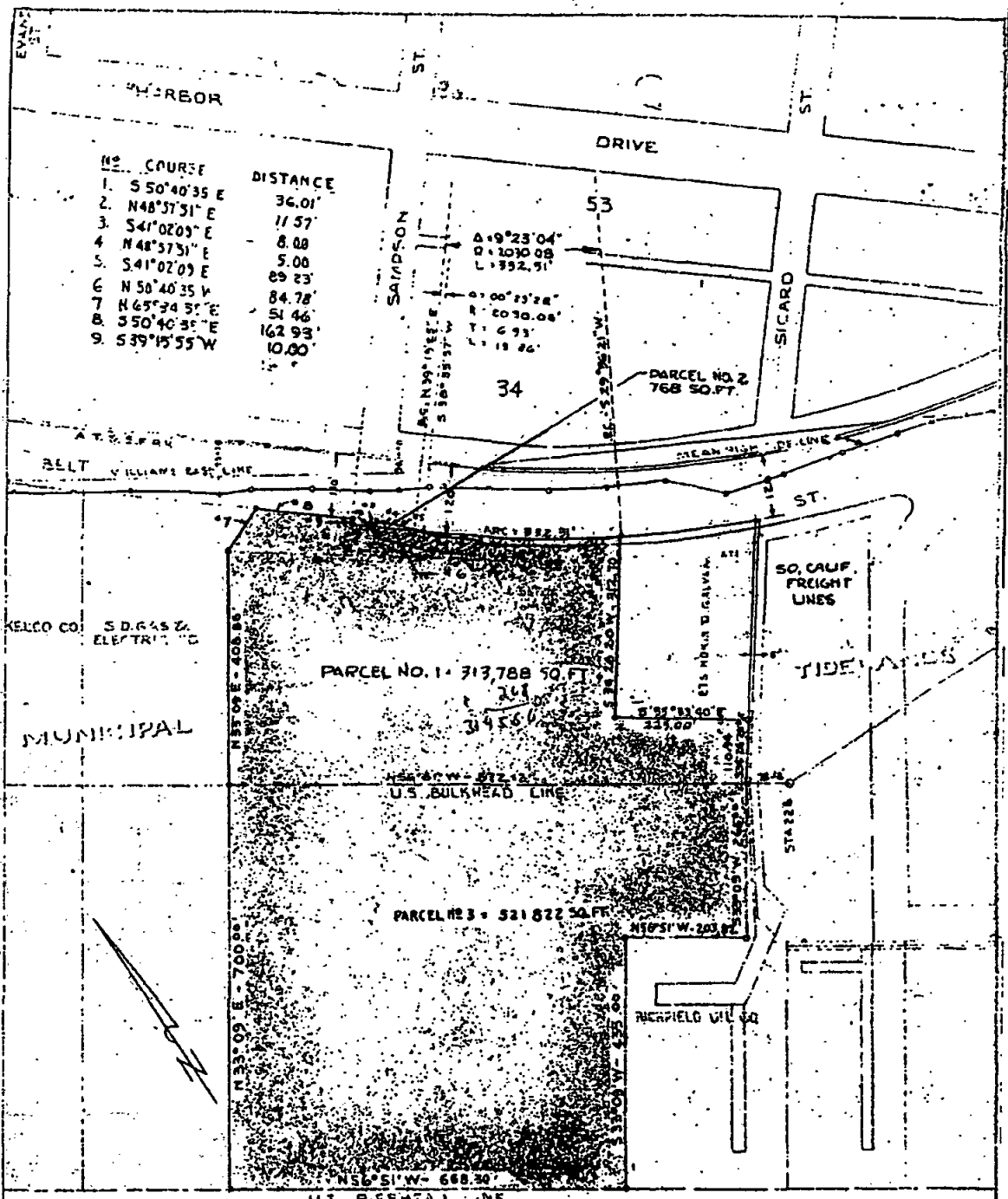
By

I HEREBY APPROVE the form and legality of the foregoing
Agreement for Amendment of Tideland Lease, Amendment No. 3, this
22 day of Jan 1959.

J. F. DUPAUL, City Attorney

By

[Signature]
Deputy City Attorney



BAY OF SAN DIEGO

NOTE: LEASE AREA SHOWN SHADED

DRAWN BY CHECKED BY APPROVED BY <i>[Signature]</i> MARINE ENGINEER	HARBOR DEPARTMENT - CITY OF SAN DIEGO MUNICIPAL - TIDELANDS LEASE S. D. MARINE CONSTRUCTION CO.	DATE: 7-3-51 SCALE: 1" = 250' DRAWING NO. 593-B
	EXHIBIT 101 Revised by M.R.S. 8-2-51 from 77-P-3 Approved for Marine Engineer <i>D.C. Hallbert</i> Revised by L.M.H. 8-2-51 from 77-P-3 Approved by Marine Engineer <i>[Signature]</i> Prepped by G.C.R. 8-9-51 from 77-P-3 Approved by Marine Engineer <i>[Signature]</i>	

PROPERTY FILE RECORD

FILE NO. SD11-3-13369
RETURN AS SOON AS POSSIBLE

SAN DIEGO UNIFIED PORT DISTRICT
3681
DOCUMENT NO. _____
FILED **DEC 3 1968**
MICROFILM NO. _____
OFFICE OF THE CLERK

L E A S E

THIS LEASE, made and entered into this 3rd day of December, 1968, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, acting by and through its Board of Port Commissioners, hereinafter called "Lessor", and SAN DIEGO MARINE CONSTRUCTION COMPANY, a corporation, hereinafter called "Lessee", WITNESSETH:

Lessor, for the considerations hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 836,378 square feet of tideland area in the City of San Diego, California, more particularly described in a three-parcel legal description and delineated on Drawing No. 1214-B dated 4 November 1968, attached hereto marked Exhibits "A" and "B", and by this reference made a part hereof.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon the conditions as follows:

1. TERM: The term of this lease agreement shall be for a period of five (5) years, commencing on the 1st day of December 1968, and ending on the 30th day of November 1973 unless sooner terminated as herein provided; provided, however, that Lessee shall have the option to extend this lease for

nine (9) additional term(s) of five (5) years, such additional five (5) year term for which this option is exercised to commence at the expiration of the immediately preceding term, upon the condition that notice in writing of an extension for such a term is given to the Port Director of Lessor at least ninety (90) days before the expiration of the immediately preceding term. Time is of the essence of said ninety (90) day notice. Upon timely exercise of said option, this lease shall continue in full force and effect in accordance with the terms, covenants and conditions thereof, including the adjustment of rental as herein provided. In the event Lessee shall fail to give the Port Director of Lessor said written notice of its election to exercise an option for a five (5) year extension of this lease, the option for any extension shall thereafter be and become null and void and of no further force and effect.

2. RENT: Lessee shall pay Lessor rent as provided herein and as determined at or during rental periods as follows:

- (a) For the first rental period of this lease, for Parcels No. 1 and 2 the sum of Seven and One-half Cents (7-1/2¢) per square foot per year, and for Parcel No. 3 the sum of Five Hundred Twenty Dollars (\$520) per month, subject to adjustment as provided herein, said sums due and payable in advance on or before the tenth day of each month. A rental period shall consist of five (5) years, the first such period to begin on the commencement date of the lease, provided however, during each five (5) year rental period Lessor shall have the right to adjust the rent after the expiration of the first thirty months. Lessor may exercise said right at any time but not later

than sixty (60) days after the expiration of the first thirty months of each rental period. In the event Lessor exercises said right, the rent for the second thirty months shall be a sum mutually agreed upon between Lessor and Lessee, but shall not exceed a rate equivalent to fifteen per cent (15%) more than the sum agreed upon for the first thirty months of the same five (5) year rental period.

- (b) For each successive rental period of this lease and any extension thereof, a sum to be agreed upon by Lessor and Lessee at or before the expiration of each said rental period, said sum subject to adjustment as provided in paragraph 2(a) above.
- (c) In the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rental provisions of this lease, then Lessee shall pay Lessor the rent due, together with an additional five per cent (5%) of the rent due for any delinquency existing for the first fifteen-day period thereafter, or any part of that first fifteen-day period; and an additional five per cent (5%) for each fifteen-day period thereafter, or any part of any fifteen-day period, that any such delinquency exists. Provided, however, that the Port Director of Lessor shall have the right to waive

for good cause any delinquency payment upon written application of Lessee for any such delinquency period.

Within sixty (60) days before the termination of any rental period or within a reasonable time in the event Lessor exercises its right to adjust the rent during any rental period as provided in paragraph 2(a) above, the parties shall commence negotiations for the following rental period or adjustment and if it should become apparent that a mutual agreement as to the rent cannot be reached, then the parties shall commence the arbitration procedure according to the terms of this lease not later than thirty (30) days prior to the expiration of the current rental period or within a reasonable time in the event of an adjustment.

One arbiter shall be selected by the Lessor and shall be a recognized real estate appraiser and a member of the American Institute of Real Estate Appraisers; one shall be selected by the Lessee and shall be a recognized real estate appraiser and a member of the American Institute of Real Estate Appraisers. Each party shall give written notice of appointment of an arbiter to the other party. Should either party within five (5) days after receiving such notice from the other party fail to appoint an arbiter and give written notice thereof to the other party who has appointed its arbiter, then upon application of either party the presiding Judge of the Superior Court of the State of California, in and for the County of San Diego, shall appoint an arbiter for the party who failed to appoint one. The arbiter so appointed shall have the same power and authority as if he had been appointed by such party who failed to appoint an arbiter. Within five (5) days after said two arbiters have been appointed, such two arbiters shall appoint a third arbiter.

If such two arbiters within the period last above mentioned shall be unable to agree upon the third arbiter, then upon application of either or both parties hereto, the presiding Judge of the Superior Court of the State of California, in and for the County of San Diego, shall appoint the third arbiter.

Within fifteen (15) days after the appointment of the third arbiter, the arbiters shall render a written decision signed by not less than two of such arbiters which decision shall specify the rental to be paid by Lessee to Lessor for and during the period in dispute. It is agreed that any award made pursuant to this arbitration may in the instance of either party

be made an order of the Superior Court of the State of California, in and for the County of San Diego, and that such award may be enforced as though it were a judgment of that court, providing standards set forth herein have been fairly observed and complied with by said arbitrators in said award.

Each party shall bear the expense of its own appointed arbiter and shall share equally in the third arbiter's fee and the incidental expenses of arbitration.

It is further agreed that in determining the rental to be charged during any five (5) year period for which this lease is extended, whether by mutual agreement of the Lessor and Lessee or by action of the board of arbiters, a fair rental value shall be arrived at in accordance with the following procedure:

The fair market value of the leased premises as unimproved land shall be determined by recognized appraisal methods as though it were fee-owned property and were to be sold in the open market. The value thus determined shall be adjusted for leasing purposes and the rental shall then be established at Seven Per Cent (7%) of this adjusted value.

It is mutually agreed that at the time of said review, the rental shall be determined on the basis of the fair rental value of the demised premises in the same condition as they were at the commencement of the term hereof, and it is further understood and agreed that said arbitrators shall not take into consideration any building, structure or improvement placed by Lessee upon the demised premises.

It is mutually agreed that a substantial portion of the consideration for the granting of this lease is the maintenance of the premises in a clean and presentable condition at all times. It is the intent of Lessee to make active use of the premises for the purposes herein described and to provide employment and otherwise contribute to the general economy of the area.

3. USE: Lessee agrees that the leased premises hereinabove described as Parcels No. 1 and No. 2 shall be used only and exclusively for the purpose of conducting and maintaining thereon a general boat building, boat repairing, tug terminal and related marine activities with the right to construct and maintain thereon such marine ways, machine shop for the repair of marine engines

and other structures as may be necessary or convenient for conducting and carrying on said business and for no other purpose whatsoever without the consent of the Lessor, evidenced by resolution, first had and obtained.

Lessee agrees that the leased premises hereinabove described as Parcel No. 3 shall be used only and exclusively for the construction and maintenance thereon of a wharf and ship ways and such other structures necessary or convenient for conducting and carrying on said business and for no other purpose whatsoever without the consent of the Lessor, evidenced by resolution, first had and obtained.

4. CONSTRUCTION OF IMPROVEMENTS: Lessee shall commence the construction and diligently proceed to the completion of those certain capital improvements including modernization and repairs to said leased premises, all to be completed within five (5) years from the signing of this lease in accordance with Lessee's letter dated 22 October 1968 and "Yard Plot Plan" dated "12/9/66" delineating said capital improvements to be made on said leased premises as further outlined in "red" on said plot plan with copies of said letter and said plot plan on file in the office of the District Clerk as Document No. 3627, which document is by this reference made a part hereof.

The approximate total cost along with the approximate starting and ending dates for each capital project of the overall expansion and new facilities program as outlined in said letter of 22 October 1968 and delineated on said plot plan of 12/9/66 is approximately One Million Two Hundred Fifty Thousand Dollars (\$1,250,000).

5. IMPROVEMENTS: Lessee may, at its own expense, make any alterations or changes in the leased premises or cause to be built, made or installed thereon any structures, machines, appliances, utilities, signs or other improvements necessary or desirable for the use of said premises and may alter and repair any such structures, machines or other improvements; provided, however, that no alterations and changes shall be made and no structures, machines, appliances, utilities, signs or other improvements shall be made, built or installed, and no major repairs thereto shall be made except in accordance with plans and specifications previously submitted to the Port Director of Lessor and approved in writing by him.

6. LEASE ENCUMBRANCE: Lessor does hereby consent and agree that the Lessee may encumber the lease, leasehold estate and the improvements thereon by a deed of trust, mortgage, or other security type instrument to assure the payment of the promissory note of Lessee. Lessor further consents and agrees that in the event said deed of trust, mortgage or other security instrument should at any time be in default and be foreclosed, the Lessor hereby agrees that upon the filing of a written application for consent to the assignment of said lease, Lessor will give its consent thereto, provided the assignee is financially reliable and is qualified to conduct the business for which this lease was granted. The decision of the board of Port Commissioners as to such financial responsibility and qualification of the proposed assignee shall be final. In the event Lessee is in default, Lessor agrees to provide notice thereof to such assignee. Said assignee may correct default.

7. MAINTENANCE: Lessee shall keep and maintain the leased premises and all improvements of any kind now existing or which may be erected, installed or made thereon by Lessee in good and substantial repair and condition, including the painting thereof, and shall make all necessary repairs and alterations thereto, and that Lessor shall not be required at any time to make any improvements or repairs whatsoever on or for the benefit of the leased premises. Lessee shall provide proper containers for trash and garbage and keep the demised premises free and clear of rubbish, debris and litter at all times. Lessor shall at all times during ordinary business hours have the right to enter upon and inspect said premises.

8. LIEN: Lessee agrees that it will at all times save Lessor free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs or alterations on the leased premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that any lien or levy of any nature whatsoever is filed against the leased premises or the leasehold interests of the Lessee therein, the Lessee shall be required to deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien or levy has been filed. Such bond shall be acknowledged by Lessee as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to immediately terminate this lease in the event the bond required by this paragraph has not been deposited with the Lessor within ten (10) days after the filing of such lien or levy.

The beneficiary in any deed of trust of record with Lessor on the demised premises shall have the right to file such bond on behalf of the Lessee.

9. TITLE TO IMPROVEMENTS: Structures, installations and/or improvements of any kind now existing on the leased premises or hereafter placed on the leased premises by Lessee shall at the option of Lessor be removed by Lessee within sixty (60) days after the expiration of the term of this lease or sooner termination thereof. Lessor may exercise said options as to any or all of the structures, installations, and/or improvements either before or after the expiration or sooner termination of this lease. If Lessor exercises such option and the Lessee fails to remove such structures, installations and/or improvements within said sixty (60) days, the Lessor shall have the right to have such structures, installations and/or improvements removed at the expense of Lessee. As to any or all structures, installations and/or improvements that Lessor does not exercise said option, title thereto, excluding all machines, appliances and trade fixtures placed on the leased premises by Lessee, shall vest in the Lessor.

10. REMOVAL OF MATERIALS: Lessee hereby agrees that upon the expiration of this lease or the sooner termination as herein provided, it will remove within sixty (60) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land area and the water area forming a part of or adjacent to the leased premises, so as to leave the same in as good condition as when first occupied by Lessee; provided, however, that if any of said ships, vessels, barges, hulls, debris, surplus

and salvage materials shall not be so removed within sixty (60) days by the Lessee, Lessor may remove and/or sell and/or destroy the same at the expense of Lessee and Lessee hereby agrees to pay to Lessor the reasonable cost of such removal, sale or destruction; or at the option of Lessor, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of Lessor.

11. ASSIGNMENT-SUBLEASE: Lessee shall not assign or transfer the whole or any part of this lease or any interest therein, nor sublease the whole or any part of the leased premises, nor permit the occupancy of any part thereof by any other person, nor permit transfer of the lease or possession of the leased premises by merger, consolidation or dissolution, nor permit sale of a controlling interest in the voting stock in said corporation without the consent of Lessor, evidenced by resolution, first had and obtained. It is mutually agreed that the personal qualifications of the parties controlling the corporation named herein as Lessee are a part of the consideration for the granting of this lease and said parties do hereby agree to maintain active control and supervision of the operations conducted on the leased premises. No assignment, voluntary or involuntary, in whole or in part of this lease or any interest therein, and no sublease of the whole or any part of the leased premises and no permission to any person to occupy the whole or any part of the leased premises, shall be valid or effective without the consent of Lessor, first had and obtained; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said premises by any employee, agent or business invitee of Lessee.

12. TAXES: Lessee shall pay before delinquency all taxes and assessments assessed or levied upon Lessee or the leased premises by reason of said lease or of any machines, appliances or other improvements of any nature whatsoever erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the said premises, and shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the leased premises or under this lease, and shall pay before delinquency any and all charges for utilities at or on the leased premises.

13. BANKRUPTCY: It is mutually agreed that in the event Lessee commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent or makes any assignment for the benefit of creditors, or in the event of any judicial sale of Lessee's interest under this lease, this lease shall at the option of Lessor immediately terminate and all rights of Lessee hereunder shall immediately cease and terminate.

The provisions of this paragraph shall not be applicable and/or binding on the beneficiary in any deed of trust of record with Lessor on the demised premises and/or its successors in interest or Lessee so long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided, however, that such beneficiary and/or its successors in interest pay to the Lessor all rent coming due under the provisions of this lease.

14. INDEMNIFICATION OF LESSOR: Lessee shall keep and hold Lessor herein, including the Board of Port Commissioners and Lessor's officers, agents, servants and employees, harmless from any

and all costs, liability, damage or expense (including costs of suit and reasonable expenses of legal services) claimed by anyone by reason of injury or death of persons or damage to persons or property sustained in, on or about the demised premises, or arising out of Lessee's operations in or on the demised premises, as a proximate result of the acts or omissions of Lessee its agents, servants or employees, or arising out of any condition occasioned by the acts or omissions of Lessee in its demised premises, or arising out of the operations of Lessee upon or about the demised premises, excepting such liability as may be the result of the direct and proximate negligence, acts or omissions of Lessor or its officers, agents, servants or employees while acting in the scope of their official duties, agency or employment; provided, however, that upon the filing of any claim with Lessor for damages arising out of incidents for which Lessee herein agrees to hold Lessor harmless, then and in that event Lessor shall notify Lessee of such claim and Lessee shall have the right to settle, compromise or defend the same. Any final judgment rendered against Lessor for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount, where the time for appeal therefrom has expired.

15. **INSURANCE:** Lessee shall obtain public liability insurance from an insurance carrier satisfactory to Lessor to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Lessee or any person acting for it or under its control or direction,

or any person authorized by it to use the leased premises, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of Lessee or any person acting for it or under its control or direction, or any person authorized by it to use the leased premises.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in amounts of not less than \$100,000 for one person injured in one accident, and not less than \$300,000 for more than one person injured in one accident, and in the amount of not less than \$50,000 with respect to any property damage aforesaid. The policy shall carry an endorsement which agrees to accept the hold harmless provisions set forth above.

Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

Certificates of such insurance shall be filed with Lessor and shall be satisfactory in form to Lessor. Said policies shall have a non-cancellation-without-notice clause and shall provide that copies of all cancellation notices shall be sent to Lessor.

16. EASEMENTS: This lease and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by Lessor in, to or over

the leased premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat or power lines as may from time to time be determined by Lessor to be in the best interests of the development of the tidelands.

Lessor agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Lessee.

17. EMINENT DOMAIN: If the whole or a substantial part of the premises hereby leased shall be taken by any paramount public authority under the power of eminent domain, then the term of this lease shall cease as to the part so taken, from the day the possession of that part shall be required for any public purpose, and the rent shall be paid up to that day, and from that day Lessee shall have the right either to cancel this lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided, except that the rent shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased; provided, however, that Lessor shall not be entitled to any portion of the award made to Lessee for loss of business, or to any award made for the taking of any installations or improvements on the leased premises belonging to Lessee as provided in Paragraph "9" of this lease.

18. **DEFAULT:** It is mutually understood and agreed that if any default be made in the payment of the rental herein provided, or in the performance of the covenants, conditions or agreements hereof, or should Lessee fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within fifteen (15) days after written notice thereof, Lessor shall have the right to immediately terminate this lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from said premises and shall have no further right or claim thereto, and said Lessor shall immediately thereupon, without recourse to the courts, have the right to re-enter and take possession of the leased premises.

It is further agreed that Lessor shall afford the beneficiary in any deed of trust of record with Lessor on the demised premises the right to cure any default by Lessee made in the performance of the covenants, conditions or agreements hereof, within fifteen (15) days after written notice thereof, which said fifteen (15) days shall be computed from the date of receipt by said beneficiary, by registered mail, of such notices from Lessor.

19. **PEACEABLE SURRENDER:** Upon the expiration of this lease or the earlier termination or cancellation thereof, as herein provided, Lessee will peaceably surrender said premises to Lessor in as good condition as said premises were at the date of this lease, ordinary wear and tear and damage by fire, the elements and accidents beyond the control of Lessee excepted.

20. **HOLD OVER:** In the event Lessee shall hold over after the expiration of this lease for any cause, such holding over

shall be deemed a tenancy from month to month only, at the same rental per month and upon the same terms, conditions and provisions of this lease, unless other terms, conditions and provisions be agreed upon in writing by Lessor and Lessee. Such holding over shall include any time employed by Lessee to remove structures, machines, appliances, and other improvements during the sixty (60) day period hereinabove mentioned for such removal.

21. WAIVER: Any waiver by Lessor of any breach by Lessee of any one or more of the covenants, conditions or agreements of this lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this lease, nor shall any failure on the part of Lessor to require or exact full and complete compliance by Lessee with any of the covenants, conditions or agreements of this lease be construed as in any manner changing the terms hereof or to prevent Lessor from enforcing the full provisions hereof, nor shall the terms of this lease be changed or altered in any manner whatsoever other than by written agreement of Lessor and Lessee.

22. CONFORMANCE WITH RULES AND REGULATIONS: Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all provisions of the San Diego Unified Port District Act, any ordinances of the city in which the leased land is located, including the Building

Code thereof, and any ordinances of the Unified Port District, and any applicable laws of the State of California, as any of the same now exist or may hereafter be adopted or amended.

23. POLICY OF LESSOR: It is the policy of the Unified Port District that prevailing wage rates shall be paid all persons who are employed by Lessee on the tidelands of the District.

24. NOTICES: Any notice or notices provided for by this lease or by law to be given or served upon Lessee may be given or served by certified or registered letter addressed to Lessee at Post Office Box 751, San Diego, California 92112, or such other places as Lessor is notified by Lessee from time to time, deposited in the United States mail, or may be served personally upon said Lessee or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided by this lease or by law to be served upon Lessor may be given or served by certified or registered letter addressed to the Port Director of Lessor at the General Offices of the San Diego Unified Port District, Post Office Box 488, San Diego, California 92112 deposited in the United States mail, or may be served personally upon said Port Director or his duly authorized representative, and that any notice or notices given or served as provided herein, shall be effectual and binding for all purposes upon the parties so served.

Said notice or notices will also be served or given by certified mail to the beneficiary of any deed of trust or holder of any promissory note of record with Lessor.

25. SUPERSEDORE: It is mutually agreed that this lease upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofore given to or made with Lessee as to any portion of the property herein described, except as to any rental and/or fees which may have accrued thereunder.

26. TIME IS OF THE ESSENCE: Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns and sublessees of Lessee.

27. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, or averment of any nature whatsoever concerning the condition of the leased premises, including the physical condition thereof, or any condition which may affect the leased premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

28. ENTIRE UNDERSTANDING: This lease contains the entire understanding of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the demised premises. No modification, amendment or alteration of this lease shall be valid unless it is in writing and signed by the parties hereto.

29. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

APPROVED as to form
and legality.

NOV 19 : 1968

AARON W. REESE
Port Attorney

By *J. Patello*
JOSEPH D. PATELLO
Assistant Port Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By *Samuel J. Galline*
~~San Diego~~ Port Director

SAN DIEGO MARINE CONSTRUCTION
COMPANY

By *C. H. H. H.*
Title: President

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 395

AN ORDINANCE GRANTING A LEASE
TO SAN DIEGO MARINE CONSTRUCTION COMPANY

The Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. That lease agreement between the San Diego Unified Port District and San Diego Marine Construction Company, on file in the office of the District Clerk as Document No. 3681, leasing certain premises located in the City of San Diego, is hereby approved and granted.


Section 2. The Port Director or his authorized representative is hereby directed to execute the said lease agreement with San Diego Marine Construction Company on behalf of the District.

Section 3. This ordinance shall take effect on the 31st day from its publication.

Presented By: DON L. NAY, Port Director

By 
ASSISTANT PORT DIRECTOR

Approved: AARON W. REESE, Port Attorney

By 
Joseph D. Patello
Assistant Port Attorney

cm
12/2/68

PORT005920

SAN DIEGO UNIFIED PORT DISTRICT
INTER-STAFF COMMUNICATION

Date: April 14, 1972

To: Donald Hillman, Property

From: Don Funderburk, Auditing

Subject: STAR & CRESCENT BOAT COMPANY

It is my understanding that the subject company is actually a division of the San Diego Marine Construction Company, a California Corporation, and is not a entity unto itself. Star & Crescent Boat Company can also be considered a DBA of the San Diego Marine Construction Company.

The most recent agreement with this organization, a TUOP for parking on B Street Pier, (Document No. 21585) contains no specific reference to the San Diego Marine Construction Company. I believe it would be more appropriate in all of our future Star & Crescent documents to also refer to the company's actual corporate name and not just the business name.



D. D. FUNDERBURK

RECEIVED

APR 14 1972
SAN DIEGO UNIFIED
PORT DISTRICT
Property Department

PROPERTY FILE RECORD
RETURN AS SOON AS POSSIBLE

Account
175
SAN DIEGO UNIFIED PORT DISTRICT
DOCUMENT NO. 6221
FILED JUN 26 1972
MICROFILM NO. _____
OFFICE OF THE CLERK

SURRENDER OF PORT LEASE

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, San Diego Marine Construction Co., whose address is Foot of Sampson Street, San Diego, California, does hereby surrender to San Diego Unified Port District, whose address is 3165 Pacific Highway, San Diego, California, that certain lease between San Diego Unified Port District and San Diego Marine Construction Co. dated December 3, 1968 and attached hereto, and waives all right and claim in and to said leased premises. San Diego Unified Port District hereby accepts the surrender of said lease and agrees that said lease is hereby terminated.

Dated: July 14, 1972

SAN DIEGO MARINE CONSTRUCTION CO.

By [Signature] Pres.

SAN DIEGO UNIFIED PORT DISTRICT

JK

By [Signature]
ASSISTANT PORT DIRECTOR

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 584

AN ORDINANCE ACCEPTING SURRENDER OF LEASE
FROM SAN DIEGO MARINE CONSTRUCTION COMPANY
AND GRANTING A LEASE OPTION TO MCCSD

The Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. That the San Diego Unified Port District hereby accepts the Agreement for Surrender of Lease from San Diego Marine Construction Company in accordance with the terms, covenants, and conditions as contained in said Surrender of Lease on file in the office of the District Clerk as Document No. 6221. Concurrently with said acceptance, the option to lease between the San Diego Unified Port District and MCCSD, on file in the office of the District Clerk as Document No. 6222, providing an option to lease certain premises located in the City of San Diego, is hereby approved and granted. In the event said option is not timely exercised and notice provided the District, said option shall be null and void and of no force and effect. Time is of the essence of said exercise of option and said notice.

Section 2. The Port Director or his authorized representative is hereby directed to execute both the Agreement for Surrender of Lease and said option to lease with the respective parties on behalf of the District in the event said option is timely exercised.

Section 3. This ordinance shall take effect on the 31st day from its publication.

Presented By: DON L. NAY, Port Director

By *Calvin P. Pella*
ASSISTANT PORT DIRECTOR

Approved: JOSEPH D. PATELLO, Port Attorney

sw
6/26/72

J. P. Patello

PORT005845

FILED

In the office of the Secretary of State
of the State of California

175009

JUL 20 1972

EDWARD A. BROWN II, Secretary of State

Thomas Harris
Deputy

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

O.J. HALL, JR. and G.E. HALL certify:

1. They are the President and the Secretary, respectively, of SAN DIEGO MARINE CONSTRUCTION CO., a California corporation.

2. The by-laws of said corporation authorize the directors to adopt resolutions amending the articles of incorporation by unanimous written consent without a meeting; heretofore, by unanimous written consent without a meeting, the directors adopted a resolution amending the articles of incorporation, as follows:

"RESOLVED that Article FIRST of the articles of incorporation of this corporation be amended to read as follows:

"The name of this corporation is STAR & CRESCENT INVESTMENT CO."

3. The shareholders have adopted said amendment by written consent. The wording of the amended article, as set forth in the shareholders' written consent, is the same as that set forth in the directors' resolution in Paragraph 2 above.

4. The number of shares represented by written consent is 55,364. The total number of shares entitled to vote on or consent to the amendment is 55,364.

2

O.J. Hall, Jr.
O.J. Hall, Jr., President

G.E. Hall
G.E. Hall, Secretary

Each of the undersigned declares under penalty of perjury that the matters set forth in the foregoing certificate are true and correct.

Executed at San Diego, California, on July 4, 1972.



O.J. Hall, Jr.



G.E. Hall

STAR AND CRESCENT INVESTMENT COMPANY

Annual Meeting of Stockholders

The annual meeting of the Company was held on December 23, 1977

~~at 1:00 P.M. in lieu of the annual meeting March 5, 1978. The Stockholders~~
voted to continue the present Board of Directors, O. J. Hall, Jr. and
K. N. Beiriger.

The Stockholders also voted to favorably accept the Ford, Hickman,
Gibbs & Massinger proposal of increasing salaries and bonuses, dated
December 12, 1977, for the Star & Crescent Boat Company. Said approval is
required under terms of the sell agreement between Star & Crescent Investment
Company and Star & Crescent Boat Company. Copy of CPA recommendations
attached to these Minutes.

The Stockholders were informed that Lasco Truck Rental operations
in Nevada has now become the largest truck rental agency in Nevada.

Preliminary talks have been held with Department of Interior on
franchise renewal of Lake Mead Ferry Service operations. This contract has
two years remaining.

In connection with baggage operations, a rate increase has been
filed with Nevada Public Service Commission, and an increase is hoped for
in the next 120 days.

Approval

site and facility

Company of

SEAL

S&C000288

~~two years remaining~~

In connection with baggage operations, a rate increase has been filed with Nevada Public Service Commission, and an increase is hoped for in the next 120 days.

Approval was given for Lake Mead Ferry Service to acquire building site and facilities for subsequent rental to Star and Crescent Investment Company of Nevada, Inc., Lasco operation.

Meeting adjourned 3:00 P.M.

Dated: December 30, 1977



SEAL

Leona Jackson
Leona Jackson
Secretary

APPROVED:

O. J. Hall, Jr.
O. J. Hall, Jr.

K. N. Baifiger
K. N. Baifiger

S&C000289

STAR AND CRESCENT INVESTMENT COMPANY

BOARD OF DIRECTORS MEETING

RESOLUTIONS ADOPTED BY UNANIMOUS
WRITTEN CONSENT OF DIRECTORS

We, O. J. Hall, Jr., Kenneth N. Beiriger and Leona Jackson, as members of the Board of Directors of Star and Crescent Investment Company, a California corporation, being all of the members of such Board as presently constituted; do by this written consent take the following actions and adopt the following Resolutions at this meeting of July 7, 1978 at 2:00 P.M.:

RESOLVED, that pursuant to the Stockholders Meeting of the Company on March 5, 1978 and the approval given therein to accept Ford, Hickman, Gibbs and Massinger proposal for increasing salaries and bonuses, dated December 12, 1977, for the Star & Crescent Boat Company, said approval being required under terms of the sell agreement between Star and Crescent Investment Company and Star & Crescent Boat Company, Phase II thereof is hereby approved wherein a 20% increase, effective July 1, 1978, is granted to Stephen P. Carlstrom, Judy E. Hall and Janet E. Miles, and such bonuses as supplemental by Ford, Hickman, Gibbs and Massinger in their updated letter of July 5, 1978, as attached hereto, be approved by the Board of Directors of Star & Crescent Investment Company.

RESOLVED, that the Company also enter into negotiations with interested parties to explore the possibility of liquidating the Las Vegas Baggage Service from the Star and Crescent Investment Company. If agreeable buyers are found, the President is authorized to make such decision.

RESOLVED, that the President be authorized to secure land by lease or purchase on combination thereof to enable Lasco Truck Rental & Equipment Co. to begin operations in Reno, Nevada, and to secure necessary additional equipment, etc. required for such an operation.

Meeting adjourned 3:00 P.M.

Leona Jackson
Leona Jackson
Secretary

APPROVED:

O. J. Hall, Jr.
O. J. Hall, Jr.

K. N. Beiriger
K. N. Beiriger

Dated: July 7, 1978

Leona Jackson S&C000290
Leona Jackson

STAR AND CRESCENT INVESTMENT COMPANY

BOARD OF DIRECTORS MEETING

The Board of Directors by this written consent of June 8, 1979 reviewed operations and approved dividends and officer's salaries and bonus payments of Star & Crescent Boat Company, in accordance with selling terms of Star & Crescent Boat Company stock in 1976.

Directors attending were Leona Jackson, O. J. Hall, Jr. and K. N. Beiriger, being all of the Directors.

This action was taken under consent, executed pursuant to Section 307(c) of the Corporations Code of the State of California, which authorizes the taking of action by the Board of Directors by unanimous written consent without a meeting.

RESOLVED, that the schedule of dividends paid, bonuses and salaries to Sub-Chapter S stockholders and to officers of Star & Crescent Boat Company be approved as presented and audited by Ford, Hickman, Gibbs and Massinger, CPA's. The schedule is presented as an adendum to Star & Crescent Boat Company's Board of Directors meeting of June 8, 1979.

RESOLVED, that Star & Crescent Investment Company desires to open a business of furniture stripping in Las Vegas, Nevada and other cities, and that Walter Bull, O. J. Hall, Jr. or K. N. Beiriger be authorized to establish necessary bank credits, and to sign leases and equipment orders pursuant to such business. Further, that this operation will be a division of subsidiary Star and Crescent Investment Company of Nevada, Inc.

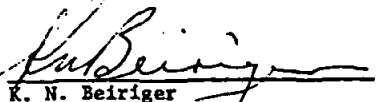
RESOLVED, that Star and Crescent Investment Company of Nevada, O. J. Hall, Jr., President, be authorized to dispose of Las Vegas Baggage Service in the amount of \$300,000, or approximately thereof, and as part of the negotiations to transfer some of the truck equipment to Lasco Truck Rental & Equipment division at a future date.



Leona Jackson, Secretary



O. J. Hall, Jr.



K. N. Beiriger

Dated: June 8, 1979

S&C000301

STAR AND CRESCENT INVESTMENT COMPANY

BOARD OF DIRECTORS MEETING

The Board of Directors by this written consent of March 9, 1981 reviewed operations and approved dividends and officer's salaries and bonus payments of Star & Crescent Boat Co. in accordance with selling terms of Star & Crescent Boat Co. stock in 1976.

Directors attending were Leona Jackson, O. J. Hall, Jr. and K. N. Beiriger, being all of the Directors.

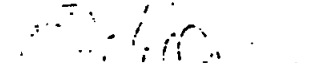
This action was taken under consent, executed pursuant to Section 307 (c) of the Corporation Code of the State of California, which authorizes the taking of action by the Board of Directors by unanimous written consent without a meeting

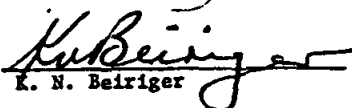
RESOLVED, that the schedule of dividends paid, bonuses and salaries to Sub-Chapter S Stockholders and to Officers of Star & Crescent Boat Company be approved as presented and audited by Ford, Hickman, Gibbs and Massinger, C.P.A.'s for the fiscal years ending March 31, 1980 and March 31, 1981. The March 31, 1981 approval is based on Ford, Hickman's letter and projections dated February 12, 1981.

RESOLVED, that Star & Crescent Investment Company has no objection to Star & Crescent Boat Company dissolving Sub-Chapter S status as at April 1, 1981 for the fiscal year thereafter, and agrees to guarantee repayment of the Star & Crescent Boat Company loan of \$325,000 from the Bank of America. \$318,089.81 will be received by Star & Crescent Investment Co. and K. N. Beiriger is hereby authorized to sign such guarantees on behalf of Star & Crescent Investment Co. with Bank of America.

RESOLVED, that Lake Mead Ferry Service, a subsidiary Nevada Corporation, be permitted to investigate with the Department of Interior an extension to present contract if a new boat be purchased by Star & Crescent Investment Co. and subsequent bare boat charter to Lake Mead Ferry Service. Owen Goodwin is authorized to investigate this matter and O. J. Hall, Jr. to sign necessary loan papers and commitments if contract extension is satisfactory. Approximate range \$350,000 to \$450,000.


Leona Jackson, Secretary


O. J. Hall, Jr.


K. N. Beiriger

Dated: March 9, 1981

S&C000317

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FILED *f*
In the office of the Secretary of State
of the State of California

DEC 23 1991

175009

March Fong Eu
MARCH FONG EU, Secretary of State

CERTIFICATE OF ELECTION TO WIND UP AND DISSOLVE

Oakley J. Hall, Jr. certifies that:

1. He is the president, secretary, and sole shareholder of STAR & CRESCENT INVESTMENT CO., a California corporation. Corporation Number D-0175009.
2. The corporation has elected to wind up and dissolve.
3. The election was made by the vote of 100 shares of the corporation and representing 100% of the voting power of the corporation.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: 12-5-91

Oakley J. Hall, Jr.
Oakley J. Hall, Jr.

D405158

FILED *g*
In the office of the Secretary of State
of the State of California

DEC 23 1991

175009

March Fong Eu
MARCH FONG EU, Secretary of State

CERTIFICATE OF DISSOLUTION

Oakley J. Hall, Jr. certifies that:

1. He is the sole director now in office of STAR & CRESCENT INVESTMENT CO., a California corporation. Corporation Number D-0175009.
2. The corporation has been completely wound up.
3. The corporations known debts and liabilities have been actually paid.
4. The corporation's known assets have been distributed to the persons entitled thereto.
5. The corporation is dissolved.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: 12-5-91

Oakley J. Hall Jr
Oakley J. Hall, Jr.



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942857
SACRAMENTO, CA 94257-0541

TAX CLEARANCE CERTIFICATE

November 5, 1991

EXPIRATION DATE: February 14, 1992

GRICE LUND & TARKINGTON
144 WEST D ST
ENCINITAS CA 92024

ISSUED TO: STAR & CRESCENT INVESTMENT CO.
Corporate Number 0175009 SA1CI

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid or are secured by bond deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1230 J Street, Sacramento, CA 95814. The telephone number is (916) 445-0620.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By J. Snyder
Special Audit Unit
Corporation Audit Section
Telephone (916) 369-4124

FRANCHISE TAX BOARD

COPY

76712A

FILED
In the Office of the Secretary of State
of the State of California

APR 7 1976

MAURICE FONG, Esq. Secretary of State
Maurice Fong
Deputy

ARTICLES OF INCORPORATION
OF
STAR & CRESCENT BOAT COMPANY

FIRST: The name of this corporation is STAR
& CRESCENT BOAT COMPANY.

SECOND: The purposes for which this corporation
is formed are:

Restriction of right
to amend articles
Yes No

5

- (a) To engage primarily in the specific business of operating a harbor excursion business;
 - (b) To engage generally in the business of buying, selling, manufacturing, using, leasing, and otherwise dealing in boats, vessels, and maritime products, and in goods, wares, merchandise, and real and personal property of all kinds;
 - (c) To engage in any business related or unrelated to those described in clauses (a) and (b) of this Article SECOND, and from time to time authorized or approved by the board of directors of this corporation;
 - (d) To act as a partner or joint venturer or in any other legal capacity in any transaction;
 - (e) To guaranty the contracts of customers and others;
 - (f) To do business anywhere in the world;
- and

(g) To have and exercise all rights and powers from time to time granted to a corporation by law.

The above-purpose clauses shall not be limited by reference to or inference from one another, but each such purpose clause shall be construed as a separate statement conferring independent purposes and powers upon this corporation.

This corporation may, through its by-laws, confer powers upon its directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by statute, provided that such powers are not in conflict with any applicable statute of law.

THIRD: The county in the State of California where the principal office for the transaction of the business of the corporation is located is San Diego County.

FOURTH: (a) The number of directors of the corporation is six (6), which constitutes the authorized number of directors and until changed by amendment of these Articles of Incorporation, or by a by-law duly adopted by the shareholders.

(b) The names and addresses of the persons appointed as first directors are:

<u>Name</u>	<u>Addresses</u>
Carole Lechleitner	2436 E. 8th Street National City, California
Monica Tripiett	7970 Rancho Fanita Drive Santee, California
Key Harpold	3091 "A" Street San Diego, California
Gail Lary	4613 67th Street San Diego, California
Jacqueline Rhodes	3473 Merrimac Avenue San Diego, California
Dorine Schamens	10045 Sierra Bonita Spring Valley, California

(c) The board of directors may take any action without a meeting that may be required or permitted to be taken by the board at a meeting, if all of the members of the board individually or collectively consent in writing to the action.

FIFTH: This corporation is authorized to issue only one class of stock which shall be designated as common stock. The total number of shares of common stock the corporation is authorized to issue is 10,000 shares. The aggregate par value of said shares is \$100,000.00, and the par value of each share is \$10.00. No distinction shall

exist between the shares of the corporation or the holders thereof.

IN WITNESS WHEREOF, the undersigned and above-named incorporators and first directors of this corporation have executed these Articles of Incorporation on March 19, 1976.

Carole Leachleithner
Carole Leachleithner

Monica J. Triplett
Monica Triplett

Kay Harpold
Kay Harpold

Gail Lary
Gail Lary

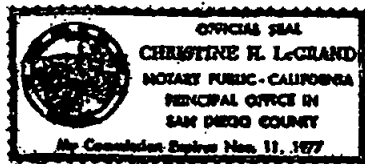
Jacqueline Rhodes
Jacqueline Rhodes

Dorine Schamens
Dorine Schamens

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On March 19th, 1976, before me, the undersigned,
a notary public in and for said state, personally appeared
Carole Lechleitner, Monica Triplett, Kay Harpold, Gail Lary,
Jacqueline Rhodes, and Dorine Schamans, known to me to be
the persons whose names are subscribed to the foregoing
Articles of Incorporation and acknowledge that they have
executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed
my official seal the day and year in this certificate first
above written.



Christine H. LeGrand
CHRISTINE H. LeGRAND

MINUTES OF MEETING OF BOARD OF DIRECTORS
OF
STAR & CRESCENT BOAT COMPANY

A meeting of the board of directors of STAR & CRESCENT BOAT COMPANY, a California corporation, was held on the 9th day of April, 1976, at the hour of 9:00 A.M. of that day at 2201 California First Bank Building, San Diego, County of San Diego, State of California, pursuant to the following written consent:

We, the undersigned, being all of the directors of STAR & CRESCENT BOAT COMPANY, a California corporation, do hereby give our written consent to the holding of this meeting of the board of directors of said corporation, at the time and place above written, and we do hereby give our written consent to the transaction of all business which may come before said meeting.

Dated: April 9, 1976

Monica Triplett
Monica Triplett

Carole Lechleitner
Carole Lechleitner

Kay Harpold
Kay Harpold

Gail Lary
Gail Lary

Jacqueline Rhodes
Jacqueline Rhodes

Dorine Schamens
Dorine Schamens

All of the directors of this corporation were present.

On motion duly made, seconded and carried, Monica Triplett was elected as Temporary Chairman of the meeting and Kay Harpold was elected as Temporary Secretary thereof.

The Chairman presented and read a copy of the Articles of Incorporation of this corporation, and on motion duly made, seconded and carried, the same were unanimously approved and ordered incorporated in the records of this corporation.

The Secretary reported that the Articles of Incorporation of this corporation had been filed in the office of the Secretary of State of the State of California on the 7th day of April, 1976; that a certified copy of said Articles of Incorporation, certified by the Secretary of State under his hand and official seal, and bearing the endorsement of the date of filing in his office, will be filed in the office of the County Clerk of the County of San Diego, State of California, the county in which this corporation is to have its principal office.

Monica Triplett submitted her resignation as a director of this corporation effective immediately. Whereupon Stephen P. Carlstrom was duly nominated to be a director of this corporation and thereafter was unanimously elected by the remaining directors to be a director of this corporation for the ensuing year and until his successor is elected and qualifies.

Carole Lechleitner submitted her resignation as a director of this corporation effective immediately. Whereupon Raleigh Miles was duly nominated to be a director of this corporation and thereafter was unanimously elected by the remaining directors to be a director of this corporation for the ensuing year and until his successor is elected and qualifies.

Gail Lary submitted her resignation as a director of this corporation effective immediately. Whereupon Judy Hall was duly nominated to be a director of this corporation and thereafter was unanimously elected by the remaining directors to be a director of this corporation for the ensuing year and until her successor is elected and qualifies.

Kay Harpold submitted her resignation as a director of this corporation effective immediately. Whereupon Janet Miles was duly nominated to be a director of this corporation and thereafter was unanimously elected by the remaining directors to be a director of this corporation for the ensuing year and until her successor is elected and qualifies.

Jacqueline Rhodes submitted her resignation as a director of this corporation effective immediately. Whereupon Kenneth Beiriger was duly nominated to be a director of this corporation and thereafter was unanimously elected by the remaining directors to be a director of this corporation

for the ensuing year and until his successor is elected and qualifies.

Dorine Schamens submitted her resignation as a director of this corporation effective immediately. Whereupon O. J. Hall, Jr. was duly nominated to be a director of this corporation and thereafter was unanimously elected by the remaining directors to be a director of this corporation for the ensuing year and until his successor is elected and qualifies.

The board next proceeded to organize and the following persons were elected to the office opposite their names:

O. J. Hall, Jr.	President
Leona Jackson	Secretary
Stephen P. Carlstrom	Vice President
Kenneth Beiriger	Vice President/Treasurer

The Chairman announced that the first business of the meeting was the adoption of a code of by-laws for this corporation. A code of by-laws was thereupon presented and read by the Secretary. On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the code of by-laws as presented and read by the Secretary be,

and the same is hereby approved and adopted as and for the by-laws of this corporation.

On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the Secretary of this corporation be and is hereby authorized and directed to insert a copy of the code and by-laws in that certain book known as the Book of Minutes of STAR & CRESCENT BOAT COMPANY, and to see that a copy of said by-laws is kept at the principal office for the transaction of business of this corporation, in accordance with Section 502 of the California Corporations Code.

On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the Secretary of this corporation be and is hereby requested to certify the adoption of said By-Laws as the By-Laws of this corporation in that certain book known as the Book of Minutes of STAR & CRESCENT BOAT COMPANY.

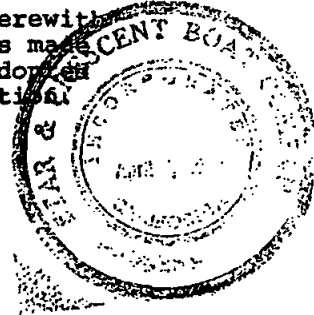
The Chairman announced that the selection of the place of the principal office of the corporation should be considered. On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the office of this corporation be and the same is hereby fixed at 570 Harbor Drive, San Diego, California, until changed by resolution of the board of directors.

The Secretary thereupon presented a seal of this corporation consisting of two concentric circles with the words "STAR & CRESCENT BOAT COMPANY" and the words and

figures "Incorporated April 7, 1976 California." On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the seal herewith presented, an impression of which is made below, be and the same is, hereby adopted as and for the seal of this corporation.



On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the President and the Treasurer of this corporation be and they are hereby authorized and directed to pay the expenses of the incorporation and organization of this corporation from the funds of the corporation.

The Secretary thereupon presented a draft for the certificate for shares of this corporation. On motion duly made, seconded and carried, the following resolution was unanimously adopted:

BE IT RESOLVED that the draft of the certificate for the shares of the corporation herewith presented be, and the same is, hereby approved and adopted.

On motion duly made, seconded and carried, the Secretary was instructed to insert a copy of the draft of the certificate for shares in the Book of Minutes of this

corporation immediately following the minutes of this meeting.

The Chairman reported that this corporation had received a written offer from STAR & CRESCENT INVESTMENT CO., a California corporation, offering:

to transfer to this corporation all of STAR & CRESCENT INVESTMENT CO.'s right title and interest of every kind and description in and to its business and assets pertaining to its harbor excursion business, as set forth in a schedule as of March 31, 1976 attached to said offer as Exhibit "A", with allowance for changes in the ordinary course of business to the date of transfer of said business and assets to this corporation, but subject to all liabilities of said business as of March 31, 1976 as relate to its harbor excursion business, all as set forth in said Exhibit "A", together with such additional liabilities that may have been incurred thereafter in the ordinary course of business to the close of business on the date of transfer, solely in exchange for:

(1) The assumption by this corporation of the debts and liabilities of said harbor excursion business as set forth in said Exhibit "A", but subject to changes occurring in the ordinary course of business between March 31, 1976 and the close of business on the date the transfer is effected, and

(2) Issuance by this corporation of not to exceed 1,500 shares of its capital stock, all of a par value of \$10.00 per share, to STAR & CRESCENT INVESTMENT CO., a California corporation.

On motion duly made, seconded and carried, it was directed that a copy of the offer from STAR & CRESCENT INVESTMENT CO., a California corporation, be incorporated as

part of the minutes of this meeting, and the Secretary was instructed to insert a copy of the offer in the book of minutes of this corporation immediately following the minutes of this meeting.

The Chairman then announced that this corporation should consider the adoption of a written plan for the sale and issuance of capital stock pursuant to the Securities Law of the State of California and Section 1244 of the Internal Revenue Code. Upon motion duly made, seconded and carried, the following resolutions were unanimously adopted:

WHEREAS the board of directors deems it advisable and in the best interests of this corporation to take steps to issue shares of its capital stock; and

WHEREAS this corporation is a domestic corporation and is authorized by its articles of incorporation to issue only one class of capital stock and this corporation has never at any time issued any shares of its authorized capital stock and no such shares are outstanding, and no portion of a prior offering of capital stock is outstanding; and

WHEREAS the board of directors deems it advisable to set forth a written plan for the issuance of capital stock in exchange for money or other property (other than stock or securities) and the issuance of the stock is to be pursuant to Section 25102(h) of the Corporations Code of the State of California, and in all events said issuance shall not be later than two years after the adoption of this written plan; and

WHEREAS this corporation has no assets, no liabilities, no equity capital; and

WHEREAS the board of directors deems the written offer of STAR & CRESCENT INVESTMENT CO., a California corporation, dated April 8, 1976, to be just and reasonable and deems it to be for the best interests of this corporation to accept the offer;

NOW, THEREFORE, BE IT RESOLVED that the president or the vice president and the secretary of this corporation be, and they hereby are, authorized and directed to sell and issue not to exceed 1,500 shares of the stock of this corporation, all of which shares have a par value of \$10.00 per share, to STAR & CRESCENT INVESTMENT CO., a California corporation, solely in exchange for (1) the business and assets described in said offer and (2) the assumption by this corporation of the debts and liabilities as set forth in said written offer, but subject to changes occurring in the ordinary course of business between that date and the close of business on the date when transfer is to be effected, at par, without commission of any kind.

RESOLVED that the board of directors hereby determines that the fair market value to this corporation of the consideration for which said 1,500 shares of stock of this corporation are to be issued is \$718,825.53.

RESOLVED that of the consideration to be received for such shares an amount equal to \$15,000.00 thereof shall be credited to stated capital and the remainder shall be credited to paid-in-surplus; and

RESOLVED that any officer of this corporation is hereby authorized and directed to file with the California Commissioner of Corporations a Notice of Issuance of Securities pursuant to Subdivision (h) of Section 25102 of the California Corporations Code.

RESOLVED that the officers of this corporation be, and they hereby are, authorized and directed to execute all documents and take all actions that they may deem necessary or advisable in order to carry out and perform the purposes of these resolutions.

There being no further business to come before the meeting, the meeting was adjourned.

Leona Jackson
Leona Jackson, Secretary

Kay Harpold
Kay Harpold, Temporary
Secretary

ATTEST:

O. J. Hall, Jr.
O. J. Hall, Jr., Chairman

Monica Triplett
Monica Triplett, Temporary
Chairman

STAR & CRESCENT BOAT COMPANY:

STAR & CRESCENT INVESTMENT CO., a California corporation, hereby offers to transfer to you all of STAR & CRESCENT INVESTMENT CO.'s right, title, and interest of every kind and description in and to its business and assets pertaining to its harbor excursion business, as set forth in a schedule as of March 31, 1976 attached hereto as Exhibit "A", with allowance for changes in the ordinary course of business to the date of transfer of said business and assets to this corporation, but subject to all liabilities of said business as of March 31, 1976 as relate to its harbor excursion business, all as set forth in said Exhibit "A", together with such additional liabilities that may have been incurred thereafter in the ordinary course of business to the close of business on the date of transfer, solely in exchange for:

- (1) The assumption by you of the debts and liabilities of said harbor excursion business as set forth in said Exhibit "A", but subject to changes occurring in the ordinary course of business between March 31, 1976 and the close of business on the date the transfer is effected, and
- (2) Issuance by you of not to exceed 1,500 shares

STAR & CRESCENT INVESTMENT CO.
HARBOR EXCURSION BUSINESS
March 31, 1976

ASSETS TRANSFERRED TO
STAR & CRESCENT BOAT COMPANY

M.V. Cabrillo	\$ 113,035.89
M.V. Marietta	107,542.09
M.V. Silvergate	3,562.61
M.V. Monterey	156,832.84
M.V. Point Loma	85,418.39
Glorietta	44,593.08
Float #1, Market Street	99,327.95
() Float #2, Broadway	26,257.09
1974 Ford Pinto Stationwagon	1,599.42
1973 Ford Ranchero	1,333.36
Miscellaneous equipment	16,777.99
Broadway excursion facility	6,934.79
Leasehold improvements, Market Street	65,464.65
Broadway snack bar	1,650.80
Prepaid insurance (see attached schedule)	21,300.69
Account receivable from Joe Allen	2,643.53
Inventories:	
Gift shop	19,980.20
Galley	4,031.41
Prepaid property taxes	1,042.25

EXHIBIT A

S&C0051

Folders and brochures	6,508.10
United Water Taxi franchise	17,495.00
Goodwill	2,000.00
Interests in leases with San Diego Unified Port District:	
570 Harbor Drive, dated March 26, 1976	
570 Harbor Drive, dated August 21, 1973	
B Street Pier, dated March 26, 1976	
Broadway Pier, dated January 2, 1976	
(see attached schedule)	
Right to use the name San Diego Harbor Excursion and the words "Star & Crescent" or name including those words, other than Star & Crescent Investment Co.	
Total Assets Transferred	<u>\$ 805,332.13</u>

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**LIABILITIES ASSUMED BY
STAR & CRESCENT BOAT COMPANY**

Notes Payable:

Charles Otterman	\$ 25,000.00
Thelma Elam	5,000.00
Security Pacific Bank	50,000.00
Employee advances	80.00
Charter deposits	4,556.30
Accrued vacation and holiday pay	<u>1,870.00</u>
Total Liabilities Assumed	<u>\$ 86,506.30</u>

SCHEDULE OF INSURANCE

<u>Name of Company</u>	<u>Policy #</u>	<u>Type of Insurance</u>	<u>Annual Premium</u>	<u>Expiration Date</u>
1. Old Republic Insurance Company	OM 2266	Hull and Machinery	\$ 14,014.00	9/3/76
2. Old Republic Insurance Company	OM 2267	Protection & Indemnity	12,888.00	9/30/76
3. Highlands Ins. Co. (80%) and Northwestern National (20%)	J&H-LA-090	Excess Marine	12,500.00	
4. The Insurance Company of the State of Pennsylvania	42722053	Excess Liability	6,000.00	10/1/75
() Pacific Indemnity Company	269702-A	Comprehensive Bond	1,641.00	Until Cancelled
6. Federal Insurance Company	20491952	Fire Insurance	1,222.00	4/20/76
7. Central National Insurance Company of Omaha	CNS93402	Comprehensive General Liability	3,472.00	11/1/75
8. Aetna Insurance Company	CG656032	Automobile Insurance	2,405.00	11/1/75
9.		Workman's Compensation		

SCHEDULE OF LEASES

	<u>Date of Lease</u>	<u>Termination Date</u>	<u>Base Rent</u>	<u>Property Covered</u>
1.	8/26/73	2/28/78	\$548/mo. (increased to \$698/mo. commencing 3/1/76)	Approximately 36,250 sq. ft. of tideland at or near foot of Market Street
2.	1/2/76	1/31/77	\$47,000/year (has percentage override)	Area and building located on the west side of Harbor Drive between Broadway Pier and B Street Pier
3.	3/26/76	5/31/76	Percentage of parking charges	Portion of B Street Pier
4.	3/26/76	5/31/77	\$288/mo.	Approximately 63,944 sq. ft. of tideland area on Harbor Drive near foot of Market Street

The undersigned hereby resigns as a director of
STAR & CRESCENT BOAT COMPANY effective immediately.

Dated: April 9, 1976

Monica Triplett
Monica Triplett

The undersigned hereby resigns as a director of
STAR & CRESCENT BOAT COMPANY effective immediately.

Dated: April 9, 1976

Carole Lechleitner
Carole Lechleitner

The undersigned hereby resigns as a director of
STAR & CRESCENT BOAT COMPANY effective immediately.

Dated: April 9, 1976

Gail Lary
Gail Lary

The undersigned hereby resigns as a director of
STAR & CRESCENT BOAT COMPANY effective immediately.

Dated: April 9, 1976

Kay Harpold
Kay Harpold

The undersigned hereby resigns as a director of
STAR & CRESCENT BOAT COMPANY effective immediately.

Dated: April 9, 1976



Jacqueline Rhodes

The undersigned hereby resigns as a director of
STAR & CRESCENT BOAT COMPANY effective immediately.

Dated: April 9, 1976



Dorine Schamens

I

(7)

SAN DIEGO UNIFIED PORT DISTRICT

DOCUMENT NO. 9455
 FILED MAR 29 1976
 MICROFILM NO. 103
 OFFICE OF THE CLERK

TIDELAND USE AND OCCUPANCY PERMIT

THIS PERMIT, granted this 26th day of March, 1976, by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called the "District," and STAR AND CRESCENT BOAT CO., a division of Star and Crescent Investment Co., a corporation, hereinafter called "Tenant," WITNESSETH:

District for the considerations hereinafter set forth, hereby grants to Tenant upon the terms and conditions and for the purposes and uses hereinafter set forth, the right to use and occupy a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 62,944 square feet of tideland area in the City of San Diego, California, more particularly delineated on Drawing No. 1609-B revised March 18, 1974, attached hereto and by this reference made a part hereof.

This Permit is granted upon the following terms and conditions:

1. TERM: The term of this Permit shall be for one (1) year, commencing on the 1st day of June, 1976, and ending on the 31st day of May, 1977, unless sooner terminated as herein provided.

2. RENTAL: As and for the rental, Tenant agrees to pay to the District the sum of TWO HUNDRED EIGHTY-EIGHT DOLLARS (\$288) per month-----payable in advance on or before the tenth day of each and every month during the term of this Permit.

3. USE: The above-described premises shall be used only and exclusively for the purpose of mooring and repairing floats and vessels-----

and for no other purpose whatsoever without the prior written consent of the Port Director of District in each instance.

Handwritten vertical note: All in accordance with...

4. ASSIGNMENT-SUBLEASE: Neither the whole nor any part of the Rented Premises nor any of the rights or privileges granted by this Permit shall be assignable or transferable in any way without the consent of District, evidenced by resolution, first had and obtained. Nor shall Tenant grant any permission to any other person to occupy any portion of the Rented Premises without such consent. Any such purported assignment, transfer, sublease or permission given without such consent shall be void as to the District.

5. CHANGES OR ALTERATIONS: Tenant shall make no changes or alterations in the above-described premises, nor make, erect, or install any buildings, structures, signs, machines or other improvements on the premises without the consent in writing of the Port Director of District. Tenant further agrees to provide proper containers for trash and to keep the premises free and clear of rubbish, debris and litter at all times.

6. MAINTENANCE: Tenant hereby agrees that the premises are in a good and tenantable condition, that Tenant will take good care of the premises and appurtenances, including any personal property belonging to District, and that Tenant, as a part of the consideration for rental stated above, will at Tenant's sole cost and expense keep and maintain said premises, appurtenances and personal property in good and sanitary condition and repair during the term of this agreement. District shall at no time during the term of the Permit be required to make any improvements or repairs to the above-described premises.

7. TITLE TO IMPROVEMENTS: Structures, installations, and improvements of any kind now existing or hereafter placed on the above-described premises by Tenant shall at the option of District be removed by Tenant within thirty (30) days after the expiration of the term of this Permit or sooner termination thereof. District may exercise said options as to any or all of the structures, installations, and improvements either before or after the expiration or sooner termination of this Permit. If District exercises such option and the Tenant fails to remove such structures, installations and improvements within said thirty (30) days, the District shall have the right to have such structures, installations and improvements removed at the expense of Tenant. As to any or all structures, installations and improvements that District does not exercise said option, title thereto shall vest in District.

8. REMOVAL OF MATERIALS: Tenant hereby agrees that upon the expiration of this Permit or the sooner termination as herein provided, it will remove within thirty (30) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land area and water area forming a part of or adjacent to the above-described premises, so as to leave the same in as good condition as when first occupied by Tenant; provided, however,

that if any said ships, vessels, barges, hulls, debris, surplus and salvage materials shall not be so removed within thirty (30) days by Tenant, District may remove, sell, or destroy the same at the expense of Tenant, and Tenant hereby agrees to pay to District the cost of such removal, sale or destruction; or at the option of District, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of District.

9. TERMINATION: This Permit may be terminated by either party upon the giving of thirty (30) days notice in writing to the other party of the intention to so terminate, and District expressly reserves the right to cancel this Permit by giving thirty (30) days notice in writing to Tenant and to make without notice any changes or improvements on or about the premises without incurring any liability whatsoever to tenant for any damage or loss occasioned by such cancellation or by the making of such changes or improvements.

10. HOLD HARMLESS: District, and its agents, officers and employees shall at all times during the term of this Permit be held by Tenant free and harmless from and indemnified against any liability pertaining to or arising out of the use and occupancy of the premises by Tenant and any costs or expenses incurred on account of any claim or claims therefor, including reasonable attorney's fees.

11. INSURANCE: Tenant shall obtain public liability insurance from an insurance carrier satisfactory to the District to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Tenant or any person acting for it or under its control or direction, or any person authorized by it to use the above-described premises, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of Tenant or any person acting for it or under its control or direction, or any person authorized by it to use the above-described premises.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Permit in amounts of not less than \$500,000 for one person injured in one accident, and not less than \$1,000,000 for more than one person injured in one accident, and in the amount of not less than \$100,000 with respect to any property damage aforesaid. The policy shall carry an endorsement which agrees to accept the hold harmless provisions set forth above.

Certificates of such insurance shall be filed with District and shall be satisfactory in form to District. Said policies shall have a noncancellation-without-notice clause and shall provide that copies of all cancellation notices be sent to the District.

The foregoing provisions as to maintenance of insurance shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the payment of damages to

persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

12. TAXES AND UTILITIES: Tenant shall pay before delinquency all taxes and assessments assessed or levied upon Tenant or the above-described premises by reason of this Permit or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the above-described premises, and shall pay any fees imposed by law for licenses or permits for any business or activities of Tenant upon the above-described premises or under this Permit, and shall pay before delinquency any and all charges for utilities at or on the above-described premises.

13. CONFORMANCE WITH RULES AND REGULATIONS: In all activities on or in connection with the premises hereinafter described and in all uses thereof, Tenant shall abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District, any ordinances of the city in which the above-described premises are located, and any applicable laws whether Municipal, State or Federal, as any of the same now exist or may hereafter be adopted or amended.

District shall not be liable to Tenant for any diminution or deprivation of its rights hereunder on account of any such laws, ordinances, statutes, rules, regulations, orders, limitations, restrictions or prohibitions. In the event, however, that any such laws, ordinances, statutes, rules, regulations, orders, limitations, restrictions, or prohibitions shall so interfere with the conduct of Tenant's activities and business operations under this Permit by operation of law in accordance with the laws of the State of California, Tenant shall have the right to terminate this Permit and thereby be relieved of all future obligations and duties hereunder. In no event, however, shall such a termination impose any liability upon District.

14. POLICY OF DISTRICT: It is the policy of the Unified Port District that prevailing wage rates shall be paid all persons who are employed by Tenant on the property of District.

15. DEFAULT: If any default be made in the payment of the rental herein provided or in the fulfillment of any terms, covenants, or conditions hereof, this Permit shall immediately terminate and Tenant shall have no further rights thereunder and shall immediately remove from said premises and District shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said premises. District shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Tenant in the amount necessary to compensate the District for all the detriment proximately caused by the Tenant's failure to perform his obligations under this Permit or which in the ordinary course of things would be likely to result therefrom.

If District's right of reentry is exercised following abandonment of the premises by Tenant, then District may consider

any personal property belonging to Tenant and left on the premises to also have been abandoned, in which case District may dispose of all such personal property in any manner District shall deem proper and is hereby relieved of all liability for doing so.

16. LIENS: Tenant agrees that it will at all times save District free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the premises, and the costs of defending against such claims, including reasonable attorney's fees.

17. BANKRUPTCY: In the event Tenant commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent or makes any judicial sale of Tenant's interest under this Permit, this Permit shall at the option of District immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.

18. EASEMENTS: This Permit and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by District in, to or over the premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat or power lines as may from time to time be determined by District to be in the best interests of the development of the tidelands.

District agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Tenant.

19. TITLE OF DISTRICT: District's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said act. This Permit is granted subject to the terms and conditions of said act.

20. JOINT AND SEVERAL LIABILITY: Each party to this Permit shall jointly and severally perform each and every term, covenant, and condition contained in this permit and each party shall be jointly and severally liable to District for such performance.

21. SUPERSEDURE: This Permit upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofore made or issued for the above-described premises and any such permits, leases or rental agreements shall hereafter be void and of no effect except as to any rentals and/or fees which may have accrued thereunder.

22. ENTIRE UNDERSTANDING: This Permit contains the entire understanding of the parties, and Tenant, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the above-described premises. No modification, amendment or alteration of this Permit shall be valid unless it is in writing and signed by the parties hereto.

23. PEACEABLE SURRENDER: Upon the termination of this Permit by the expiration thereof or the earlier termination as by the terms of this Permit provided, Tenant will peaceably surrender said above-described premises in a good condition, subject to normal and ordinary change and alteration resulting from the use of such premises as herein provided, as the same may be at the time Tenant takes possession thereof, and to allow the District to take peaceable possession thereof.

24. HOLD OVER: If tenant holds over after the expiration of the term of this Permit, such holding over shall constitute a tenancy from month to month.

25. WARRANTIES - GUARANTEES: District makes no warranty, guarantee, covenant; including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the above-described premises, including the physical condition thereof, or any condition which may affect the above-described premises, and it is agreed that District will not be responsible for any loss or damage or costs which may be incurred by Tenant by reason of any such condition or conditions.

26. NOTICES: Any notice or notices provided for by this Permit or by law to be given or served upon the Tenant may be given or served by certified or registered letter addressed to Tenant at P. O. Box 751, San Diego, CA 92112 and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Permit or by law to be served upon District may be given or served by certified or registered letter addressed to the Port Director of District at the General Offices of the San Diego Unified Port District, deposited in the United States mail, or may be served personally upon said Port Director or his duly authorized representative, and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

27. ATTORNEY'S FEES: In the event any suit is commenced by District against Tenant to enforce the payment of any rent due or to enforce any of the terms and conditions hereof, or in case District shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for the forfeit of this agreement, and the possession of said premises, provided District effects a recovery, Tenant shall pay District all costs expended in any such action, together with a reasonable attorney's fee to be fixed by the Court.

28. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

Port Attorney

By


JOSEPH D. PATELLO
Port Attorney

SAN DIEGO UNIFIED PORT DISTRICT

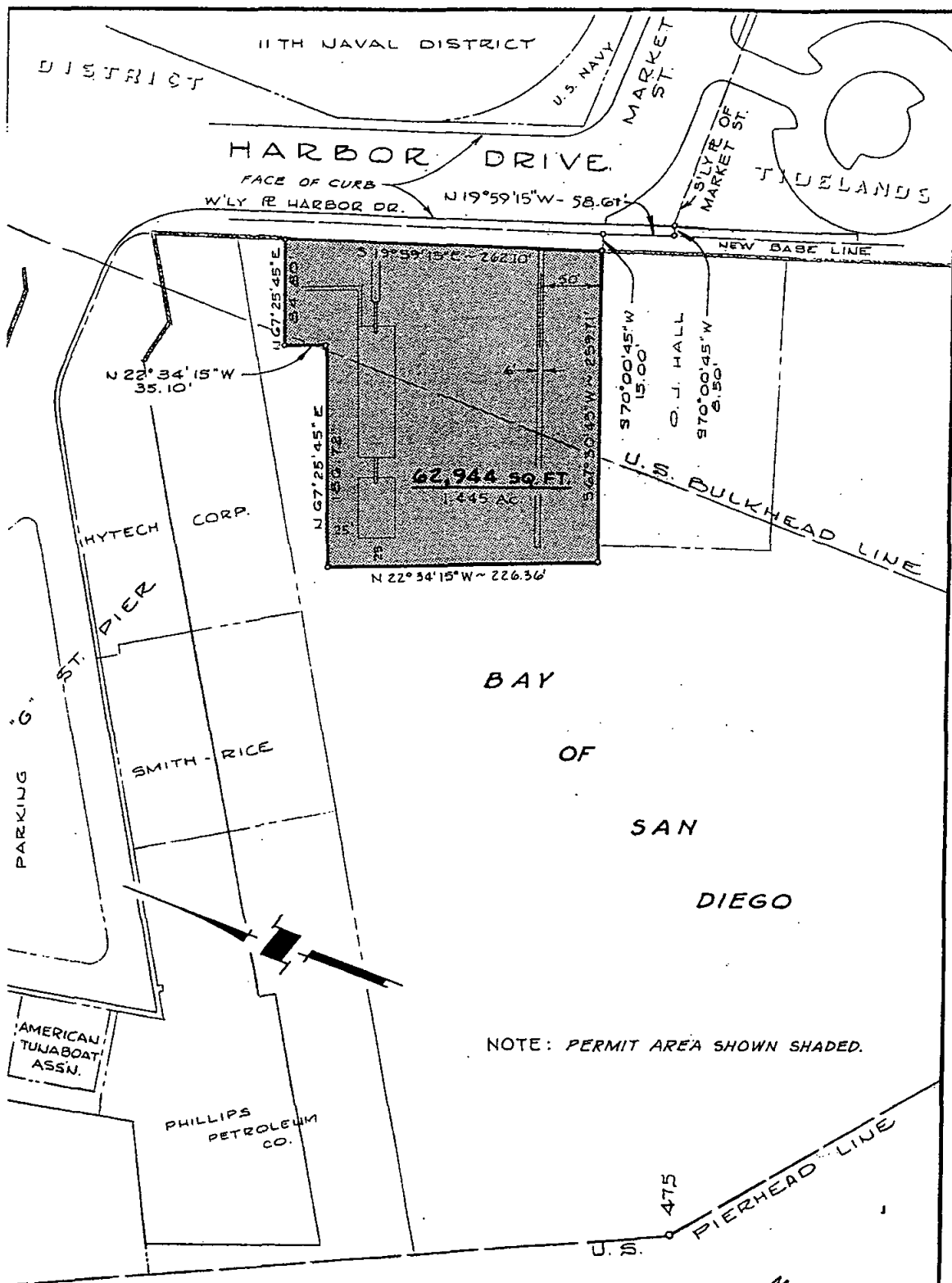
By


JAHIRI WILLIAMS
Assistant Port Director

STAR AND CRESCENT BOAT CO.

By


Title: Pres.



REVISED FROM 1442-B, 18 MAR. 1974, BY P.D.B.; APPROVED BY CHIEF ENGINEER *J. E. Helman*

FROM 1050-B, 22 FEB. '72, BY D.B. APPROVED BY CHIEF ENGINEER *J. E. Helman*

REVISED: FROM 750-B

DRAWN <u>G.P.</u> CHECKED <u>BOURKE</u> REVIEWED <u>Stetson</u>	<p align="center">SAN DIEGO UNIFIED PORT DISTRICT</p> <p align="center">TIDELAND USE AND OCCUPANCY PERMIT WITHIN CORPORATE LIMITS OF SAN DIEGO</p> <p align="center">STAR & CRESCENT BOAT CO.</p> <p align="center">A DIVISION OF STAR & CRESCENT INVESTMENT COMPANY</p>	DATE <u>4-15-66</u> SCALE <u>1" = 100'</u> REF. <u>1143-B, 1050-B</u> <u>25-10</u>
APPROVED <i>J. E. Helman</i> CHIEF ENGINEER		DRAWING NO. 1609-B

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(1)

SAN DIEGO UNIFIED PORT DISTRICT

DOCUMENT NO. 9456
FILED MAR 29 1976
MICROFILM NO. 103
OFFICE OF THE CLERK

TIDELAND USE AND OCCUPANCY PERMIT

THIS PERMIT, granted this 26th day of March, 1976, by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called the "District," and STAR AND CRESCENT BOAT CO., a division of Star and Crescent Investment Co., hereinafter called "Tenant," WITNESSETH:

District for the considerations hereinafter set forth, hereby grants to Tenant upon the terms and conditions and for the purposes and uses hereinafter set forth, the right to use and occupy a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

That portion of the "B" Street Pier as designated by the District's Port Director.

This Permit is granted upon the following terms and conditions:

1. TERM: The term of this Permit shall be for one (1) year, commencing on the 1st day of June, 1976, and ending on the 31st day of May, 1977, unless sooner terminated as herein provided.

2. RENTAL: As and for the rental and for and in consideration of this Permit, Tenant agrees to pay to District a sum per month equal to the following:

Eighty Per Cent (80%) of the Forty Cents (40¢) parking charge made to customers of Harbor Excursions and the Maritime Museum Association of San Diego (Star of India, Berkeley, Medea).

In this connection, Tenant shall at all times during the term of this Permit keep true, accurate and complete records in a form satisfactory to District, of all receipts for fees and charges collected by it on said premises, and that no later than the tenth day of each month, it will render a statement to the District showing the amount of such collections made by it during the preceding month, together with the amount payable to the District as hereinabove provided, and will accompany the same with a remittance

of the amount so shown to be due. District shall, through its duly authorized agents or representatives, have the right at any and all reasonable times to examine said records for the purpose of determining the accuracy thereof and of the monthly statements of collections hereinabove required to be made. All such records or any other records required by the District for said purpose shall be available to the authorized agents or representatives of the District at the above-described premises. The tenant further covenants and agrees that it will validate all parking tickets, including the parking ticket stubs, which stubs shall be properly recorded in a sales journal along with the amount of all receipts for fees and charges. The Port Director of District shall have the authority to require the installation of any additional accounting methods as he may deem necessary.

3. USE; The above-described premises shall be used only and exclusively for the purpose of automobile parking by customers of Harbor Excursions and the Maritime Museum Association of San Diego (Star of India, Berkeley, Medea) and for no other purpose whatsoever without the prior written consent of the Port Director in each instance.

4. ASSIGNMENT-SUBLEASE: Neither the whole nor any part of the Rented Premises nor any of the rights or privileges granted by this Permit shall be assignable or transferable in any way without the consent of District, evidenced by resolution, first had and obtained. Nor shall Tenant grant any permission to any other person to occupy any portion of the Rented Premises without such consent. Any such purported assignment, transfer, sublease or permission given without such consent shall be void as to the District.

5. IMPROVEMENTS: Tenant acknowledges prior examination of the premises and the condition thereof, and agrees that the improvements thereon, if any, are, in their present condition, satisfactory and usable for Tenant's purposes and that no representations as to value or condition have been made by or on behalf of District.

Tenant agrees that it shall make no changes or alterations in the premises, nor make, erect, or install any machines, signs or other improvements thereon without the consent in writing of the Port Director of District. Tenant further agrees to provide proper containers for trash and to keep the premises free and clear of rubbish, debris and litter at all times.

6. MAINTENANCE: Tenant hereby agrees that the premises are in a good and tenantable condition, that Tenant will take good care of the premises and appurtenances, including any personal property belonging to District, and that Tenant, as a part of the consideration for rental stated above, will at Tenant's sole cost and expense keep and maintain said premises, appurtenances and personal property in good and sanitary condition and repair during the term of this agreement. All damage or injury done to the premises by Tenant or any person who may be on the premises with Tenant's consent shall be paid for by Tenant, and Tenant shall at the termination of this agreement surrender to District the said premises with the appurtenances and other personal property belonging to District in as good condition and repair as when received, reasonable and proper use thereof excepted.

7. TITLE TO IMPROVEMENTS: Any installations or improvements placed on the premises by Tenant in such fashion as to be permanently attached thereto shall be and remain the property of District and shall not be removable by Tenant. It is further agreed that any installations or improvements or equipment which are not permanently attached to the premises shall be removable by Tenant at its own expense within two (2) days from the expiration or earlier termination of this Permit; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof, and if not so removed, said installations, improvements or equipment shall become the property of District without cost or expense to it.

8. REMOVAL OF MATERIALS: Tenant hereby agrees that upon the expiration of this Permit or the sooner termination as herein provided, it will remove within two (2) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land area and water area forming a part of or adjacent to the above-described premises, so as to leave the same in as good condition as when first occupied by Tenant; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus and salvage materials shall not be so removed within two (2) days by Tenant, District may remove, sell, or destroy the same at the expense of Tenant, and Tenant hereby agrees to pay to District the cost of such removal, sale or destruction; or at the option of District, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of District.

9. TERMINATION: This Permit may be terminated by either party upon the giving of two (2) days notice in writing to the other party of the intention to so terminate, and District expressly reserves the right to cancel this Permit by giving two (2) days notice in writing to Tenant and to make without notice any changes or improvements on or about the premises without incurring any liability whatsoever to tenant for any damage or loss occasioned by such cancellation or by the making of such changes or improvements.

10. HOLD HARMLESS: District, and its agents, officers and employees shall at all times during the term of this Permit be held by Tenant free and harmless from and indemnified against any liability pertaining to or arising out of the use and occupancy of the premises by Tenant and any costs or expenses incurred on account of any claim or claims therefor, including reasonable attorney's fees.

11. INSURANCE: Tenant shall obtain public liability insurance from an insurance carrier satisfactory to the District to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Tenant or any person acting for it or under its control or direction, or any person authorized by it to use the above-described premises, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of Tenant or any person acting for it or under its control or direction, or any person authorized by it to use the above-described premises.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Permit in amounts of not less than \$500,000 for one person injured in one accident, and not less than \$1,000,000 for more than one person injured in one accident, and in the amount of not less than \$100,000 with respect to any property damage aforesaid. The policy shall carry an endorsement which agrees to accept the hold harmless provisions set forth above.

Certificates of such insurance shall be filed with District and shall be satisfactory in form to District. Said policies shall have a noncancellation-without-notice clause and shall provide that copies of all cancellation notices be sent to the District.

The foregoing provisions as to maintenance of insurance shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

12. TAXES AND UTILITIES: Tenant shall pay before delinquency all taxes and assessments assessed or levied upon Tenant or the above-described premises by reason of this Permit or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the above-described premises, and shall pay any fees imposed by law for licenses or permits for any business or activities of Tenant upon the above-described premises or under this Permit, and shall pay before delinquency any and all charges for utilities at or on the above-described premises.

13. CONFORMANCE WITH RULES AND REGULATIONS: In all activities on or in connection with the premises hereinafter described and in all uses thereof, Tenant shall abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District, any ordinances of the city in which the above-described premises are located, and any applicable laws whether Municipal, State or Federal, as any of the same now exist or may hereafter be adopted or amended.

District shall not be liable to Tenant for any diminution or deprivation of its rights hereunder on account of any such laws, ordinances, statutes, rules, regulations, orders, limitations, restrictions or prohibitions. In the event, however, that any such laws, ordinances, statutes, rules, regulations, orders, limitations, restrictions, or prohibitions shall so interfere with the conduct of Tenant's activities and business operations under this Permit by operation of law in accordance with the laws of the State of California, Tenant shall have the right to terminate this Permit and thereby be relieved of all future obligations and duties hereunder. In no event, however, shall such a termination impose any liability upon District.

14. POLICY OF DISTRICT: It is the policy of the Unified Port District that prevailing wage rates shall be paid all persons who are employed by Tenant on the property of District.

15. **DEFAULT:** If any default be made in the payment of the rental herein provided or in the fulfillment of any terms, covenants, or conditions hereof, this Permit shall immediately terminate and Tenant shall have no further rights thereunder and shall immediately remove from said premises and District shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said premises. District shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Tenant in the amount necessary to compensate the District for all the detriment proximately caused by the Tenant's failure to perform his obligations under this Permit or which in the ordinary course of things would be likely to result therefrom.

If District's right of reentry is exercised following abandonment of the premises by Tenant, then District may consider any personal property belonging to Tenant and left on the premises to also have been abandoned, in which case District may dispose of all such personal property in any manner District shall deem proper and is hereby relieved of all liability for doing so.

16. **LIENS:** Tenant agrees that it will at all times save District free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the premises, and the costs of defending against such claims, including reasonable attorney's fees.

17. **BANKRUPTCY:** In the event Tenant commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent or makes any judicial sale of Tenant's interest under this Permit, this Permit shall at the option of District immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.

18. **EASEMENTS:** This Permit and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by District in, to or over the premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat or power lines as may from time to time be determined by District to be in the best interests of the development of the tidelands.

District agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Tenant.

19. **TITLE OF DISTRICT:** District's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said act. This Permit is granted subject to the terms and conditions of said act.

20. **JOINT AND SEVERAL LIABILITY:** Each party to this Permit shall jointly and severally perform each and every term, covenant, and condition contained in this permit and each party shall be jointly and severally liable to District for such performance.

21. SUPERSEDEURE: This Permit upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofore made or issued for the above-described premises and any such permits, leases or rental agreements shall hereafter be void and of no effect except as to any rentals and/or fees which may have accrued thereunder.

22. ENTIRE UNDERSTANDING: This Permit contains the entire understanding of the parties, and Tenant, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the above-described premises. No modification, amendment or alteration of this Permit shall be valid unless it is in writing and signed by the parties hereto.

23. PEACEABLE SURRENDER: Upon the termination of this Permit by the expiration thereof or the earlier termination as by the terms of this Permit provided, Tenant will peaceably surrender said above-described premises in a good condition, subject to normal and ordinary change and alteration resulting from the use of such premises as herein provided, as the same may be at the time Tenant takes possession thereof, and to allow the District to take peaceable possession thereof.

24. HOLD OVER: If tenant holds over after the expiration of the term of this Permit, such holding over shall constitute a tenancy from month to month.

25. WARRANTIES - GUARANTEES: District makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the above-described premises, including the physical condition thereof, or any condition which may affect the above-described premises, and it is agreed that District will not be responsible for any loss or damage or costs which may be incurred by Tenant by reason of any such condition or conditions.

26. NOTICES: Any notice or notices provided for by this Permit or by law to be given or served upon the Tenant may be given or served by certified or registered letter addressed to Tenant at Post Office Box 751, San Diego, CA 92112 and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Permit or by law to be served upon District may be given or served by certified or registered letter addressed to the Port Director of District at the General Offices of the San Diego Unified Port District, deposited in the United States mail, or may be served personally upon said Port Director or his duly authorized representative, and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

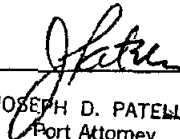
27. ATTORNEY'S FEES: In the event any suit is commenced by District against Tenant to enforce the payment of any rent due or to enforce any of the terms and conditions hereof, or in case District shall commence summary action under the laws of the State of California relating to the unlawful detention of

property, for the forfeit of this agreement, and the possession of said premises, provided District effects a recovery, Tenant shall pay District all costs expended in any such action, together with a reasonable attorney's fee to be fixed by the Court.

28. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

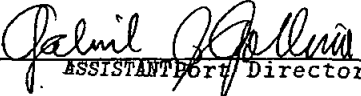
Port Attorney

By


JOSEPH D. PATELLO
Port Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By


ASSISTANT Port Director

STAR AND CRESCENT BOAT CO.

By

Title:


Pres.

PROPERTY FILE RECORD

FILE No. SD11-2-22396

ROUTE TO:
1. ACCT. AT 2. ENG. S

RETURN AS SOON AS POSSIBLE

L E A S E

THIS LEASE, made and entered into this 2nd day of January, 1976, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and STAR AND CRESCENT BOAT CO., a division of Star and Crescent Investment Co., a corporation, hereinafter called "Lessee,"

WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Those areas and building located on the west side of Harbor Drive between Broadway Pier and "B" Street Pier which are delineated on Drawing No. 1597-B dated 9 January 1974, attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon the conditions as follows:

1. TERM: The term of the lease shall be for a period of one (1) year commencing on February 1, 1976, and ending on January 31, 1977, unless sooner terminated as herein provided.

2. RENTAL: Lessee agrees to pay to Lessor rent in accordance with the following schedules and procedures:
- (a) A minimum of Forty-Seven Thousand Dollars (\$47,000) per year, or the cumulative total of the percentage rents as provided in (b) below, whichever is greater.
 - (b) Percentage rents shall be calculated on a monthly basis and shall be based on the following percentages of the gross income of the operations and businesses conducted on or from the leased premises.
 - (1) 5-1/2% of the gross income derived from the boat excursion and snack bar operations, including but not limited to, ticket sales, food, food products, soft drinks, candy, ice cream, coffee, cigars, cigarettes, wine, beer, liquor, mixed drinks, alcoholic beverages, and incidentals.
 - (2) 8% of the gross income derived from the sale of gifts, novelties and souvenirs.
 - (3) 10% of the gross income from any and all activities and businesses allowed under this Lease and not otherwise provided for in this clause.
 - (c) On or before the 20th day of each month Lessee shall render to Lessor, in a form prescribed by Lessor, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be 12 full calendar months. The accounting year shall begin on the first day of the first month during which the percentage rentals described in this lease become effective. Subsequent accounting years shall begin upon each anniversary of that date during the lease term or any extension thereof. Each report shall be signed by Lessee or his responsible agent under

penalty of perjury and shall include the following:

- (1) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rental rate is established.
- (2) The related itemized amounts of percentage rental computed as herein provided and the total thereof;
- (3) The total rental previously paid by Lessee for the accounting year within which the preceding month falls.

Concurrently with the rendering of each monthly statement, Lessee shall pay the greater of the following two amounts:

- (1) The total percentage rental computed for that portion of the accounting year ending with and including the last day of the preceding month (Item (2) above), less total rentals previously paid for the accounting year (Item (3) above), or
 - (2) One-twelfth (1/12th) of the annual minimum rental, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rentals previously paid for the accounting year (Item (3) above).
- (d) Rentals shall be delivered to and statements required in clause (c) above shall be filed with the Director of Finance of the San Diego Unified Port District at P. O. Box 488, San Diego, California 92112. The designated place of payment and filing may be changed at any time by Lessor upon ten (10) days written notice to Lessee.
- (e) In the event Lessee fails to render to Lessor an accounting of rent due or to remit the rent due in accordance with the

rental provisions of this lease, then Lessee shall become liable for and shall pay to Lessor the rent due, together with an additional five per cent (5%) of the rent due for any delinquency existing for the first fifteen-day period thereafter, or any part of that first fifteen-day period; and an additional five per cent (5%) for each fifteen-day period thereafter, or any part of any fifteen-day period, that any such delinquency exists. Provided, however, that the Port Director of Lessor shall have the right to waive for good cause any delinquency payment upon written application of Lessee for any such delinquency period.

- (f) Lessee shall, at all times during the term of this lease, keep or cause to be kept accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

All retail sales shall be recorded by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily

record. In the event of admission charges or rentals, Lessee shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

All Lessee's books of account, records and documentation related to this lease or to business operations conducted within or from the leased premises shall be kept either at the leased premises or at such other locations as are acceptable to Lessor, and Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof and of the monthly statements of gross income submitted and of the rental paid to the Lessor. The Port Director of Lessor shall have the discretion to require the installation of any additional accounting methods or controls he may deem necessary. In the event the Lessee does not make available the original records and books of account at the leased premises or within the limits of San Diego County, Lessee agrees to pay all necessary expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

The cost of said audit shall be borne by Lessor unless the audit reveals a discrepancy of more than five per cent (5%) between the rent due as reported by Lessee in accordance with this lease and the rent due as determined by this audit. In the event of a greater discrepancy, the cost of the audit, as determined by the Port Director of Lessor, shall be paid by Lessee.

- (g) Gross income, upon which the percentage rentals are to be based, shall include all income resulting from occupancy or

use of the premises in any manner whether by Lessee, his sublessees or concessionaires or parties operating through Lessee, his sublessees or concessionaires, from whatever source derived and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this lease. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. Refunds for goods returned shall be deducted from current gross income upon their return. Bad debt losses shall not be deducted from gross income.

3. USE: Lessee agrees that the leased premises shall be used only and exclusively for the operation of a boat excursion business; a snack bar; a gift shop; and office and storage space for those businesses, and for no other purpose whatsoever without the written consent of Lessor, evidenced by resolution, first had and obtained.

Lessee further agrees that it will not permit street, curbside or sidewalk solicitation of business by its employees or agents nor use loudspeakers for such purposes.

4. IMPROVEMENTS: Lessee may, at its own expense, make any alterations or changes in the leased premises or cause to

be built, made or installed thereon any structures, machines, appliances, utilities, signs or other improvements necessary or desirable for the use of said premises and may alter and repair any such structures, machines or other improvements; provided, however, that no alterations, and changes shall be made and no structures, machines, appliances, utilities, signs or other improvements shall be made, built or installed, and no major repairs thereto shall be made except in accordance with plans and specifications previously submitted to the Port Director of Lessor and approved in writing by him.

Lessee further agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to be flown, installed, placed, or erected on the premises without written consent of the Port Director of Lessor.

5. TITLE TO IMPROVEMENTS: Structures, installations or improvements of any kind placed on the leased premises by Lessee either before or after the commencement of this lease shall at the option of Lessor be removed by Lessee within thirty (30) days after the expiration of the term of this lease or sooner termination thereof. Lessor may exercise said options as to any or all of the structures, installations and improvements either before or after the expiration or sooner termination of this lease. If Lessor exercises such option and the Lessee fails to remove such structures, installations or improvements within said thirty (30) days, the Lessor shall have the right to have such structures, installations or improvements removed at the expense of Lessee. As to any or all structures, installations or improvements that

Lessor does not exercise said option for removal, title thereto shall vest in the Lessor without cost to Lessor and without any payment to Lessee.

Machines, appliances, equipment and trade fixtures of any kind now existing or hereafter placed on the leased premises by Lessee shall be removed by Lessee within thirty (30) days after the expiration of the term of this lease or sooner termination thereof; provided, however, Lessee agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment and trade fixtures are not removed within thirty (30) days after the termination of this lease, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to the Lessor and without any payment to Lessee; except that Lessor shall have the right to have the same removed at the expense of Lessee.

During any period of time employed by Lessee under this paragraph to remove structures, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall pay rent to Lessor in accordance with the lease which said rent shall be prorated.

6. LIENS: Lessee agrees that it will at all times save Lessor free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the leased premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that any lien or levy of any nature whatsoever is filed against the lease premises or the leasehold interests of the Lessee therein, the Lessee shall, upon written

request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien or levy has been filed. Such bond shall be acknowledged by Lessee as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this lease in default in the event the bond required by this paragraph has not been deposited with the Lessor within ten (10) days after written request therefor has been delivered to Lessee.

7. LEASE ENCUMBRANCE: Lessee understands and agrees that it cannot encumber the lease, leasehold estate and the improvements thereon by a deed of trust, mortgage or other security instrument to assure the payment of the promissory note of Lessee without the express written consent of Lessor, evidenced by resolution, first had and obtained. If any deed of trust, mortgage or other security instrument that encumbers the lease, leasehold estate and the improvements thereon is entered into by Lessee without Lessor's prior express written consent, Lessor shall have the right to declare this lease in default.

In the event a deed of trust, mortgage, or other security instrument which Lessor has consented to by resolution, should at any time be in default and be foreclosed, before the Lessee's interest under such lease may be sold as a part of any foreclosure or trustee's sale to any purchaser, prior express written consent of Lessor shall be obtained thereto. Before a purchaser at such a foreclosure or trustee's sale may assign

or sublet the Lessee's interest, it shall obtain the Lessor's express written consent thereto. The decision of the Board of Port Commissioners of Lessor as to such assignee, purchaser, or subtenant shall be final.

8. ASSIGNMENT-SUBLEASE: Lessee shall not assign or transfer the whole or any part of this lease or any interest therein, nor sublease the whole or any part of the leased premises, nor permit the occupancy of any part thereof by any other person, nor permit transfer of the lease or possession of the leased premises by merger, consolidation or dissolution, nor permit sale of a controlling interest in the voting stock in said corporation without the consent of Lessor, evidenced by resolution, first had and obtained in each instance. It is mutually agreed that the personal qualifications of the parties controlling the corporation named herein as Lessee are a part of the consideration for the granting of this lease and said parties do hereby agree to maintain active control and supervision of the operations conducted on the leased premises. No assignment, voluntary or involuntary, in whole or in part of the lease or any interest therein, and no sublease of the whole or any part of the leased premises and no permission to any person to occupy the whole or any part of the leased premises, shall be valid or effective without the consent of Lessor, first had and obtained in each instance; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said premises by any employee or business invitee of Lessee.

9. DEFAULT: It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions,

or agreements herein, or should Lessee fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within five (5) days after written notice thereof if default is in the submittal of monthly reports of gross income if required in this lease or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to paragraph 13 of this lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or thirty (30) days after written notice thereof if default is in the performance of any other covenant, condition and agreements, Lessor shall have the right to immediately terminate this lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from said premises and shall have no further right to claim thereto, and said Lessor shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the leased premises. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the Lessor for all the detriment proximately caused by the Lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

It is further agreed that Lessor shall afford the beneficiary in any deed of trust, mortgage, or other security instrument of record with Lessor and consented to by resolution of Lessor the right to cure any default by Lessee within said time periods stated above after written notice to said beneficiary. The time periods to cure shall be computed from the date of receipt by said beneficiary by certified mail of such notices from Lessor.

In the event of the termination of this lease pursuant to the provisions of this paragraph, Lessor shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this lease under the provisions of paragraph 5.

10. BANKRUPTCY: It is mutually agreed that in the event Lessee commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent or makes any assignment for the benefit of creditors, or in the event of any judicial sale of Lessee's interest under this lease, Lessor shall have the right to declare this lease in default.

The conditions of this paragraph shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to the Lessor all rent due or coming due under the provisions of this lease and the premises are continuously and actively used in accordance with paragraph 13 of this lease.

11. EMINENT DOMAIN: If the whole or a substantial part of the premises hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this lease shall cease as to the part so taken, from the day the possession of that part shall be required for any public purpose, and the rent shall be paid up to

that day, and from that day Lessee shall have the right either to cancel this lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided, except that the minimum rent shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased; provided, however, that Lessor shall not be entitled to any award made for the taking of any installations or improvements on the leased premises belonging to Lessee.

12. SUPERSEDURE: This lease upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofore made or issued for the leased premises between Lessor and Lessee, and any such permits, leases or rental agreements shall hereafter be void and of no effect except as to any rentals and/or fees which may have accrued thereunder.

13. USE OBLIGATION: It is mutually agreed that a condition for the granting of this lease is the active and continuous use of the premises by Lessee, except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies, and acts of God, for the purposes herein described, in that said use enhances the value of the tidelands, provides needed public service, provides additional employment, taxes, and other benefits to the general economy of the area.

14. MAINTENANCE AND REPAIR: As part of the consideration for the leasing thereof, Lessee shall maintain and repair the leased premises and all improvements of any kind which have been or may

be erected, installed or made thereon in good and substantial repair and condition, including without limitation the painting thereof; and shall make all necessary repairs and alterations thereto hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said Code. Lessor shall not be required at any time to maintain or to make any improvements or repairs whatsoever on or for the benefit of the leased premises. Lessee shall, as further consideration for the leasing thereof, keep the premises in a clean and sanitary condition and provide proper containers for and keep the demised premises free and clear of rubbish, garbage, and other waste. Lessor shall at all times during ordinary business hours have the right to enter upon and inspect the leased premises and any improvements thereon.

15. PERFORMANCE BOND: No major construction shall be commenced upon the demised premises by Lessee until Lessee has secured and submitted to Lessor performance bonds in the amount of the total estimated construction cost of improvements to be constructed by Lessee. Lessor will accept the performance and labor and material bonds supplied by Lessee's contractor or subcontractors. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to Lessor.

16. TAXES AND UTILITIES: Lessee shall pay before delinquency all taxes and assessments assessed or levied upon Lessee or the leased premises by reason of this lease or of any buildings, machines, or other improvements of any nature

whatsoever erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the leased premises, and shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the leased premises or under this lease, and shall pay before delinquency any and all charges for utilities at or on the leased premises.

17. CONFORMANCE WITH RULES AND REGULATIONS: Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District Act, any ordinances of the City in which the leased land is located, including the Building Code thereof, and any ordinances and general rules of the Unified Port District, including tariffs, and any applicable laws of the State of California and Federal Government, as any of the same now exist or may hereafter be adopted or amended.

18. NON-DISCRIMINATION: Lessee agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, or national origin. Lessee shall make its accommodations and services available to the public on fair and reasonable terms.

19. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this lease is held by a court of competent jurisdiction to be invalid, void or unenforceable,

the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. HOLD HARMLESS: Lessee shall defend, indemnify, and hold harmless Lessor, its officers and employees against causes of action, liability, damage, and expense, including reasonable attorney's fees, for judicial relief of any kind, for damage to property of any kind whatsoever and to whomever belonging, including without limitation Lessee or its employees, or injury or death of any person or persons, including without limitation Lessee or its employees, resulting directly or indirectly from granting and performance of this lease or arising from the use and operation of the leased premises or any defect in any part thereof.

21. SUCCESSORS IN INTEREST: Unless otherwise provided in this lease, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

22. EASEMENTS: This lease and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by Lessor in, to or over the leased premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by Lessor to be in the best interests of the development of the tidelands.

Lessor agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Lessee.

23. TITLE OF LESSOR: Lessor's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said act. This lease is granted subject to the terms and conditions of said act.

24. INSURANCE: Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this lease. The policies for said insurance shall, as a minimum, provide the following forms of coverage:

A. Comprehensive Public Liability (covering premises, operations, products and completed operations)

1. Five Hundred Thousand Dollars (\$500,000) bodily injury, each person;
2. One Million Dollars (\$1,000,000) bodily injury, each occurrence; and
3. One Hundred Thousand Dollars (\$100,000) property damage.

B. Blanket Contractual Coverage

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

Certificates evidencing the existence of the necessary insurance policies shall be kept on file with Lessor during the entire term of this lease.

Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby.

If, in the opinion of Lessor, the insurance provisions in this lease do not provide adequate protection for Lessor and/or for members of the public using the leased premises, Lessor may require Lessee to obtain an insurance sufficient in coverage, form and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

Lessor shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice, this lease shall be in default without further notice to Lessee, and Lessor shall be entitled to all legal remedies.

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

25. POLICY OF LESSOR: It is the policy of the Unified Port District that prevailing wage rates shall be paid all persons who are employed by Lessee on the tidelands of the District.

26. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, including but not limited to

covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the leased premises, including the physical condition thereof, or any condition which may affect the leased premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

27. DAMAGE TO OR DESTRUCTION OF PREMISES: In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of Lessee-constructed improvements located within the demised premises or in the event Lessee-constructed improvements located within the demised premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, within ninety (90) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the demised premises for the purposes required by this lease. Repair, replacement, or reconstruction of improvements within the demised premises shall be accomplished in a manner and according to plans approved by Lessor.

28. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION: Upon termination of this lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to Lessor within thirty (30) days after receipt of written demand therefor a good and sufficient deed whereby all right, title and interest of Lessee in the demised premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and

record a notice reciting the failure of Lessee to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this lease and of all right of Lessee or those claiming under Lessee in and to the demised premises.

29. PEACEABLE SURRENDER: Upon the expiration of this lease or the earlier termination or cancellation thereof, as herein provided, Lessee will peaceably surrender said premises to Lessor in as good condition as said premises were at the date of this lease, ordinary wear excepted.

30. WAIVER: Any waiver by Lessor of any breach by Lessee of any one or more of the covenants, conditions, or agreements of this lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this lease, nor shall any failure on the part of Lessor to require or exact full and complete compliance by Lessee with any of the covenants, conditions, or agreements of this lease be construed as in any manner changing the terms hereof or to prevent Lessor from enforcing the full provisions hereof. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

31. HOLD OVER: In the event Lessee shall hold over after the expiration of this lease for any cause, such holding over shall be deemed a tenancy from month to month only at the

same rental per month and upon the same terms, conditions and provisions of this lease, unless other terms, conditions and provisions be agreed upon in writing by Lessor and Lessee.

32. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

33. ENTIRE UNDERSTANDING: This lease contains the entire understanding of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the demised premises. No modification, amendment or alteration of this lease shall be valid unless it is in writing and signed by the parties hereto.

34. TIME IS OF THE ESSENCE: Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns and sublessees of Lessee.

35. ATTORNEY'S FEES: In the event any suit is commenced by Lessor against Lessee to enforce the payment of any rent due or to enforce any of the terms and conditions hereof, or in case Lessor shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for the forfeit of this Lease, and the possession of said premises, provided Lessor effects a recovery, Lessee shall

pay Lessor all costs expended in any such action, together with a reasonable attorney's fee to be fixed by the Court.

36. NOTICES: Notices given or to be given by Lessor or Lessee to the other may be personally served upon Lessor or Lessee or any person hereafter authorized by either in writing to receive such notice or may be served by certified letter addressed to the appropriate address hereinafter set forth or to such other address as Lessor and Lessee may hereafter designate by written notice.

To Lessor

Port Director
San Diego Unified Port District
Post Office Box 488
San Diego, California 92112

To Lessee

Mr. O. J. Hall
Star and Crescent Boat Co.
Post Office Box 751
San Diego, CA 92112

Said notices shall also be served by certified letter to the beneficiary of any deed of trust, mortgage, or other security instrument of record with Lessor and consented to by resolution of Lessor who has notified Lessor in writing of its desire to receive said notice.

37. REMOVAL OF MATERIALS: Lessee hereby agrees that upon the expiration of this lease or the sooner termination as herein provided, it will remove within sixty (60) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land area forming a part of or adjacent to the leased premises, so as to leave the same in as good condition as when first occupied by Lessee; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus and salvage materials shall not be so removed within sixty (60) days by the Lessee, Lessor may remove, sell and destroy the

same at the expense of Lessee and Lessee hereby agrees to pay to Lessor the reasonable cost of such removal, sale or destruction; or at the option of Lessor, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of Lessor without cost to Lessor and without any payment to Lessee.

During any period of time employed by Lessee under this paragraph to remove ships, vessels, barges, hulls, debris, surplus and salvage materials, Lessee shall pay rent to Lessor in accordance with the lease which said rent shall be prorated.

38. ACKNOWLEDGMENT OF LESSOR'S IMPROVEMENTS: Lessee agrees that it has examined the leased premises and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for Lessee's purposes and that no representations as to value or condition have been made by or on behalf of Lessor.

39. TERMINATION: It is mutually agreed that this lease may be terminated by either party at any time upon the giving of thirty (30) days notice in writing to the other party of its intention to so terminate, and the Lessor expressly reserves the right to terminate this lease without incurring any liability whatsoever for any damage or loss occasioned by such termination including damage to or interference with or loss of business or franchise occasioned by such termination. In the event of such termination by Lessor, Lessee shall not be entitled to compensation for structures, installations, improvements, or trade fixtures of any kind in existence on the demised premises at the time of such termination; provided, further, that any structures, installations,

improvements or trade fixtures of any kind now existing or placed on the leased premises shall be removed as provided in Paragraph 5 hereinabove set forth, and Lessee shall not be entitled to any compensation therefor.

APPROVED as to form
and legality

SAN DIEGO UNIFIED PORT DISTRICT

OCT 17

, 1975

By


Assistant Port Director

Port Attorney

STAR AND CRESCENT BOAT CO., a
division of Star and Crescent
Investment Co., a Corporation


JOSEPH D. PATELLO
Port Attorney

By

Title:



PROPERTY FILE RECORD

FILE No. 78-25

ROUTE TO:

1. ACCT. A 2. ENG. S

RETURN AS SOON AS POSSIBLE

L E A S E

THIS LEASE, made and entered into this 17 day of January, 1978, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and STAR AND CRESCENT BOAT CO., A California corporation, hereinafter called "Lessee," WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Those areas and building located on the west side of Harbor Drive between Broadway Pier and "B" Street Pier which are delineated on Drawing No. 1597-B dated January 9, 1974, attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon the conditions as follows:

1. TERM: The term of the lease shall be for a period of one (1) year commencing on February 1, 1978, and ending on January 31, 1979, unless sooner terminated as herein provided.

2. RENTAL: Lessee agrees to pay to Lessor rent in accordance with the following schedules and procedures:

- (a) A minimum of Sixty-Eight Thousand Dollars (\$68,000) per year, or the cumulative total of the percentage rents as provided in (b) below, whichever is greater.
- (b) Percentage rents shall be calculated on a monthly basis and shall be based on the following percentages of the gross income of the operations and businesses conducted on or from the leased premises.
 - (1) 5-1/2% of the gross income derived from the boat excursion and snack bar operations, including but not limited to, ticket sales, food, food products, soft drinks, candy, ice cream, coffee, cigars, cigarettes, wine, beer, liquor, mixed drinks, alcoholic beverages, and incidentals.
 - (2) 8% of the gross income derived from the sale of gifts, novelties and souvenirs.
 - (3) 25% of any commission or other compensation paid to Lessee for the right to install or operate coin-operated vending or service machines or devices, including telephones, or 5-1/2% of the gross income of any such coin-operated machines or devices owned, rented or leased by Lessee or his sublessee.
 - (4) 10% of the gross income from any and all activities and businesses allowed under this Lease and not otherwise provided for in this clause.
- (c) On or before the 20th day of each month Lessee shall render to Lessor, in a form prescribed by Lessor, a detailed report of gross income for that portion of the

accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be 12 full calendar months. The accounting year shall begin upon each anniversary of that date during the lease term or any extension thereof. Each report shall be signed by Lessee or his responsible agent under penalty of perjury and shall include the following:

- (1) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rental rate is established.
- (2) The related itemized amounts of percentage rental computed as herein provided and the total thereof;
- (3) The total rental previously paid by Lessee for the accounting year within which the preceding month falls.

Concurrently with the rendering of each monthly statement, Lessee shall pay the greater of the following two amounts:

- (1) The total percentage rental computed for that portion of the accounting year ending with and including the last day of the preceding month (Item (2) above), less total rentals previously paid for the accounting year (Item (3) above), or
- (2) One-twelfth (1/12th) of the annual minimum rental, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rentals previously paid for the accounting year (Item (3) above).

- (d) Rentals shall be delivered to and statements required in clause (c) above shall be filed with the Treasurer of the San Diego Unified Port District at P. O. Box 488, San Diego, California 92112. The designated place of

payment and filing may be changed at any time by Lessor upon ten (10) days written notice to Lessee.

- (e) In the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rental provisions of this lease, then the rent not paid when due shall bear interest at the rate of Ten Per Cent (10%) per annum from the date due until paid. Provided, however, that the Port Director of Lessor shall have the right to waive for good cause any interest payment upon written application of Lessee for any such delinquency period.
- (f) Lessee shall, at all times during the term of this lease, keep or cause to be kept accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

All retail sales shall be recorded by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction

numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. In addition to the above, in the event of admission, cover charges, or rentals, Lessee shall also issue serially numbered tickets for each such admission, cover, or rental charge and shall keep an adequate record of said tickets, both issued and unissued.

All Lessee's books of account, records and documentation related to this lease or to business operations conducted within or from the leased premises shall be kept either at the leased premises or at such other locations as are acceptable to Lessor, and Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof and of the monthly statements of gross income submitted and of the rental paid to the Lessor. The Port Director of Lessor shall have the discretion to require the installation of any additional accounting methods or controls he may deem necessary. In the event the Lessee does not make available the original records and books of account at the leased premises or within the limits of San Diego County, Lessee agrees to pay all necessary expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

The cost of said audit shall be borne by Lessor unless the audit reveals a discrepancy of more than five per cent (5%) between the rent due as reported by Lessee in accordance with this lease and the rent due as determined by this audit. In the event of a greater discrepancy, the cost of the audit, as determined by the Port Director of

Lessor, shall be paid by Lessee.

(g) Gross income, upon which the percentage rentals are to be based, shall include all income resulting from occupancy or use of the premises in any manner whether by Lessee, his sublessees or concessionaires or parties operating through Lessee, his sublessees or concessionaires, from whatever source derived and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this lease. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. Refunds for goods returned shall be deducted from current gross income upon their return. Bad debt losses shall not be deducted from gross income.

3. USE: Lessee agrees that the leased premises shall be used only and exclusively for the operation of a boat excursion business; a snack bar; a gift shop; and office and storage space for those businesses, and for no other purpose whatsoever without the written consent of Lessor, evidenced by resolution first had and obtained.

Lessee further agrees that it will not permit street, curbside or sidewalk solicitation of business by its employees or agents nor use loudspeakers for such purposes.

4. IMPROVEMENTS: Lessee may, at its own expense, make any alterations or changes in the leased premises or cause to be built, made or installed thereon any structures, machines, appliances, utilities, signs or other improvements necessary or desirable for the use of said premises and may alter and repair any such structures, machines or other improvements; provided, however, that no alterations and changes shall be made and no structures, machines, appliances, utilities, signs or other improvements shall be made, built or installed, and no major repairs thereto shall be made except in accordance with plans and specifications previously submitted to the Port Director of Lessor and approved in writing by him.

Lessee further agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to be flown, installed, placed, or erected on the premises without written consent of the Port Director of Lessor.

5. TITLE TO IMPROVEMENTS: Structures, installations or improvements of any kind placed on the leased premises by Lessee either before or after the commencement of this lease shall at the option of Lessor be removed by Lessee within thirty (30) days after the expiration of the term of this lease or sooner termination thereof. Lessor may exercise said options as to any or all of the structures, installations and improvements either before or after the expiration or sooner termination of this lease. If Lessor exercises such option and the Lessee fails to remove such structures, installations or improvements within said thirty (30) days, the Lessor shall have the right to have such structures, installations or improvements removed at the expense of

Lessee. As to any or all structures, installations or improvements that Lessor does not exercise said option for removal, title thereto shall vest in the Lessor without cost to Lessor and without any payment to Lessee.

Machines, appliances, equipment and trade fixtures of any kind now existing or hereafter placed on the leased premises by Lessee shall be removed by Lessee within thirty (30) days after the expiration of the term of this lease or sooner termination thereof; provided, however, Lessee agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment and trade fixtures are not removed within thirty (30) days after the termination of this lease, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to the Lessor and without any payment to Lessee; except that Lessor shall have the right to have the same removed at the expense of Lessee.

During any period of time employed by Lessee under this paragraph to remove structures, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall pay rent to Lessor in accordance with the lease which said rent shall be prorated.

6. LIENS: Lessee agrees that it will at all times save Lessor free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the leased premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that any lien or levy of any nature whatsoever is filed against the lease premises or the leasehold interests of the Lessee therein, the Lessee shall, upon written

request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien or levy has been filed. Such bond shall be acknowledged by Lessee as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this lease in default in the event the bond required by this paragraph has not been deposited with the Lessor within ten (10) days after written request therefor has been delivered to Lessee.

7. LEASE ENCUMBRANCE: Lessee understands and agrees that it cannot encumber the lease, leasehold estate and the improvements thereon by a deed of trust, mortgage or other security instrument to assure the payment of the promissory note of Lessee without the prior express written consent by resolution of Lessor in each instance. If any deed of trust, mortgage or other security instrument that encumbers the lease, leasehold estate and the improvements thereon is entered into by Lessee without Lessor's prior express written consent, Lessor shall have the right to declare this lease in default.

If a deed of trust, mortgage, or other security instrument which Lessor has consented to by resolution, should at any time be in default, before Lessee's interest under said lease may be sold as part of any foreclosure or trustee's sale or be assigned in lieu of foreclosure, the prior express written consent by resolution of Lessor shall be obtained in each instance. However, the original beneficiary of the deed of trust, the original mortgagee of the mortgage, and the original holder of the security instrument which the Lessor has consented to by resolution may purchase the Lessee's interest at a

foreclosure or trustee's sale or accept assignment of the lease in lieu of foreclosure, without the requirement of any further consent on the part of Lessor provided said party, as an expressed condition precedent, agrees in writing to assume each and every obligation under the lease. Furthermore, before any said original beneficiary, mortgagee, or holder of a security instrument, or any other consented-to assignee or purchaser may subsequently assign or sublet any of the leasehold or Lessee's interest, it shall obtain the Lessor's prior express written consent by resolution. The decision of the Board of Port Commissioners of Lessor as to such assignee, purchaser, or subtenant shall be final.

8. ASSIGNMENT-SUBLEASE: Lessee shall not assign or transfer the whole or any part of this lease or any interest therein, nor sublease the whole or any part of the leased premises, nor permit the occupancy of any part thereof by any other person, nor permit transfer of the lease or possession of the leased premises by merger, consolidation or dissolution, nor permit sale of a controlling interest in the voting stock in said corporation without the consent of Lessor, evidenced by resolution, first had and obtained in each instance. It is mutually agreed that the personal qualifications of the parties controlling the corporation named herein as Lessee are a part of the consideration for the granting of this lease and said parties do hereby agree to maintain active control and supervision of the operations conducted on the leased premises. No assignment, voluntary or involuntary, in whole or in part of the lease or any interest therein, and no sublease of the whole or any part of the leased premises and no permission to any person to occupy the whole or any part of the leased premises, shall be valid

or effective without the consent of Lessor, first had and obtained in each instance; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said premises by any employee or business invitee of Lessee.

9. DEFAULT: It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein, or should Lessee fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within five (5) days after written notice thereof if default is in the submittal of monthly reports of gross income if required in this lease or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to paragraph 13 of this lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or thirty (30) days after written notice thereof if default is in the performance of any other covenant, condition and agreements, Lessor shall have the right to immediately terminate this lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from said premises and shall have no further right to claim thereto, and Lessor shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the leased premises. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the Lessor for all the detriment proximately caused by the Lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

In the event Lessor consents to an encumbrance of the Lease for security purposes in accordance with Paragraph 7 of the Lease, it is understood and agreed that Lessor shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within fifteen (15) days following the expiration of the period within which Lessee may cure such default, provided, however, Lessor shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this lease pursuant to the provisions of this paragraph, Lessor shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this lease under the provisions of paragraph 5.

10. BANKRUPTCY: In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this lease, Lessor shall have the right to declare this lease in default.

The conditions of this paragraph shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors

in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to the Lessor all rent due or coming due under the provisions of this lease and the premises are continuously and actively used in accordance with paragraph 13 of this lease.

11. EMINENT DOMAIN: If the whole or a substantial part of the premises hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this lease shall cease as to the part so taken, from the day the possession of that part shall be required for any public purpose, and the rent shall be paid up to that day, and from that day Lessee shall have the right either to cancel this lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided; except that the minimum rent shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased; provided, however, that Lessor shall not be entitled to any award made for the taking of any installations or improvements on the leased premises belonging to Lessee.

12. SUPERSEDURE: This lease upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofore made or issued for the leased premises between Lessor and Lessee, and any such permits, leases or rental

agreements shall hereafter be void and of no effect except as to any rentals and/or fees which may have accrued thereunder.

13. USE OBLIGATION: It is mutually agreed that a condition for the granting of this lease is the active and continuous use of the premises by Lessee, except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies, and acts of God, for the purposes herein described, in that said use enhances the value of the tidelands, provides needed public service, provides additional employment, taxes, and other benefits to the general economy of the area.

14. MAINTENANCE AND REPAIR: As part of the consideration for the leasing thereof, Lessee shall maintain and repair the leased premises and all improvements of any kind which have been or may be erected, installed or made thereon in good and substantial repair and condition, including without limitation the painting thereof, and shall make all necessary repairs and alterations thereto hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said Code. Lessor shall not be required at any time to maintain or to make any improvements or repairs whatsoever on or for the benefit of the leased premises. Lessee shall, as further consideration for the leasing thereof, keep the premises in a clean and sanitary condition and provide proper containers for and keep the demised premises free and clear of rubbish, garbage, and other waste. Lessor shall at all times during ordinary business hours have the right to enter upon and inspect the leased premises and any improvements thereon.

15. PERFORMANCE BOND: No major construction shall be commenced upon the demised premises by Lessee until Lessee

has secured and submitted to Lessor performance bonds in the amount of the total estimated construction cost of improvements to be constructed by Lessee. Lessor will accept the performance and labor and material bonds supplied by Lessee's contractor or subcontractors. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to Lessor.

16. TAXES AND UTILITIES: Lessee shall pay before delinquency all taxes and assessments assessed or levied upon Lessee or the leased premises by reason of this lease or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the leased premises, and shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the leased premises or under this lease, and shall pay before delinquency any and all charges for utilities at or on the leased premises.

17. CONFORMANCE WITH RULES AND REGULATIONS: Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District Act, any ordinances of the City in which the leased land is located, including the Building Code thereof, and any ordinances and general rules of the Unified Port District, including tariffs, and any applicable laws of the State of California and Federal Government, as any of the same now exist or may hereafter be adopted or amended.

18. NON-DISCRIMINATION: Lessee agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, or national origin. Lessee shall make its accommodations and services available to the public on fair and reasonable terms.

19. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. HOLD HARMLESS: Lessee shall defend, indemnify, and hold harmless Lessor, its officers and employees against causes of action, liability, damage, and expense, including reasonable attorney's fees, for judicial relief of any kind, for damage to property of any kind whatsoever and to whomever belonging, including without limitation Lessee or its employees, or injury or death of any person or persons, including without limitation Lessee or its employees, resulting directly or indirectly from granting and performance of this lease or arising from the use and operation of the leased premises or any defect in any part thereof.

21. SUCCESSORS IN INTEREST: Unless otherwise provided in this lease, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

22. EASEMENTS: This lease and all rights given hereunder shall be subject to all easements and rights-of-way now

existing or heretofore granted or reserved by Lessor in, to or over the leased premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by Lessor to be in the best interests of the development of the tidelands.

Lessor agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Lessee.

23. TITLE OF LESSOR: Lessor's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said act. This lease is granted subject to the terms and conditions of said act.

24. INSURANCE: Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this lease. The policies for said insurance shall, as a minimum, provide the following forms of coverage:

A. Comprehensive Public Liability (covering premises, operations, products and completed operations)

1. Five Hundred Thousand Dollars (\$500,000) bodily injury, each person;
2. One Million Dollars (\$1,000,000) bodily injury, each occurrence; and
3. One Hundred Thousand Dollars (\$100,000) property damage.

B. Blanket Contractual Coverage

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

Certificates evidencing the existence of the necessary insurance policies shall be kept on file with Lessor during the entire term of this lease.

Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Lessor, the insurance provisions in this lease do not provide adequate protection for Lessor and/or for members of the public using the leased premises, Lessor may require Lessee to obtain an insurance sufficient in coverage, form and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

Lessor shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice, this lease shall be in default without further notice to Lessee, and Lessor shall be entitled to all legal remedies.

The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this lease. Notwithstanding said policies of insurance, Lessee shall

be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this lease or with the use or occupancy of the leased premises.

25. POLICY OF LESSOR: It is the policy of the Unified Port District that prevailing wage rates shall be paid all persons who are employed by Lessee on the tidelands of the District.

26. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the leased premises, including the physical condition thereof, or any condition which may affect the leased premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

27. DAMAGE TO OR DESTRUCTION OF PREMISES: In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of Lessee-constructed improvements located within the demised premises or in the event Lessee-constructed improvements located within the demised premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, within ninety (90) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the demised premises for the purposes required by this lease. Repair, replacement, or reconstruction of improvements within the demised premises shall be accomplished in a manner and according to plans approved by Lessor.

28. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION: Upon termination of this lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to Lessor within thirty (30) days after receipt of written demand therefor a good and sufficient deed whereby all right, title and interest of Lessee in the demised premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this lease and of all right of Lessee or those claiming under Lessee in and to the demised premises.

29. PEACEABLE SURRENDER: Upon the expiration of this lease or the earlier termination or cancellation thereof, as herein provided, Lessee will peaceably surrender said premises to Lessor in as good condition as said premises were at the date of this lease, ordinary wear and tear excepted.

30. WAIVER: Any waiver by Lessor of any breach by Lessee of any one or more of the covenants, conditions, or agreements of this lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this lease, nor shall any failure on the part of Lessor to require or exact full and complete compliance by Lessee with any of the covenants, conditions, or agreements of this lease be construed as in any manner changing the terms hereof or to prevent Lessor from enforcing the full provisions hereof. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, other

than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

31. HOLD OVER: In the event Lessee shall hold over after the expiration of this lease for any cause, such holding over shall be deemed a tenancy from month to month only at the same rental per month and upon the same terms, conditions and provisions of this lease, unless other terms, conditions and provisions be agreed upon in writing by Lessor and Lessee.

32. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

33. ENTIRE UNDERSTANDING: This lease contains the entire understanding of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the demised premises. No modification, amendment or alteration of this lease shall be valid unless it is in writing and signed by the parties hereto. Each of the parties to this lease acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representations or warranty whatsoever, expressed or implied, which is not expressly contained in this lease, and, each party further acknowledges that it has not executed this lease in reliance upon any collateral promise, representation or warranty, or in reliance upon any belief as to any fact not expressly recited in this lease.

34. TIME IS OF THE ESSENCE: Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the

parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns and sublessees of Lessee.

35. ATTORNEY'S FEES: In the event any suit is commenced by Lessor against Lessee to enforce the payment of any rent due or to enforce any of the terms and conditions hereof, or in case Lessor shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for the forfeit of this Lease, and the possession of said premises, provided Lessor effects a recovery, Lessee shall pay Lessor all costs expended in any such action, together with a reasonable attorney's fee to be fixed by the Court.

36. NOTICES: Notices given or to be given by Lessor or Lessee to the other may be personally served upon Lessor or Lessee or any person hereafter authorized by either in writing to receive such notice or may be served by certified letter addressed to the appropriate address hereinafter set forth or to such other address as Lessor and Lessee may hereafter designate by written notice.

To Lessor

Port Director
San Diego Unified Port District
Post Office Box 488
San Diego, California 92112

To Lessee

Mr. Stephen P. Carlstrom
Star and Crescent Boat Co.
Post Office Box 751
San Diego, CA 92112

Said notices shall also be served by certified letter to the beneficiary of any deed of trust, mortgage, or other security instrument of record with Lessor and consented to by resolution of Lessor who has notified Lessor in writing of its desire to receive said notice.

37. REMOVAL OF MATERIALS: Lessee hereby agrees that upon the expiration of this lease or the sooner termination as herein provided, it will remove within sixty (60) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land and water area forming a part of or adjacent to the leased premises, so as to leave the same in as good condition as when first occupied by Lessee; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus and salvage materials shall not be so removed within sixty (60) days by the Lessee, Lessor may remove, sell and destroy the same at the expense of Lessee and Lessee hereby agrees to pay to Lessor the reasonable cost of such removal, sale or destruction; or at the option of Lessor, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of Lessor without cost to Lessor and without any payment to Lessee.

During any period of time employed by Lessee under this paragraph to remove ships, vessels, barges, hulls, debris, surplus and salvage materials, Lessee shall pay rent to Lessor in accordance with the lease which said rent shall be prorated.

38. ACKNOWLEDGMENT OF LESSOR'S IMPROVEMENTS: Lessee agrees that it has examined the leased premises and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for Lessee's purposes and that no representations as to value or condition have been made by or on behalf of Lessor.

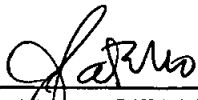
39. TERMINATION: It is mutually agreed that this lease may be terminated by either party at any time upon the giving of thirty (30) days notice in writing to the other party of its intention to so terminate, and the Lessor expressly

reserves the right to terminate this lease without incurring any liability whatsoever for any damage or loss occasioned by such termination including damage to or interference with or loss of business or franchise occasioned by such termination. In the event of such termination by Lessor, Lessee shall not be entitled to compensation for structures, installations, improvements, or trade fixtures of any kind in existence on the demised premises at the time of such termination; provided, further, that any structures, installations, improvements or trade fixtures of any kind now existing or placed on the leased premises shall be removed as provided in Paragraph 5 hereinabove set forth, and Lessee shall not be entitled to any compensation therefor.

APPROVED as to form
and legality


JAN 18, 1978

Port Attorney



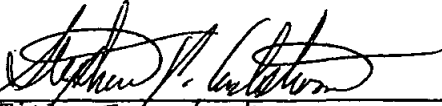
JOSEPH D. PATELLO
Port Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By 

ASSISTANT Port Director

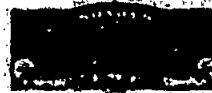
STAR AND CRESCENT BOAT CO.

By 

Title: President

INCORPORATED UNDER THE LAWS

OF THE STATE OF CALIFORNIA



NO CONSUMERS SALE OR TRANSFER OF INTEREST THEREIN, OR TO RECEIVE WITHOUT THE PRIOR WRITTEN CONSENT OF THE CORPORATIONS OF THE STATE OF CALIFORNIA

IT IS THE POLICY OF THIS STATE TO PROTECT THE INTERESTS OF THE CONSUMER'S

Gift Certificate

STEPHEN P. CARLSTROM

is the record

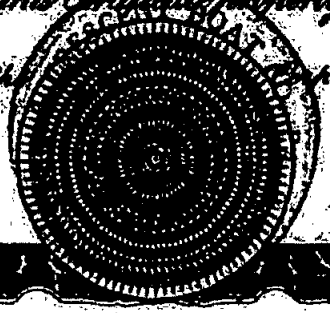
holder of Five Hundred Shares of the Capital Stock of

STAR & CRESCENT BOAT COMPANY

transferable, on the share register of said Corporation, in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed or assigned.

~~When~~ the Seal of the Corporation, and the signature of its duly authorized officers
Dated October 25, 1976

[Signature]
SECRETARY



[Signature]
PRESIDENT

INCORPORATED UNDER THE LAWS

OF THE STATE OF CALIFORNIA



CONSUMMATE A SALE OR TRANSFER OF INTEREST THEREIN, OR TO RECEIVE THE PROCEEDS THEREOF, WITHOUT THE PRIOR WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF THIS CORPORATION.

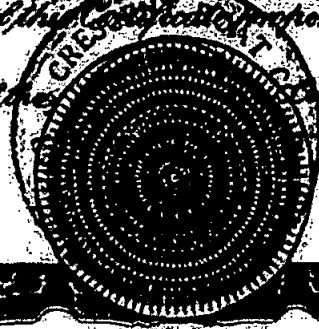
IT IS THIS DAY DEPOSITED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES.

Clara Cecilia Hall JUDY HALL is the record holder of Five Hundred Shares of the Capital Stock of STAR & CRESCENT BOAT COMPANY

transferred to the share register of said corporation in person or by duly authorized Attorney at Law, surrender of which certificate is properly endorsed or assigned.

Witness the Seal of the said Corporation, and the signature of its duly authorized officers
Dated October 26, 1976

Amber...
SECRETARY



[Signature]
PRESIDENT

For Value Received,

hereby sell, assign and transfer unto..... **Star & Crescent Investment Co.,**.....

a California corporation..... (..... **500**.....) Shares of the.....

Capital Stock of the **STAR & CRESCENT BOAT COMPANY,** a California corporation.....

standing in... **Judy Hall's**..... name on the books of said **STAR & CRESCENT**

BOAT COMPANY..... represented by Certificate No..... **3**..... herewith

and do hereby irrevocably constitute and appoint

..... attorney to transfer the said stock on the books of the within named Com-

pany with full power of substitution in the premises.

Dated ... **October 26, 1976**.....

Judy Hall
Signature

IN PRESENCE OF

.....

SIGNATURE GUARANTEED

INCORPORATED UNDER THE LAWS

OF THE STATE OF CALIFORNIA



NO TRANSFER OF INTEREST THEREIN, OR TO RECEIVE DIVIDENDS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF THE COMPANY.

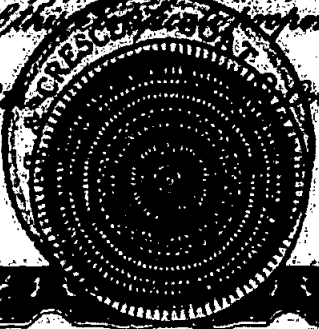
"IT IS UNDERSTOOD THAT THIS SHARE HAS BEEN ISSUED IN ACCORDANCE WITH THE CONSTITUTION AND BY-LAWS OF THE STATE OF CALIFORNIA AND THE RULES OF THE BOARD OF DIRECTORS OF THE COMPANY."

Star & Crescent Boat Company JANET MILES is the record holder of Five Hundred Shares of the Capital Stock of **STAR & CRESCENT BOAT COMPANY**

transferable on the share register of said Corporation in person or by duly authorized Attorney, upon surrender of this certificate properly endorsed or assigned.

Witness the Seal of said Corporation and the signature of its duly authorized officers
Dated October 26, 1976

K. Bevington
SECRETARY



J. Hall
PRESIDENT

MINUTES OF SPECIAL MEETING
OF
SHAREHOLDERS AND DIRECTORS
OF
STAR & CRESCENT BOAT COMPANY

A special meeting of the shareholders and directors of STAR & CRESCENT BOAT COMPANY, a California corporation, was held at 570 North Harbor Drive, San Diego, California, on October 26, 1976, at 3:30 P.M.

Present at the meeting were the holders of all of the issued and outstanding shares of stock of the corporation consisting of Stephen P. Carlstrom, 500 shares; Judy Hall, 500 shares; and Janet Miles, 500 shares. Stephen P. Carlstrom presided as Chairman of the meeting, and Judy Hall presided as Secretary of the meeting.

The Chairman announced that on October 26, 1976 the named shareholders had purchased all of the issued and outstanding shares of STAR & CRESCENT BOAT COMPANY from Star & Crescent Investment Co. pursuant to an Agreement of that date.

The Chairman announced that O. J. Hall, Jr. had tendered his resignation as an officer and director of STAR & CRESCENT BOAT COMPANY, which resignation was accepted. Upon motion duly made, seconded and unanimously carried, the following persons were reelected as directors of the corporation: Stephen P. Carlstrom, Judy Hall, Janet Miles, Raleigh Miles, and Kenneth Beiriger.

The Board of Directors then met, directors Stephen P. Carlstrom, Judy Hall, Janet Miles, Raleigh Miles, and Kenneth Beiriger being present. The directors elected the following officers of the corporation:

Stephen P. Carlstrom	President
Raleigh Miles	Vice-President
Janet Miles	Vice-President
Judy Hall	Vice-President and Assistant Secretary
Kenneth Beiriger	Secretary-Treasurer

Each elected officer accepted his office.

Annual salaries of the officers were set by the Board as follows: Stephen P. Carlstrom, \$22,000.00; Raleigh Miles, \$18,000.00; Janet Miles, \$10,000.00 until March 31, 1977 and \$12,000.00 thereafter; and Judy Hall, \$16,000.00.

The Board next considered the advantages of electing to be taxed as a small business corporation under Internal Revenue Code Subchapter S. On motion, the following resolutions were adopted:

RESOLVED, that the corporation elects to be taxed under Internal Revenue Code Subchapter S as a small business corporation; and

RESOLVED FURTHER, that the President of the corporation is authorized and directed to prepare, execute, and file, or cause to be prepared, executed, and filed, Internal Revenue Service Form 2553, together with a statement by each shareholder consenting to this election, and to do all other acts that may be required to make this election effective.

The Chairman informed the Board that it would be

necessary to designate an administrator of the employees pension plan to comply with applicable regulations. On motion, the following resolution was adopted:

~~RESOLVED, that the corporation appoint the Secretary-Treasurer of the corporation as administrator of the corporation's employees pension plan with Connecticut General Life Insurance Company.~~

The Board next considered the corporation's banking arrangements with Bank of America National Trust and Savings Association. On motion, the following resolutions were adopted:

RESOLVED, that any officer of the corporation is authorized to endorse checks, drafts, or other evidences of indebtedness made payable to the corporation for the purpose of deposit;

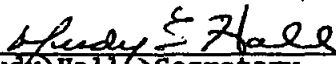
RESOLVED FURTHER, that all checks and drafts, including checks and drafts payable to officers or other persons authorized to sign them, may be signed by any officer of the corporation; and

RESOLVED FURTHER, that either the President or the Secretary-Treasurer of the corporation be authorized to borrow funds from Bank of America National Trust and Savings Association for the account of the corporation, and to execute promissory notes or other evidences of indebtedness for such loans.

The Board next considered the transfer of the corporate liquor licenses. On motion, the following resolution was adopted:

RESOLVED, that the Secretary-Treasurer be authorized to complete all requirements of the Department of Alcoholic Beverage Control to maintain the licenses issued by that department of the corporation.

There being no further business to come before
the meeting, upon motion duly made, seconded and
unanimously adopted, the meeting was adjourned.



Judy Hall Secretary


ATTEST:



Stephen P. Carlstrom, Chairman


Each of the undersigned waives notice of the meeting of the shareholders and Board of Directors of STAR & CRESCENT BOAT COMPANY held on October 26, 1976 and approves ~~the foregoing minutes of such meeting as to all particulars.~~

The foregoing minutes of the meeting of the shareholders and Board of Directors of STAR & CRESCENT BOAT COMPANY, a California corporation, are approved as to all particulars.


Stephen P. Carlstrom


Judy Hall


Janet Miles


Raleigh Miles


Kenneth Beiriger

I hereby resign as an officer and director of
STAR & CRESCENT BOAT COMPANY, a California corporation,
effective immediately.

Dated: October 26, 1976


O. J. Hall, Jr.

SHAREHOLDERS' AGREEMENT
AND
STOCK REDEMPTION AGREEMENT

THIS AGREEMENT is made this 21 day of September, 1977, between STAR & CRESCENT BOAT COMPANY, a California corporation (hereinafter called "Company") and its shareholders with respect to all shares of the Company now or hereafter owned by said shareholders for the purpose of protecting said shareholders and the Company in the event any shareholder dies, terminates or has employment terminated by the Company, or seeks to dispose of shares.

The following shares of the Company are presently issued as follows:

<u>Shareholder</u>	<u>Certificate No.</u>	<u>No. of Shares</u>
Stephen P. Carlstrom	2	500
Judy Hall	3	500
Janet Miles	4	500

The shares are held by Star & Crescent Investment Co. under a Security Agreement dated October 26, 1976 as collateral for a promissory note of that same date in the original principal amount of \$765,400.00 payable by the shareholders to Star & Crescent Investment Co. for the purchase of the shares of stock.

Each share is subject to a legend condition imposed by the California Commissioner of Corporations and

may or may not be subject to a right of first refusal held by Pacific Towboat & Salvage Co.

In consideration of the mutual promises, covenants and conditions, the parties hereto agree as follows:

1. Insurance. The Company may insure the life of any shareholder. All policies, showing the names and amounts of insurance, shall be listed in Schedule A to be attached hereto. The Company shall have the right to take out additional insurance on the life of any shareholder whenever, in the opinion of the Company, additional insurance may be required to carry out its obligations under this agreement. The additional policies shall be listed in Schedule A and shall be subject to the terms of this agreement. The policies and any proceeds received by the Company thereunder shall be held by the Company in trust for the purposes of this agreement. The Company shall pay all premiums on insurance policies taken out by it pursuant to this agreement.

2. Rights of Ownership. The Company shall be the sole owner of the policies issued to it or transferred to it and has the right to elect any dividend option on the policies.

3. Purchase of Stock. Upon their termination of employment with the Company, for any reason including death, the terminating shareholder or their estate shall have the option to require the corporation to purchase all of their shares at the purchase price determined according to the

provisions of paragraph 4. Such option shall be exercised by a deceased shareholder's personal representative within one hundred twenty (120) days after death and by a shareholder whose employment has terminated within ten (10) days after termination and shall be exercised in writing. ~~The shares~~ purchased and sold hereunder shall include separate or community property interest, if any, of such shareholder's spouse in the shares. The purchase price of the shares shall be determined in accordance with the provisions of paragraph 4.

4. Purchase Price. The purchase price for the shares to be purchased shall be equal to the agreed value of the Company at the end of the year preceding termination divided by the total number of shares then outstanding and multiplied by the number of shares to be purchased. The parties to this agreement shall review the Company's financial condition at the end of each fiscal year and unanimously agree on the value of the Company which shall be the Company's agreed value for the purpose of this agreement until a different value is determined. Such agreed value shall be endorsed on Exhibit B to this agreement. If an agreed value is not so established, the purchase price to be paid for the shares subject to this agreement shall be according to the last agreed value, and if there is none, the book value determined as of the end of the month preceding termination. Book value shall be determined from the books of the Company according to generally accepted principles of accounting

applied in a consistent manner by the accountants of the Company who customarily prepare the Company's financial statements. Book value shall include the cash surrender value of any life insurance policies taken out by the Company pursuant to this agreement but shall not include the proceeds of any policies insuring the life of a deceased shareholder in excess of any cash surrender value.

5. Payment of Purchase Price on Death. In the event of the death of a shareholder, the purchase price shall be paid as soon as possible in cash, to the extent of any insurance proceeds received by the Company. If the proceeds of insurance on the life of the decedent are insufficient to pay the entire purchase price in cash, the Company shall pay the balance of the purchase price for such shares with its promissory note payable in equal monthly installments of principal and interest, with interest at the rate of seven percent (7%) per annum on the unpaid balance of principal remaining from time to time, and with payments not to extend over a period of longer than five (5) years. The Company shall have the right to prepay any or all installments without penalty.

6. Payment of Purchase Price on Termination Other Than Death. In the event of termination other than by death of a shareholder, the purchase price shall be paid in cash, or a promissory note or both at the option of the Company. Any such promissory note shall be payable in equal

monthly installments of principal and interest, with interest at the rate of seven percent (7%) per annum on the unpaid balance of principal remaining from time to time, over a period equal to either the maturity date of the above referenced promissory note of shareholders to Star & Crescent Investment Co. dated October 26, 1976 in the original principal amount of \$765,400.00 or ten (10) years, whichever is longer. The Company shall have the right to prepay such promissory note in whole or in part at any time without penalty.

7. Payment to Star & Crescent Investment Co.

If the shares being purchased are then subject to pledge to Star & Crescent Investment Co. for the unpaid balance of the purchase price of the shares, the Company shall first make its payments to the holder of the note secured by a pledge of such shares and if the proportionate indebtedness of the terminating shareholder is paid in full, the Company's payments shall then be made to the shareholder or his estate as the case may be.

8. Insufficient Surplus. If the Company may not legally redeem any or all of said shares, the remaining shareholders shall purchase pro rata and pay for any and all of the selling shareholder's shares not purchased by the Company, at the price and on the terms herein stated.

9. Delivery of Stock. Upon the payment of the purchase price by cash or promissory note, the shares or the pledgor's rights to the shares shall be endorsed and

delivered to the Company or other shareholders as the case may be.

10. Purchase of Insurance Policies on Withdrawal of Party. If any shareholder ceases to be a party to this agreement, ~~such shareholder shall have the right to purchase~~ from the Company any insurance policy on his life for a price equal to the value of the policy which shall be its reserve plus unearned premiums and dividends credited less any loan, and if term insurance, for the pro rata amount of any prepaid premiums. Such option shall be exercised within ten (10) days of such event. The Company shall deliver the policy to the shareholder and shall execute any necessary instruments of transfer.

11. Transfer Restrictions. Except as otherwise provided in this agreement, no shareholder shall transfer, encumber, or in any way dispose of any of his or her shares or any right or interest in them without obtaining the prior written consent of the Company and of all other shareholders, unless the shareholder shall first have given written notice to the Company, of intent to do so. The notice shall be accompanied by an executed counterpart of any document of transfer, which must name the proposed transferee and specify the number of shares to be transferred, the price per share, and the terms of payment. Promptly on receipt of the notice, the Company shall forward a copy of the notice and the executed counterpart to each member of the Company's board of directors, and within twenty (20) days thereafter a

meeting of the board of directors shall be duly called, noticed, and held to consider the proposed transfer. For forty-five (45) days following notice to the Company, it shall have the option to purchase the shares at the price and on the terms stated in the notice and any accompanying transfer document(s) or at a price determined in the same manner as is provided in paragraph 4. of this agreement, whichever price is lower. The Company's right to exercise the option and to purchase the stock is subject to the restrictions governing the right of a corporation to purchase its own stock.

If the Company exercises the option within the forty-five (45) -day period, the Company shall give notice of that fact to the offering shareholder. The Company shall pay the purchase price in the same manner as provided in paragraph 6. hereof.

If the option is not exercised by the Company as to all shares set forth in the notice of intention to transfer within the forty-five (45) -day period, notice of the proposed transfer in the same form as the notice given to the corporation shall be given immediately to the remaining shareholders, who shall have the option to purchase any shares not purchased by the Company at the price and on the same terms and conditions specified in the notice and any accompanying transfer document(s). Within twenty (20) days after giving the notice, any shareholder desiring to acquire

any part or all of the shares offered shall deliver to the Company a written election to purchase the shares or a specified number of them. If the total number of shares specified in the elections exceeds the number of available shares, each shareholder shall have priority, up to the number of shares specified in his notice of election to purchase, to such proportion of the available shares as the number of the Company's shares that he holds bears to the total number of the Company's shares held by all shareholders electing to purchase. The shares not purchased on such a priority basis shall be allocated in one or more successive allocations to those shareholders electing to purchase more than the number of shares to which they have a priority right, up to the number of shares specified in their respective notices, in the proportion that the number of shares held by each of them bears to the number of shares held by all of them.

Within ten (10) days after the mailing of the notice to the shareholders, the Company shall notify each shareholder of the number of shares as to which his election was effective, and the shareholder shall meet the terms and conditions of the purchase within thirty (30) days thereafter.

If the Company and the shareholders do not purchase all the shares set forth in the notice of intention to transfer, all the shares may be transferred at any time within

one hundred twenty (120) days from the date of the notice and on the terms specified in the notice. The transferee will hold the shares subject to the provisions of this agreement. No transfer of the shares shall be made after the end of the one hundred twenty (120) -day period, nor shall any change in the terms of transfer be permitted without a new notice of intention to transfer and compliance with the requirements of this paragraph.

12. Endorsement on Stock Certificates. Upon the execution of this agreement and any subsequent transfer of shares permitted hereunder, the certificates of stock subject hereto shall be subject to the following endorsement:

"Sale, transfer, or hypothecation of the shares represented by this Certificate is restricted by the provisions of a Shareholders Agreement dated _____, a copy of which may be inspected at the principal office of the Corporation, and all of the provisions of which are incorporated herein."

The Company shall request Star & Crescent Investment Co. as holder of the shares as collateral to endorse the share certificates as herein provided.

13. Term. This agreement shall terminate upon the occurrence of any of the following events:

- (a) Cessation of the Company's business.
- (b) Bankruptcy, receivership, or dissolution of the Company.

(c) Whenever there is only one surviving shareholder bound by the terms hereof.

(d) The voluntary agreement of all parties who are then bound by the terms hereof.

The termination of this agreement shall terminate ~~the endorsement set forth in paragraph 11.~~

14. Permitted Transfers. Any of the named shareholders may transfer shares during his or her lifetime to his or her spouse or family and any spouse of any of the named shareholders may transfer shares during his or her lifetime or at death to any child of any of the named shareholders.

Notwithstanding any provision of this agreement to the contrary, no transfer of shares shall be made if the effect of the transfer would be to cause the loss of the Subchapter S election.

In the case of any permitted transfer, the transferee shall agree in writing to hold such shares subject to the terms and conditions of this agreement, and to comply with the requirements necessary to preserve the Company's Subchapter S election.

Except as otherwise provided in this paragraph, in the event of the death of the permitted transferee, the Company and the remaining shareholders shall have the option to purchase all of the shares owned by such decedent. The option shall expire 120 days after written notice of death given to the Company making specific reference to this agreement. The purchase price shall be as provided in paragraph 4 and the manner of payment shall be as provided in paragraph 6. The option shall first be exercisable

by the Company and thereafter by the remaining shareholders in the manner provided for the exercise of options in paragraph 11. In the event this option is not exercised, as herein provided, the successors in interest of the deceased permitted transferee shall hold the shares subject to the provisions of this agreement.

15. Sale, Exchange or Merger of Entire Business.

The provisions hereof with respect to the purchase and sale of shares upon the death or termination of services shall not be applicable in the event of a sale of the entire business by the Company, the merger of the Company with another corporation, or a sale of all of the shares of the Company in order that the shareholders may participate with all shareholders with respect to any such sale, exchange or merger. In this connection, each shareholder hereby covenants and agrees to vote, sell or exchange his shares in the same manner as the holder or holders of a majority of the shares of the Company with respect to any such sale, exchange or merger.

16. Agreement to Perform Necessary Acts. Each party to this agreement agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this agreement.

17. Amendments. The provisions of this agreement may be waived, altered, amended, or repealed, in whole or in part, only on the written consent of all parties to this agreement.

18. Successors and Assigns. This agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors, and assigns.

~~19. Validity of Agreement. It is intended that each paragraph of this agreement shall be viewed as separate and divisible, and in the event that any paragraph shall be held to be invalid, the remaining paragraphs shall continue to be in full force and effect.~~

20. Notices. All notices, requests, demands, and other communications under this agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or within 72 hours after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed to the party at his or her last known address.

21. Governing Law. This agreement shall be construed in accordance with, and governed by, the laws of the State of California.

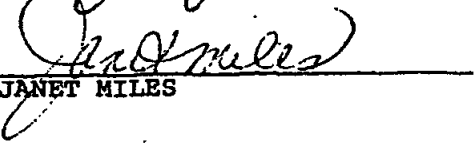
22. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this

agreement on the date first above written.


STEPHEN P. CARLSTROM


JUDY HALL


JANET MILES

STAR & CRESCENT BOAT COMPANY

By 
President

Attest: 
Secretary

SCHEDULE A

(INSURANCE)

Insured

Company

Policy No.

Amount

SCHEDULE B
(AGREED VALUE)

Agreed Value of the Company:

_____ Date _____

STEPHEN P. CARLSTROM

JUDY HALL

JANET MILES

_____ Date _____

STEPHEN P. CARLSTROM

JUDY HALL

JANET MILES

(Additional Pages to be Added as Required.)

MINUTES OF SPECIAL MEETING
OF
DIRECTORS
OF
STAR & CRESCENT BOAT COMPANY

A special meeting of the directors of STAR & CRESCENT BOAT COMPANY, a California corporation, was held at 570 North Harbor Drive, San Diego, California, on May 6, 1977 at 3:30 P.M.

Present at the meeting were Stephen P. Carlstrom, Judy Hall, Janet Miles, Raleigh Miles and Kenneth Beiriger, being all of the directors.

Mr. Carlstrom acted as Chairman of the meeting and Mr. Beiriger presided as Secretary.


The Chairman announced that the purpose of the meeting was to ratify payments of dividends by the corporation to the shareholders in the total amounts of \$6,500.00 per month made on November 4, 1976, December 3, 1976, January 7, 1977, February 8, 1977, March 3, 1977, April 7, 1977 and May 3, 1977 by way of direct payments from the corporation to Star & Crescent Investment Co. as installment payments on the note of the shareholders to Star & Crescent Investment Co.

After full discussion, upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that the payments of the corporation to Star & Crescent Investment Co. in

the amounts of \$6,500.00 each on November 4, 1976, December 3, 1976, January 7, 1977, February 8, 1977, March 3, 1977, April 7, 1977 and May 3, 1977 are hereby ratified and approved as declared dividends of the corporation paid for and on behalf of the shareholders of the corporation to satisfy their obligations under their note to Star & Crescent Investment Co,


There being no further business to come before the meeting, on motion duly made and carried, the meeting was adjourned.



Kenneth Beiriger
Secretary of the Meeting

ATTEST,

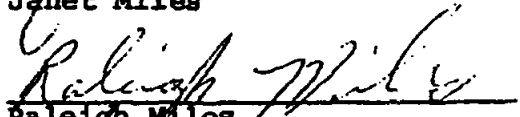

Stephen P. Carlstrom, Chairman

Each of the undersigned waives notice of the meeting of the Board of Directors of STAR & CRESCENT BOAT COMPANY held on May 6, 1977 and approves the foregoing minutes of such meeting as to all particulars.


Stephen P. Carlstrom


Judy Hall


Janet Miles


Raleigh Miles


Kenneth Beiriger

Minutes of a Meeting of the Board of Directors
of
STAR & CRESCENT BOAT COMPANY

~~A meeting of the Board of Directors of Star & Crescent Boat Company was held May 18, 1977 at the offices of the Corporation in San Diego, California, at the hour of 2:00 P.M. that day pursuant to notice of meeting dated May 10, 1977 which notice called the meeting for May 25, but amended by verbal polling of Directors who unanimously moved the meeting ahead to May 18, 1977.~~

John Patrick Ford, partner of Ford, Hichman & Trammel, our C.P.A.'s, presented the six months first annual report and management recommendations.

Also, by motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that the payments of the Corporation to Star & Crescent Investment Co. in the amount \$6,500 or multiples thereof monthly during the fiscal year ending March 31, 1978 are hereby ratified and approved as declared dividends of the Corporation paid for and on behalf of the shareholders of the Corporation to satisfy their obligations under their note to Star & Crescent Investment Co.

The Board reviewed recommendations for 1978 rates and unanimously adopted the following schedule effective January 1, 1978:

	One Hour			Two Hour		
	Retail	Dis/Grp	Net	Retail	Dis/Grp	Net
Adult	2.90	2.60	2.30	4.75	4.25	3.80
Junior*	N/A	2.00	1.80	N/A	3.20	2.85
Child	1.45	1.30	1.15	2.40	2.15	1.90

*Groups only

There being no further business to come before the meeting, on motion duly made and carried, the meeting was adjourned.


K. N. Beiriger
Secretary

May 23, 1977

S&C000282

Minutes of a Meeting of the Board of Directors

of

Star & Crescent Boat Company

A meeting of the Board of Directors of Star & Crescent Boat Company in special meeting was held on June 28, 1977 to consider a dividend payable to stockholders to permit payment of a substantial amount of summer receipts for retirement of stockholders' notes to Star & Crescent Investment Co., thereby saving considerable interest over the life of the notes.

RESOLVED, that the payment of the Corporation to Star & Crescent Investment Co. in the amount of \$50,621.24 is hereby ratified and declared dividends of the Corporation paid for and on behalf of the stockholders to satisfy their note to Star & Crescent Investment Co.

There being no further business, the meeting was adjourned.


K. N. Beiriger
Secretary

Attest:


Stephen P. Carlstrom


Janet E. Miles


Judy E. Hall

June 29, 1977

S&C000283

Minutes of a Meeting of the Board of Directors

of

Star and Crescent Boat Company

A meeting of the Board of Directors of Star & Crescent Boat Company was held on December 14, 1977 at the offices of the Corporation in San Diego, California, at the hour of 2:00 P.M. that day pursuant to the notice of meeting dated December 6 and revised December 8, 1977.

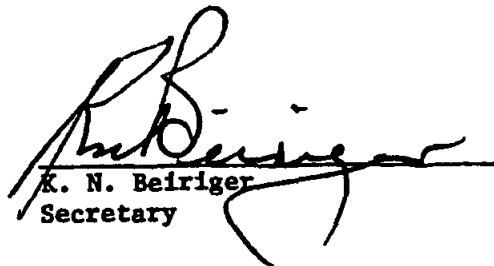
All Directors were present at the meeting.

1. Review of November financial statements indicate a loss of \$14,241 for November and a profit of \$234,089 for eight months in the fiscal year.
2. As a result of #1 above, a redivision of Chapter S profits will be required. The public accountants have been attempting to assess this taxable position. See attachment.
3. Bonuses payable per scheduled recommendations amount of \$3,770 excluding stockholders and Vice President-Operations. Stockholders will be paid a bonus of \$2,000 and Vice President-Operations \$1,000 effective January 10, 1978 and also on January 10, 1978 stockholders will be paid a bonus of \$10,000 each subject to withholding taxes.
 - a. Stockholders will pay taxes of approximately \$985 each on their 1977 assessments from the \$2,000 bonus paid in December.
 - b. Prior to March 31, 1978, stockholders will pay balance of taxes due on Sub Chapter S distributions. Public Accountants will advise correct amount, but is approximately \$52,000.
 - c. Prior to April 15, 1978, shareholders will pay first installments on 1978 taxes as computed by our public accountants.
4. Stockholders will be granted a 20% increase in salaries effective January 1, 1978 subject to the approval of the Star & Crescent Investment Co. as contained in the buy-out agreement.
5. Cost of living and raises for Union employees on February 1, 1978 per Union contract will also follow through to non-union employees, including stockholders. This percentage will probably be 6% for all non-union employees and management effective February 1, 1978.

6. Charter minimum for 10% commission on two hour boat charters will be thirty (30) charters per calendar year.

~~7. The Board of Directors voted to omit a January dividend.~~

There being no further business brought before the Board, the meeting was adjourned at 3:45 P.M.


K. N. Beiriger
Secretary

December 15, 1977

MEMORANDUM

TO: ~~Stockholders, Star & Crescent Boat Co.~~
Projection of Sub-chapter S Distributions

December 12, 1977

For the March fiscal years 1977 and 1978, the stockholders will have withdrawn additional note payments to Star & Crescent Investment Co. of \$47,000 each year in addition to the regular annual note payments of \$78,000. The income taxes due for these distributions are delayed in payment until the subsequent year when the returns are filed; then additional withdrawals are made to pay the taxes (estimated at \$52,000 in 1978 for 1977 taxes and \$72,500 in 1979 for 1978 taxes) over and above the amounts withheld and paid on declarations.

The effect of "doubling up" the withdrawals in calendar year 1978 to pay income taxes and complete the extra note payments becomes a planning problem to spread the taxable income between 1978 and 1979 in the best way.

The distributable Sub-chapter S income used in the following projection assumes an operating income from the corporation before bonuses or salary increases of \$200,000. The projection provides for a 20% salary increase January 1, 1978, another 20% increase July 1, 1978, and the payment of \$30,000 in bonuses before March 31, 1978. All of the 1978 federal and state income taxes required to be paid to avoid penalty will be withheld from salaries and bonuses so no dividends for tax payments will be necessary in 1978 to pay 1978 taxes. The dividend for payment of 1977 taxes (approximately \$52,000) will be paid after March 31, 1978 to avoid excess dividend distributions for that fiscal year.

Projected Sub-chapter S income:

	<u>3/31/78</u>	<u>3/31/79</u>
Operating income after salaries and bonuses proposed	166,500	157,300
Dividend distributions	(147,330)	(176,500)
Income distributions	<u>19,170</u>	<u>(19,200)</u>

Projected Stockholders' income - 1978:

	<u>Carlstrom</u>	<u>Hall</u>	<u>Miles</u>
Salaries	30,500	22,200	40,800
Bonuses	10,000	10,000	10,000
Dividends	59,000	59,000	59,000
Sub S income	6,400	6,400	6,400
Gross income	<u>105,900</u>	<u>97,600</u>	<u>116,200</u>

MEMORANDUM

Page 2

TO: Stockholders, Star & Crescent Boat Co. (continued).
Projection of Sub-chapter S Distributions

December 12, 1977

	<u>Carlstrom</u>	<u>Hall</u>	<u>Miles</u>
Taxable income	<u>86,300</u>	<u>76,600</u>	<u>90,600</u>
Federal tax	37,000	37,000	39,500
State tax	8,500	8,200	9,000
Withholding taxes	<u>(22,400)</u>	<u>(20,700)</u>	<u>(24,000)</u>
Net payroll	<u>18,100</u>	<u>11,500</u>	<u>24,800</u>
Balance of taxes due 4/15/79	<u>23,100</u>	<u>24,900</u>	<u>24,500</u>

Summary of stockholders' income (combined):

	<u>12/31/78</u>	<u>12/31/79</u>
Salaries	93,500	102,000
Bonuses	30,000	20,000
Dividends:-		
Note payments	125,000	78,000
Tax payments	52,000	72,500
Sub S income	<u>19,200</u>	<u>(19,200)</u>
Gross income	<u>319,700</u>	<u>272,500</u>

The proposed salary and bonus adjustments are recommended to cover taxes to be withheld and to reduce the taxable income for state franchise tax. Additional increases in 1979 might be appropriate to cover all taxes due when dividend distributions for note payments have been reduced.

Prepared by John Patrick Ford

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STAR & CRESCENT BOAT COMPANY

Minutes of Board of Directors Meeting

Directors present: Stephen P. Carlstrom, Judy E. Hall, Janet E. Miles, Raleigh J. Miles, K. N. Beiriger

The meeting was called to order at 2 p.m. on September 19, 1979 at San Diego, California, Stephen P. Carlstrom presiding.


1. Consistent with prior year accelerated payments by the stockholders on the note payable to Star and Crescent Investment Company, the Board authorized the payment of a dividend of \$25,000 to Star and Crescent Investment Co. This dividend was payable in August by verbal authority and is confirmed in the minutes of this September meeting.
2. Further action by agreement of the Board an additional \$25,000 dividend was declared to Star & Crescent Investment Company payable in September, 1979. This was confirmed on initialing the notice to the Board dated September 11, 1979 and is appended hereto as an exhibit to these minutes.
3. Parade of Lights: the price this year will be \$4.90 and there will be no refunds as was done in prior years, on the basis we cannot guarantee the weather on December 16, 1979. There will be no discounts for this special event.
4. The new float authorized in previous Board meetings for 1050 No. Harbor Drive has been installed and will begin operations on Monday, September 22nd. Cost has not been finalized, but is approximately \$28,000.
5. Clarifying the June Board meeting, the payment to Interface Marketing for marketing review of a five year plan. The engagement terminates December, 1979 at \$2,500 per engagement.
6. Excursion building snack bar to be fixed up on exterior side in the building. A study should be made on exterior and interior remodel.
7. Marine insurance for 1979-80 is \$67,245.19, less Lake Mead Ferry Service (approximately \$8,000).

Hull	\$19,131.09
P & I	17,114.40
Excess	<u>31,000.00</u>
Total	\$67,245.49

8. Public Relations budget should be established along with Advertising budget. General discussion on this point. Dean Martin Christmas Show contribution of \$5,000 is an example of a public relations expenditure. Steve Carlstrom is to present such a budget for calendar year 1980.

9. Carroll Peterson to develop a monthly expense reporting form on all people who have credit cards.
10. Boat sewage system effective January 1, 1980. We have no approved system at this time. The installing of any system for all boats will be expensive.
11. Marietta pier has broken piling which must be replaced.

There being no further business brought before the Board, the meeting was adjourned at 4 p.m.


K. N. Beiriger
Secretary

September 20, 1979

STAR & CRESCENT BOAT COMPANY

Minutes of Board of Directors Meeting

Minutes of meeting held pursuant to agenda dated February 19, 1981 at 2 pm on March 4, 1981 at 570 North Harbor Drive, San Diego, California 92101.

Directors Present: Stephen P. Carlstrom, Judy E. Hall, Janet E. Miles, Raleigh J. Miles, K. N. Beiriger

Directors Absent: None

Guest Present: John Patrick Ford, CPA

The first order of business was the general discussion of pro forma balance sheet and cash flow requested by Bank of America in connection with upcoming loan for dissolution of Sub-Chapter S corporate status.

Mr. Ford discussed the presentation prepared by Ford, Hickman, Gibbs and Massinger and presented to Mr. D. L. Brockmeier, Bank of America.

RESOLUTION: BE IT RESOLVED that the Star & Crescent Boat Company dissolve its Sub-Chapter S status at the close of the fiscal year, March 31, 1981, and

BE IT FURTHER RESOLVED that the Treasurer be authorized to borrow from the Bank of America the sum of \$325,000 for an amortized period of five (5) years at an interest rate to be negotiated and said loan to be guaranteed by the Star & Crescent Investment Company, effective March 20, 1981,

AND BE IT FURTHER RESOLVED that a dividend be paid on March 25, 1981 to stockholders in the amount of principal owing at March 31, 1981 to Star & Crescent Investment Co. - total \$318,089.81.

Unanimously approved by the Board of Directors.

Tour guide and Broadway operations approved by Board for S. P. Carlstrom to appoint Don Castellani as a supervisor for a 60 day probationary period.

Raleigh Miles to review janitorial service requirements at Broadway and to solve the problem of adequate service before summer season begins.

Uniforms for 1981 - agreed that Judy Hall settle on colors and set up appointments for personnel to be fitted.

Janet Miles requested that Samuel Carpenter be notified that we are now in a position to receive an offer from Mr. Morris of Seaport Village. Mr. Beiriger to contact Mr. Carpenter.


Cocktail cruise - It was decided to run the cruise this summer on Wednesday, Thursday, Friday and Saturday nights. Price \$5.50 adults only. Cocktails and liquor drinks to be established later by S. Carlstrom and Judy Hall.

1982 admission ages will be 3 to 11 half price, 11-17 juniors (groups only), under three free. This is to conform to other entertainment areas in San Diego.

Reminder to operations that 1982 fiscal year forecasts are due in Treasurer's office by March 25, 1981.

General meeting on salaries of stockholders and officers. Special subsequent meeting held by the stockholders on this subject.

There being no further business brought before the Board, the meeting was adjourned at 4 pm.


K. N. Beiriger
Secretary

March 5, 1981

P.S. D. L. Brockmeier contacted K. N. Beiriger on March 5, 1981 and paper work will be completed in sufficient time. Money will be credited to Star & Crescent Boat Co. account on March 20, 1981.

On March 5, 1981 Mr. Beiriger contacted S. Carpenter and conveyed Board's desire. Mr. Carpenter did contact Mr. Bryant Morris who stated an interest still existed. Mr. Carpenter asked for permission to fairly open an information with the exception of the appraisal. Mr. Beiriger on behalf of the Board granted Mr. Carpenter's request as being in the best interests of the Boat Company.

shares repurchased by the corporation. Negotiations with Miss Hall had been conducted during which it was determined that a fair purchase price for said 500 shares would be Four Hundred Thousand Dollars (\$400,000.00), to be paid One Hundred Fifty Thousand Dollars (\$150,000.00) in cash and the remaining Two Hundred Fifty Thousand Dollars (\$250,000.00) in the form of a Promissory Note. A proposed agreement for such repurchase and Promissory Note were presented to the Board. After full discussion of these matters, upon motion duly made, seconded and unanimously carried, (except that Judy E. Hall refrained from voting) the following resolutions were adopted:

RESOLVED, that the Agreement presented to this meeting providing for the repurchase by the corporation of 500 shares of common stock owned by Judy E. Hall, discussed hereat is hereby adopted and approved; and

RESOLVED FURTHER, that the President and Secretary are authorized and directed to enter into said Agreement on behalf of this corporation; and

RESOLVED FURTHER, that the President and Secretary are authorized to make payment to Judy E. Hall for said shares by a payment of \$150,000.00 on this date, and by execution of and delivery to Judy E. Hall of the Promissory Note of the corporation in the amount of \$250,000.00 presented to this meeting and discussed hereat.

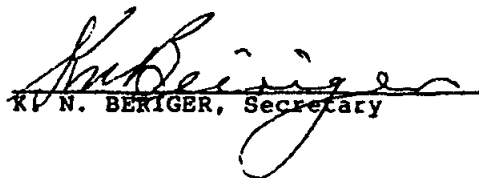
The next order of business was to consider the resignation of Judy E. Hall, as Director of, and in all her other capacities with STAR & CRESCENT BOAT COMPANY, which resignation Miss Hall presented to the meeting. After full discussion the following resolutions were adopted:

(10)


RESOLVED, that the corporation accept the resignation of Judy E. Hall as Director and in all her other capacities with the corporation; and

WHEREAS, a vacancy on this Board has been created by the resignation of Judy E. Hall, therefore it is resolved that the remaining Directors hereby agree that said vacancy shall continue to remain open, until a new Board of Directors is elected at the next annual meeting of Shareholders.

There being no further business to come before the meeting, the meeting was adjourned.


K. N. BERIGER, Secretary

APPROVED BY:


STEPHEN P. CARLSTROM,
Chairman of the meeting

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ENDORSED
FILED
In the office of the Secretary of State
of the State of California

AGREEMENT OF MERGER

BETWEEN

DEC 24 1986

SAN DIEGO HARBOR EXCURSIONS, INC.

MARCH FONG EIL, Secretary of State

AND

STAR & CRESCENT BOAT COMPANY

AND

AMENDMENT AND RESTATEMENT OF ARTICLES OF INCORPORATION

OF

STAR & CRESCENT BOAT COMPANY

STAR & CRESCENT BOAT COMPANY (hereinafter sometimes called "Star & Crescent") and SAN DIEGO HARBOR EXCURSIONS, INC. (hereinafter sometimes called "Harbor Excursions") agree as follows:

ARTICLE 1

Recitals of Constituent Corporations

1.1 Harbor Excursions is a corporation duly organized, validly existing, and in good standing under the laws of the State of California.

1.2 Star & Crescent is a corporation duly organized, validly existing, and in good standing under the laws of the State of California.

1.3 Star & Crescent Boat Company is to be the surviving corporation, as that term is defined in the General Corporation Law of California, to the merger described in this Agreement.

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ARTICLE 2

Merger

2.1 Harbor Excursions shall be merged into Star & Crescent Boat Company under the laws of the State of California.

ARTICLE 3

Terms and Conditions

3.1 Between the date of this Agreement and the date on which the merger shall become effective, either constituent corporation shall not:

3.1.1 Declare or pay any dividends to its shareholders.

3.1.2 Except in the normal course of business and for adequate value, dispose of any of its assets.

3.2 If at any time the surviving corporation shall consider or be advised that any further assignments or assurances in law are necessary to vest or to perfect or to confirm of record in the surviving corporation the title to any property or rights of Harbor Excursions, or otherwise carry out the provisions hereof, the proper officers and directors of Harbor Excursions, as of the effective date of the merger, shall execute and deliver all proper deeds, assignments, confirmations, and assurances in law, and do all acts proper to vest, perfect, and confirm title to such property or rights in the surviving corporation, and otherwise carry out the provisions hereof.

ARTICLE 4

Basis of Converting Shares

4.1 At the effective date of the merger, each share of the common stock of the disappearing corporation shall be converted into 100 shares of the no-par value common stock of the surviving corporation authorized pursuant to the amendment of the Articles of Incorporation of Star & Crescent Boat Company as set forth in Article 6 of this Agreement.

4.2 Each holder of the shares of the disappearing corporation shall surrender his shares, properly endorsed, to the surviving corporation or its agent, and shall thereupon receive in exchange therefor a certificate or certificates representing the number of shares of the surviving corporation into which the shares of the disappearing corporation have been converted.

4.3 The presently outstanding 1,000 shares of common stock of Star & Crescent, each of \$10.00 par value, shall be cancelled as of the effective date of the merger.

ARTICLE 5

Directors

5.1 The present Board of Directors of Star & Crescent shall continue to serve as the Board of Directors of the surviving corporation until the next annual meeting or until such time as their successors have been elected and qualified.

ARTICLE 6

Articles of Incorporation

6.1 The articles of incorporation of the surviving corporation shall read in their entirety as follows:

I

The name of this corporation is Star & Crescent Boat Company.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

This corporation is authorized to issue only one class of shares of stock; the total number of shares which this corporation is authorized to issue is 100,000; and all such shares of stock are to be without par value.

IV

This corporation elects to be governed by all of the provisions of the General Corporations Law of 1977 not otherwise applicable to it under Chapter 23 thereof.

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ARTICLE 7

Bylaws

7.1 Section 2 of Article III of the bylaws of Star & Crescent Boat Company is hereby amended to read as follows:

"NUMBER AND QUALIFICATION OF DIRECTORS. The number of directors shall be five (5) until changed by a Bylaw duly adopted by the shareholders amending this Section 2."

7.2 Except as amended pursuant to Article 7.1 hereof, the bylaws of Star & Crescent Boat Company, as existing on the effective date of the merger, shall continue in full force as the bylaws of the surviving corporation until altered, amended, or repealed as provided therein or as provided by law.

ARTICLE 8

Interpretation and Enforcement

8.1 Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepared, addressed:

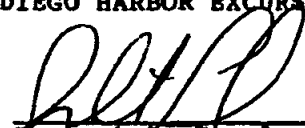
8.1.1 In the case of Harbor Excursions to: Mr. Lloyd A. Schwartz, Secretary, San Diego Harbor Excursions, Inc., P.O. Box 13308, San Diego, California 92113-0308, or to such other person or address as Harbor Excursions may from time to time furnish to Star & Crescent.


8.1.2 In the case of Star & Crescent to: Mr. Lloyd A. Schwartz, Secretary, Star & Crescent Boat Company, P.O. Box 13008, San Diego, California 92113-0308, or to such other person or address as Star & Crescent may from time to time furnish to Harbor Excursions.

8.2 The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, the state in which this Agreement is being executed.

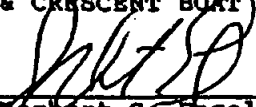
Executed on December 1, 1986 at San Diego, California.

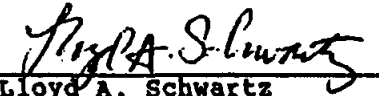
SAN DIEGO HARBOR EXCURSIONS,
INC.

By: 
Herbert G. Engel
Vice President

By: 
Lloyd A. Schwartz
Secretary

STAR & CRESCENT BOAT COMPANY

By: 
Herbert G. Engel
Vice President

By: 
Lloyd A. Schwartz
Secretary

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CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER


HERBERT G. ENGEL and LLOYD A. SCHWARTZ certify that:

1. They are the Vice President and Secretary, respectively, of SAN DIEGO HARBOR EXCURSIONS, INC., a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and Shareholders of the corporation.
3. The shareholder approval was by the holders of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 134.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: December 19, 1986


HERBERT G. ENGEL
Vice President


LLOYD A. SCHWARTZ
Secretary

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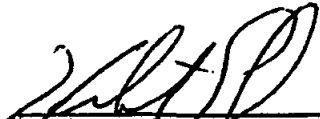
CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER

HERBERT G. ENGEL and LLOYD A. SCHWARTZ certify that:


1. They are the Vice President and Secretary, respectively, of STAR & CRESCENT BOAT COMPANY, a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and Shareholders of the corporation.
3. The shareholder approval was by the holders of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 1,000.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: December 19, 1986



 HERBERT G. ENGEL
 Vice President



 LLOYD A. SCHWARTZ
 Secretary

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

In the matter of Tentative Cleanup
and Abatement Order No. R9-2011-
0001 (Formerly R9-2010-0002)
Shipyard Sediment Cleanup

Regional Board Cleanup Team's
Responses & Objections to
Designated Party Star & Crescent
Boat Company's First Set of Special
Interrogatories

Propounding Party: Star & Crescent Boat Company ("Star &
Crescent")

Responding Party: California Regional Water Quality Control
Board, San Diego Region Cleanup Team

Set Number: One (1)

Pursuant to the Presiding Officer's February 18, 2010 Order Issuing Final Discovery Plan for Tentative Cleanup and Abatement Order No. R9-2010-0002 and Associated Draft Technical Report, the Presiding Officer's October 27, 2010 Order Reopening Discovery Period, Establishing Discovery Schedule, and Identifying Star and Crescent Boat Company as a Designated Party for Purposes of Tentative Cleanup and Abatement Order R9-2011-0001 (the "10.27.10 Order"), the Parties' August 9, 2010 Stipulation Regarding Discovery Extension and all applicable law, Designated Party the San Diego Water Board Cleanup Team ("Cleanup Team"), hereby responds and objects to Star & Crescent's First Set of Special Interrogatories (the "Interrogatories") as follows:

OBJECTIONS TO DEFINITIONS

1. The Cleanup Team objects to the defined term "DOCUMENT" on the ground and to the extent that it seeks information protected by settlement confidentiality rules, the attorney-client privilege, the joint prosecution privilege, the work product doctrine, the mediation privilege, the common interest privilege, the official information privilege, the deliberative process privilege, and/or any other privilege or confidentiality protection.

RESPONSES TO SPECIAL INTERROGATORIES

SPECIAL INTERROGATORY NO. 1:

Identify all facts in support of the contention in paragraph 1 of the TCAO that "Star & Crescent Boat Company...caused or permitted the discharge of waste to the Shipyard Sediment Site resulting in the accumulation of waste in the marine sediment."

RESPONSE TO INTERROGATORY NO. 1:

The Cleanup Team objects to this Interrogatory to the extent it requests information protected by the attorney-client privilege, joint prosecution privilege, common interest privilege, mediation privilege, official information privilege and/or deliberative process privilege, and to the extent it requests information subject to the work-product exemption, collectively referred to herein as the "privilege" or "privileged." The Cleanup Team contends that all communications exchanged between it and its counsel are privileged. The Cleanup Team objects to identifying or producing any and all products of investigations or inquiry conducted by, or pursuant to the direction of

counsel, including, but not limited to, all products of investigation or inquiry prepared by the Cleanup Team in anticipation of this proceeding, based on the attorney-client privilege and/or the work-product doctrine. The Cleanup Team further objects to providing information subject to or protected by any other privilege, including, but not limited to, settlement communications, the joint prosecution privilege, the common interest privilege, the mediation privilege, the official information privilege and/or the deliberative process privilege. Inadvertent provision of privileged information shall not constitute a waiver of said privileges.

The Cleanup Team further objects to this Interrogatory to the extent it purports to impose any requirement or discovery obligation other than as set forth in Title 23 of the California Code of Regulations, sections 648 et seq., the California Government Code, sections 11400 et seq. and/or applicable stipulations, agreements and/or orders governing this proceeding, including, but not limited to, the limitations on the proper scope of discovery set forth in the 10.27.10 Order. The Cleanup Team further objects to Star & Crescent's "INSTRUCTIONS" to the extent they purport to impose obligations on the Cleanup Team not specifically set forth in Title 23 of the California Code of Regulations, sections 648 et seq., the California Government Code, sections 11400 et seq. and/or applicable stipulations, agreements and/or orders governing this proceeding.

The instant Cleanup and Abatement Order proceeding is ongoing, and the Cleanup Team expects that additional evidence will be provided by the Designated Parties hereto in accordance with governing statutes, regulations and applicable hearing procedures. While the Cleanup Team's response to each of these Interrogatories is based on a reasonable investigation and search for the information

requested as of this date, additional information and evidence may be made available to or otherwise obtained by the Cleanup Team subsequent to the date of this response.

These responses are provided without prejudice to the Cleanup Team's right to supplement these responses, or to use in this proceeding any testimonial, documentary, or other form of evidence or facts yet to be discovered, unintentionally omitted, or within the scope of the objections set forth herein.

Subject to and without waiving the preceding objections, the Cleanup Team responds as follows: the facts supporting the quoted allegation from the CAO are set forth in detail in the DTR in Chapters 5 and 6, Sections 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8 and will not be repeated here.

SPECIAL INTERROGATORY NO. 2:

Identify all witnesses with knowledge of all facts in support of the contention in paragraph 1 of the TCAO that "Star & Crescent Boat Company...caused or permitted the discharge of waste to the Shipyard Sediment Site resulting in the accumulation of waste in the marine sediment."

RESPONSE TO INTERROGATORY NO. 2:

Witnesses with knowledge of the facts supporting the quoted allegation from the CAO are Tom Alo, David Barker, Craig Carlisle, unknown employees, officers and/or agents of the Designated Parties, including, but not limited to, the San Diego Unified Port District and Star & Crescent and its corporate predecessors, successors, subsidiaries and/or affiliates.

SPECIAL INTERROGATORY NO. 3:

Identify all documents which relate to or support the contention in paragraph 1 of the TCAO that "Star & Crescent Boat Company...caused or permitted the discharge of waste to the Shipyard Sediment Site resulting in the accumulation of waste in the marine sediment."

or otherwise obtained by the Cleanup Team subsequent to the date of this response. These responses are provided without prejudice to the Cleanup Team's right to supplement these responses, or to use in this proceeding any testimonial, documentary, or other form of evidence or facts yet to be discovered, unintentionally omitted, or within the scope of the objections set forth herein.

Subject to and without waiving the preceding objections, the Cleanup Team responds as follows:

SAR105417	Exponent, 2003
Military Paint. Web page last modified April 27, 2005. http://www.globalsecurity.org/military/systems/ship/systems/paint.htm)	Global Security.org, 2005
SAR294642	Peng et. al., 2003
SAR374265	RWQCB, 1972
SAR159479	SDUPD, 2004
U.S. EPA, 1997c: Profile of the Shipbuilding and Repair Industry. EPA-310-R-97-008. U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Washington, D.C. September 1997. Compliance Assistance Web Page at http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/ship.html	U.S. EPA, 1997c
	Water Code section 13304
	Water Code section 13050(k)
	Water Code section 13050(l)
56268, 56270, 56714, 57292, 57462.	Various documents on historical occupancy, including Woodward-Clyde, 1995
SAR374863	Order No. 74-84, NPDES Permit No. CA0107697

SPECIAL INTERROGATORY NO. 10:

Identify all facts in support of the contention in paragraph 5 of the TCAO that "Star & Crescent is the corporate successor of and responsible for the conditions of pollution or nuisance caused or permitted by San Diego Marine Construction Company."

RESPONSE TO INTERROGATORY NO. 10:

The Cleanup Team objects to this Interrogatory to the extent it requests information protected by the attorney-client privilege, joint prosecution privilege, common interest privilege, mediation privilege, official information privilege and/or deliberative process privilege, and to the extent it requests information subject to the work-product exemption, collectively referred to herein as the "privilege" or "privileged." The Cleanup Team contends that all communications exchanged between it and its counsel are privileged. The Cleanup Team objects to identifying or producing any and all products of investigations or inquiry conducted by, or pursuant to the direction of counsel, including, but not limited to, all products of investigation or inquiry prepared by the Cleanup Team in anticipation of this proceeding, based on the attorney-client privilege and/or the work-product doctrine. The Cleanup Team further objects to providing information subject to or protected by any other privilege, including, but not limited to, settlement communications, the joint prosecution privilege, the common interest privilege, the mediation privilege, the official information privilege and/or the deliberative process privilege. Inadvertent provision of privileged information shall not constitute a waiver of said privileges.

The Cleanup Team further objects to this Interrogatory to the extent it purports to impose any requirement or discovery obligation other than as set forth in Title 23 of the California Code of Regulations, sections 648 et seq., the California Government Code, sections 11400 et seq. and/or applicable stipulations, agreements and/or orders governing this proceeding, including, but not limited to, the limitations on the proper scope of discovery set forth in the 10.27.10 Order. The Cleanup Team further objects to Star & Crescent's "INSTRUCTIONS" to the extent they purport to impose obligations on the Cleanup Team not specifically set forth in Title 23 of the California Code of Regulations, sections 648 et seq., the California Government Code, sections 11400 et seq. and/or applicable stipulations, agreements and/or orders governing this

proceeding.

The instant Cleanup and Abatement Order proceeding is ongoing, and the Cleanup Team expects that additional evidence will be provided by the Designated Parties hereto in accordance with governing statutes, regulations and applicable hearing procedures. While the Cleanup Team's response to each of these Interrogatories is based on a reasonable investigation and search for the information requested as of this date, additional information and evidence may be made available to or otherwise obtained by the Cleanup Team subsequent to the date of this response. These responses are provided without prejudice to the Cleanup Team's right to supplement these responses, or to use in this proceeding any testimonial, documentary, or other form of evidence or facts yet to be discovered, unintentionally omitted, or within the scope of the objections set forth herein.

Subject to and without waiving the preceding objections, the Cleanup Team responds as follows: the facts supporting the quoted allegation from the CAO are set forth in detail in the DTR in Chapters 5 and 6, Sections 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8, and will not be repeated here.

SPECIAL INTERROGATORY NO. 11:

Identify all witnesses with knowledge of all facts in support of the contention in paragraph 5 of the TCAO that "Star & Crescent is the corporate successor of and responsible for the conditions of pollution or nuisance caused or permitted by San Diego Marine Construction Company."

RESPONSE TO INTERROGATORY NO. 11:

Witnesses with knowledge of the facts supporting the quoted allegation from the CAO are David Barker, Craig Carlisle, unknown employees, officers and/or agents of the Designated Parties, including, but not limited to, the San Diego Unified Port District and Star & Crescent and its corporate predecessors, successors, subsidiaries and/or affiliates.

ms/ship/systems/paint.htm)	
SAR294642	Peng et. al., 2003
SAR374265	RWQCB, 1972
SAR159479	SDUPD, 2004
U.S. EPA, 1997c: Profile of the Shipbuilding and Repair Industry. EPA-310-R-97-008. U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Washington, D.C. September 1997. Compliance Assistance Web Page at http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/ship.html	U.S. EPA, 1997c
56268, 56270, 56714, 57292, 57462.	Various documents on historical occupancy, including Woodward-Clyde, 1995
SAR374863	Order No. 74-84, NPDES Permit No. CA0107697

Dated: January 4, 2010

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
DIEGO REGION, CLEANUP TEAM

By:


Christian Carrigan

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STAR & CRESCENT WRITTEN DISCOVERY RESPONSE VERIFICATION

I, David Barker, declare:

I am the Branch Chief of the Surface Waters Basins Branch and a Supervising Water Resource Control Engineer at the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). I am the designated manager of the Cleanup Team for the San Diego Water Board's proceedings to consider the development and issuance of a cleanup and abatement order for discharges of metals and other pollutant wastes to San Diego Bay marine sediments and waters at a Site referred to as the Shipyard Sediment Site. I am authorized to make this verification on behalf of the San Diego Water Board's Cleanup Team.

I have read the foregoing Regional Board Cleanup Team's Responses & Objections to Designated Party Star & Crescent Boat Company's First Set of Requests for Production of Documents and Regional Board Cleanup Team's Responses & Objections to Designated Party Star & Crescent Boat Company's First Set of Special Interrogatories, and know their contents. I am informed and believe that the matters stated therein are true and on that ground certify or declare under penalty of perjury under the laws of the State of California that the same are true and correct.

Dated: January 4, 2010



David Barker

1 looking at, it states that Star & Crescent Boat Company
2 is the corporate successor of and responsible for the
3 conditions of pollution and uses caused or permitted by
4 San Diego Marine Construction Company.

5 I'll ask you the same question: Do you know who
6 authored that statement of paragraph 5?

7 A. No.

8 Q. And again, do you know if there were any
9 documents presented to the Water Board that formed the
10 basis of that allegation?

11 A. No.

12 Q. Other than the corporate successorship that's
13 alleged here in paragraph 5, are you personally aware of
14 any other basis on which Star & Crescent Boat Company
15 would be liable for the cleanup of this site, the
16 Shipyard Sediment Site?

17 A. I'm a little confused by the wording of the
18 question.

19 Q. Sorry. I can try and rephrase it.

20 In this particular paragraph, it states that
21 Star & Crescent Boat Company was the successor, corporate
22 successor, to San Diego Marine Construction Company and,
23 on that basis as a corporate successor, was responsible
24 for the conditions of the pollution and nuisance.

25 And what I'm asking is other than that basis,

1 the corporate successorship of Star & Crescent, is there
2 an independent basis that you're aware of for which
3 Star & Crescent would be a responsible party for the
4 contamination?

5 A. Are you asking besides the fact that their
6 predecessors discharged waste into San Diego Bay?

7 Q. Correct. That's exactly what I'm asking.

8 A. No.

9 Q. In this paragraph 5, it also mentions that
10 Star & Crescent Investment Company transferred all of its
11 assets and liabilities to Star & Crescent, meaning,
12 presumably, the boat company.

13 Other than the one document that you've
14 described that may have discussed a stock trade, are you
15 aware of any documents that were relied upon by the
16 Water Board in stating that fact in the Tentative Cleanup
17 and Abatement Order?

18 A. No.

19 Q. You may have already answered this. But just
20 for clarification, have you seen any documents which
21 purport to evidence the transfer of all assets and
22 liabilities from Star & Crescent Investment Company to
23 Star & Crescent Boat Company?

24 A. No.

25 Q. You testified with Mr. Carlin earlier, I

1 I, ANNE M. ZARKOS, Certified Shorthand
2 Reporter for the State of California, do hereby certify:

3
4 That the witness in the foregoing deposition was by me
5 first duly sworn to testify to the truth, the whole
6 truth and nothing but the truth in the foregoing cause;
7 that the deposition was taken by me in machine shorthand
8 and later transcribed into typewriting, under my
9 direction, and that the foregoing contains a true record
10 of the testimony of the witness.

11
12 Dated: This 22nd day of February, 2011
13 at San Diego, California.

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16 
17 Anne M. Zarkos RPR, CRR
18 CSR No. 13095

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22
23
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1 3:48 p.m.

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EXAMINATION

4 BY MS. EVANS:

5 Q. Good afternoon, Mr. Barker, my name is

6 Sarah Evans, as I indicated off the record. Our office

7 represents Star & Crescent Boat Company, along with

8 Suzanne Varco who has been switching in and out with me

9 here. We're going to switch gears entirely and talk

10 about issues related just to our client, Star & Crescent

11 Boat Company.

12 A. All right.

13 Q. First, have you reviewed any documents related

14 to the corporate history of San Diego Marine Construction

15 Company?

16 A. Yes, I have. Documents that are in the

17 administrative record and some supplementary documents

18 that have been added. Also, the sections of the DTR that

19 address that, yes.

20 Q. So all the documents related to San Diego Marine

21 Construction Company you reviewed are either in the

22 administrative record, the supplemental record, or in

23 Exhibits 1 and 2.

24 A. That's correct, yes.

25 Q. How about documents relating to the corporate

1 history of Star & Crescent Boat Company as a division of
2 the San Diego Marine Construction Company?

3 A. As a division.

4 MR. CARRIGAN: Assumes facts not in evidence.

5 Go ahead.

6 THE WITNESS: I -- I've reviewed the findings
7 and conclusions in the DTR. I haven't looked at all of
8 the documents myself, personally.

9 BY MS. EVANS:

10 Q. Which ones have you personally looked at on that
11 topic?

12 A. Okay. The ones that were referenced in the
13 responses to the interrogatories, if I'm phrasing that
14 correctly.

15 Q. Any others?

16 A. No.

17 Q. Okay. Have you looked at any additional
18 documents related to Star & Crescent Boat Company since
19 completing the discovery responses?

20 A. No, I have not.

21 Q. Do you have plans to do so?

22 A. I -- yes, I do have plans to -- to do that, yes.

23 Q. What types of plans do you have on that?

24 A. Types of plans to look at documents.

25 Q. Why do you intend to look at additional

1 documents?

2 A. Just I have a crushing workload at the office.
3 I'm not always able to look at everything at the same
4 time. And -- but I eventually catch up with events.
5 Yeah.

6 Q. But nothing specific, no specific documents that
7 you haven't yet gotten a chance to review, but that you
8 intend to review related to Star & Crescent Boat Company?

9 A. That's correct.

10 Q. Who provided you the documents that you did
11 review which are in the administrative records or in
12 Exhibits 1 and 2?

13 A. The ones that are in the administrative record
14 were -- were in the Regional Board files. And I reviewed
15 them as those documents were scanned. The other
16 documents, any documents that were attached to our
17 responses to the interrogatories were -- would have -- I
18 would have seen those.

19 Q. How about for Star & Crescent Investment
20 Company; have you seen any -- or have you reviewed any
21 documents related to its corporate history?

22 A. I don't believe so.

23 Q. Have you ever seen the Star & Crescent Boat
24 Company articles of incorporation from 1976?

25 A. I -- I don't recall seeing that.

1 Q. How about any minutes of meetings for
2 Star & Crescent Boat Company?

3 A. I -- I don't recall that.

4 Q. How about any offers between Star & Crescent
5 Investment Company and Star & Crescent Boat Company?

6 A. Also, I don't recall that.

7 Q. So you don't recall reviewing any of those three
8 types of documents in preparing any -- Exhibits 1 or 2?

9 A. No. I don't recall that, no.

10 Q. And if we can turn to Exhibit 1 which is the
11 tentative order.

12 A. Okay.

13 Q. If you'd go to page 2.

14 A. Exhibit 2, okay.

15 Q. In that first paragraph, it indicates that
16 Star & Crescent and other discharging parties "caused or
17 permitted discharge of waste to Shipyard Sediment Site."

18 A. Right.

19 Q. Do you know who authored that statement as it
20 relates to Star & Crescent?

21 A. As it relates to Star & Crescent, legal -- I
22 guess legal counsel had investigated the change in
23 responsible parties that has occurred at the San Diego
24 Marine construction site, which is currently referred to
25 as the BAE site, that have occurred over the years. And

1 based upon advice from counsel, after they reviewed the
2 various documents, that was added there, yeah.

3 Q. Do you have any understanding as to what the
4 basis of that statement is other than what legal counsel
5 has told you?

6 A. Just the statements that support that in the
7 DTR, I have some familiar -- familiarity with that, that
8 there was a -- a successor in interest covering the years
9 from, I believe it was 1914 to 1972.

10 Q. When you say that, what do you mean by -- by
11 your familiarity with that successor in interest during
12 that time frame?

13 A. Just that I have reviewed the statements in the
14 DTR supporting this, the facts that are in the DTR. And
15 that's it.

16 Q. Other than the statements in the DTR that
17 support that, have you reviewed any other documents
18 related to that statement about the successor in interest
19 liability of Star & Crescent?

20 A. No, I have not, no.

21 Q. So you haven't reviewed any of the underlying
22 documents?

23 A. That's correct.

24 Q. So other than the statements in the DTR, you
25 don't know of any documents that support that statement

1 in the tentative order that Star & Crescent Boat Company
2 caused.

3 MR. CARRIGAN: Asked and answered. Go ahead.

4 THE WITNESS: I -- I would just refer to
5 whatever responses we provided in the response to the
6 interrogatories on these issues.

7 BY MS. EVANS:

8 Q. Nothing else?

9 A. That's correct, from myself, yes.

10 Q. Do you know of any witnesses who have
11 information about the statement that Star & Crescent
12 caused or permitted discharge of waste to the
13 Shipyard Sediment Site?

14 A. There are witnesses that have inspected the
15 Southwest Marine site and conducted inspections there
16 between the years of -- that I'm aware of between 1970 --
17 the early 1970s that would have covered the period that
18 the DTR discusses that --

19 Q. Star & Crescent?

20 A. -- Star & Crescent had responsibility for the
21 site.

22 Q. And I think my question is a little bit more
23 narrow.

24 Do those witnesses -- do you understand that
25 those witnesses have information that it was Star &

1 Crescent Boat Company that did those discharges?

2 A. No, I do not know.

3 Q. Just they know about discharges that occurred?

4 A. Yes, that's correct.

5 Q. But not who was responsible for them?

6 A. Right.

7 Q. Do you know of any witnesses who have any
8 information about Star & Crescent Boat Company's
9 responsibility for those discharges referred to in the
10 tentative order?

11 A. I -- I know that -- that the -- the lands were
12 leased from the Port District, and the Port District had
13 knowledge about who the -- the leases were issued to. So
14 that would be one group we would go to, to get that type
15 of information.

16 Q. Any other groups that you think might be
17 witnesses for that type of information?

18 A. I am not aware of any.

19 Q. I assume that your responses to those questions
20 would be the same as they relate to the information on
21 page 4 at paragraph 5 about Star & Crescent on Exhibit 1.

22 A. On page --

23 Q. Four?

24 A. Of this cleanup order?

25 Q. Yes.

1 A. Okay. Yes. The same type of --

2 Q. As far as -- I should -- let me clarify that.

3 I assume your -- the basis for the statement
4 there on page 4 that Star & Crescent caused or permitted
5 the discharge of waste to be deposited where they were
6 discharged into San Diego Bay were the ones we've already
7 discussed?

8 A. Yes.

9 Q. And do you know who authored that statement on
10 page 4?

11 A. On page 4?

12 Q. Yes.

13 A. This finding was constructed with the advice of
14 legal counsel.

15 Q. Do you know who authored it? Was it legal
16 counsel?

17 A. I think it was a collaboration between legal
18 counsel and the technical staff.

19 Q. Were you involved in that collaboration?

20 A. Peripherally, yes.

21 Q. When you say "peripherally," what was your
22 involvement?

23 A. I'm kind of the supervisor of the Cleanup Team.
24 And so I had awareness that such a finding was being
25 developed and the basis for it.

1 Q. And you're -- the basis for it, we've already
2 talked about, is the information that was in the
3 supplemental -- or I'm sorry -- in the administrative --

4 A. Record.

5 Q. -- record.

6 A. And then the text that's written in the DTR
7 and -- and -- yes, basically.

8 Q. Okay.

9 Later in that same paragraph on page 4, it says
10 that, "Star & Crescent Investment Company, formerly
11 San Diego Marine Construction Company, transferred all
12 assets and liability to Star & Crescent Boat Company."
13 Do you see that?

14 A. Okay. We're in finding --

15 Q. Five.

16 A. -- five.

17 Q. Near the bottom?

18 A. Near the bottom.

19 Q. That's "Star & Crescent Investment Company
20 (formerly San Diego Marine Construction Company)" --

21 A. Okay.

22 Q. -- "transferred all of its assets and
23 liabilities to Star & Crescent."

24 A. Right. Yes.

25 Q. Who drafted that statement?

1 A. I -- I don't know the person. It was --
2 whatever was done there was done upon advice of legal
3 counsel who reviewed various corporate documents and
4 made --

5 Q. Did you review -- oh, go ahead.

6 A. -- made recommendations to us.

7 Q. Did you review those corporate documents when
8 discussing the recommendations?

9 A. When -- did I personally, no.

10 Q. Do you know what the basis is of the statement
11 that all assets and liabilities were transferred from
12 Star & Crescent Investment Company?

13 A. I guess just from a very general viewpoint that
14 I understood Star & Crescent was a successor in interest.
15 And -- but that's it.

16 Q. And that understanding is based upon information
17 we've just talked about?

18 A. Yes, exactly.

19 Q. And nothing else?

20 A. None that I'm aware of, no.

21 Q. Do you -- other than what we've discussed
22 regarding the Port District, do you know of any witnesses
23 who had information that would support the statement that
24 Star & Crescent Investment Company transferred all its
25 assets and liabilities?

1 A. I'm not aware of any, no.

2 Q. Other than the alleged transfer of all of
3 Star & Crescent Investment Company's assets and
4 liabilities, are you aware of any other basis of
5 liability for Star & Crescent Boat Company here as a
6 discharging party?

7 A. I -- there could be, but I'm -- I'm not aware of
8 it.

9 Q. Were you involved in the decision to name Star &
10 Crescent as a responsible party in the tentative order?

11 A. I was part of that decision process, yes.

12 Q. When you say you were part of it, how -- what
13 was your involvement?

14 A. Just -- it was -- some of our decision making
15 were decisions made by me. Others were kind of
16 consensus-based decisions that we all looked at a set of
17 facts and jointly decided.

18 Q. And how would you classify this decision to name
19 Star & Crescent Boat Company?

20 A. This was kind of a collaboration decision based
21 heavily upon advice from legal counsel.

22 Q. And was it based upon anything else?

23 A. No.

24 Q. Who was involved in the collaborative decision?

25 A. Well, it would have been myself, other

1 I, ANNE M. ZARKOS, Certified Shorthand
2 Reporter for the State of California, do hereby certify:

3
4 That the witness in the foregoing deposition was by me
5 first duly sworn to testify to the truth, the whole
6 truth and nothing but the truth in the foregoing cause;
7 that the deposition was taken by me in machine shorthand
8 and later transcribed into typewriting, under my
9 direction, and that the foregoing contains a true record
10 of the testimony of the witness.

11
12 Dated: This 16th day of March, 2011
13 at San Diego, California.

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17 Anne M. Zarkos RPR, CRR
18 CSR No. 13095
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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN RE THE MATTER OF)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
)
)
)
-----)

DEPOSITION OF GEORGE PALERMO
San Diego, California
February 22, 2011

Reported By: Anne M. Zarkos, RPR, CRR,
CSR No. 13095

1 A. Accounting.

2 Q. What was the university or school?

3 A. California State University at Los Angeles,
4 L.A. State.

5 Q. What year was that?

6 A. '72.

7 Q. Anything beyond that?

8 A. CPA.

9 Q. And when did you acquire that or obtain that?

10 A. '75, '74, something like that.

11 Q. And are you still certified?

12 A. Yes.

13 Q. And is that in California?

14 A. Yes.

15 Q. Any other jurisdictions?

16 A. No.

17 Q. And can you describe for me, starting with the
18 present day and working -- we'll work backwards a ways,
19 your present position and job responsibilities.

20 A. I'm the present of San Diego Harbor Excursions,
21 now known as Flagship Cruises & Events. And I've been in
22 that capacity for probably about 19 years, and I've been
23 with the company for over 20 years.

24 Prior to that, I was in Los Angeles and worked
25 for two or three different real estate developers as a

1 BY MR. PATTERSON:

2 Q. Okay. I guess what I was asking is was it a
3 situation where you moved from that location to the
4 Convention Center location, or was it not lined up that
5 way?

6 A. There was a move. But it wasn't to the
7 Convention Center location. What I recall is us being,
8 in the late '80s, at a location which I think this is.
9 The move was from there to an office on Main Street in
10 San Diego not from Campbell Industries, then subsequently
11 moved to where we have today.

12 Q. Okay. I appreciate the clarification.

13 On Exhibit No. 11, roughly pages 2 through 4 but
14 culminating on page 4, there's a description of the
15 original directors of Star & Crescent Boat Company
16 resigning and being replaced by new directors who are
17 identified on page 4 of the document. It's exhibit -- I
18 did say 11? I'm sorry. Exhibit 7. My apologizes. I've
19 got two numbers working on my own.

20 MS. VARCO: Page No. 4?

21 MR. PATTERSON: Correct.

22 MS. VARCO: Okay.

23 BY MR. PATTERSON:

24 Q. You'll see the list O.J. Hall, Junior,
25 Leona Jackson, Stephen Carlstrom, Kenneth Beiriger.

1 Do you know any of those individuals?

2 A. No.

3 Q. And do you know what, if any, relationship those
4 individuals had with San Diego Marine Construction
5 Company?

6 A. No.

7 Q. Do you know what, if any, relationship those
8 individuals had with Star & Crescent Investment Company?

9 A. No.

10 Q. And do any of those individuals have any current
11 ownership interest in the current Star & Crescent Boat
12 Company?

13 A. No.

14 Q. Do you know if at any point in time they had any
15 ownership interest in Star & Crescent Boat Company?

16 A. I do know, and they don't.

17 Q. On page 7 of that document, there's a
18 description of the offer from Star & Crescent Investment
19 Company. Are you familiar at all, generally, with the
20 nature of this transaction?

21 A. No.

22 Q. And having reviewed and had some questions
23 asked, is it still your recollection that you don't
24 recall having seen this document before?

25 A. That's correct.

1 of that transaction, meaning the stock transfer from
2 investment company to those individuals?

3 A. No.

4 Q. Do you know whether Star & Crescent Investment
5 Company -- going back to the transaction that was
6 described in Exhibit 7, do you know whether the Star &
7 Crescent Investment Company ever received anything in the
8 nature of consideration from Star & Crescent Boat Company
9 apart from the stock?

10 A. No.

11 Q. Have you ever seen, apart from the document
12 we've marked as Exhibit 9 -- apart from the document
13 we've marked as Exhibit 9, have you seen any
14 documentation regarding the stock transfer from the
15 Star & Crescent Investment Company to these individuals?

16 A. No.

17 Q. The reason I ask in part is your interrogatory
18 response has a description of a promissory note and
19 valuation for the stock transfer. I haven't found any
20 documents regarding that. And I'm just wondering, do you
21 have any recollection as to having seen that number and,
22 if so, where it was found?

23 A. No, I do not.

24 Q. As far as the individuals who obtained the stock
25 in the company -- Stephen Carlstrom, Judy Hall and

1 Janet Miles -- do you know any of those individuals?

2 A. No.

3 Q. Do you know whether Judy Hall is related to
4 O.J. Hall?

5 A. No.

6 MR. PATTERSON: Why don't we take a five-minute
7 break.

8 MS. VARCO: Okay.

9 (A recess was taken.)

10 BY MR. PATTERSON:

11 Q. I'm going to switch gears just slightly and
12 close a loop regarding the investment company.

13 In your response at the very end of the special
14 interrogatory response, Exhibit 3, there's a reference to
15 Star & Crescent Investment Company being dissolved in
16 1991. Do you see that reference?

17 A. Yes.

18 Q. Do you recall what the basis for that was?

19 A. No.

20 Q. I'll show you a document. This is Exhibit 10.

21 (Exhibit 10 was marked.)

22 BY MR. PATTERSON:

23 Q. This is a Certificate of Election to Wind Up and
24 Dissolve, and then the Certificate of Dissolution for
25 Star & Crescent Investment Company from 1991.

1 Excursions were?

2 A. Yes, if you're referring to the people that are
3 in this document, these people.

4 MS. VARCO: He asked if you knew who the
5 stockholders were.

6 THE WITNESS: Before?

7 BY MR. PATTERSON:

8 Q. I'm wondering at the point in time when there
9 was going to be the stock exchange or transfer as part of
10 the merger, who the shareholders of San Diego Harbor
11 Excursions were.

12 A. No.

13 Q. Do you know presently who the stockholders are?

14 A. Yes..

15 MS. VARCO: Objection. Vague. For what entity?

16 MR. PATTERSON: For the current entity.

17 THE WITNESS: Yes.

18 MS. VARCO: Star & Crescent?

19 MR. PATTERSON: Star & Crescent, what he's
20 referred to dba as a few different entities including, I
21 guess, Flagship.

22 BY MR. PATTERSON:

23 Q. Is that the new entity?

24 A. Yes.

25 Q. Who are the shareholders?

1 A. Arthur E. Engel, Herbert G. Engel, and
2 David Engel.

3 BY MR. PATTERSON:

4 Q. Okay. Art Engel, Dave Engel, and --

5 A. Herb Engel.

6 Q. Do you have any knowledge one way or the other
7 as to whether those are the same stockholders at the
8 point in time of this merger?

9 A. No.

10 Q. Do you have any information that one of them
11 became a stockholder at some point in time?

12 MS. VARCO: Objection. Vague.

13 THE WITNESS: One of them increased their -- one
14 of them took out a different shareholder that I didn't
15 name.

16 BY MR. PATTERSON:

17 Q. And who was that other shareholder?

18 A. William Johnston.

19 Q. And did they replace them or just buy them out?

20 A. No. David Engel absorbed his shares. They each
21 had the same ownership, seven and a half percent.
22 David Engel acquired his seven and a half percent in the
23 last -- about three years ago.

24 Q. Prior to that, do you recall or are you aware of
25 any prior stockholders that existed?

1 A. No.

2 Q. And what is the stock breakdown between those
3 three parties?

4 A. Art Engel is approximately 60 percent.
5 Herb Engel 25 percent, and David Engel, 15 percent.
6 There are fractional differences in those percentages.

7 Q. Sure. I guess what I was trying to get at a
8 little inartfully, did Art, Herb, or Dave acquire any
9 part of the company -- that's not the right -- let me try
10 this again.

11 To your knowledge was there any point in time
12 between 1986 and the present that either Art, Herb, or
13 Dave were not shareholders?

14 A. No.

15 Q. And do you know whether any of the Engels had
16 any affiliation or connection with the San Diego Marine
17 Construction Company?

18 A. Say that again.

19 Q. Do you know whether any of the Engels -- Art,
20 Herb, or Dave -- had any connection or affiliation with
21 the San Diego Marine Construction Company while it was
22 operating?

23 A. Yes, I do know. And they did not.

24 Q. And the same question for Star &
25 Crescent Investment Company.

1 A. Yes.

2 Q. You know, and it's no?

3 A. Yes.

4 Q. Got it. My fault for asking the question that
5 way.

6 They never had any affiliation with Star &
7 Crescent Investment Company is what you're saying;
8 correct?

9 A. Correct.

10 Q. And prior to the stock purchase of Star &
11 Crescent Boat Company, did any of the Engels have any
12 affiliation or connection with Star & Crescent Boat
13 Company?

14 A. No.

15 Q. Do you have any information following the merger
16 described in Exhibit 15 that Star & Crescent Boat
17 Company's operations were conducted any differently than
18 they had been immediately prior to the merger?

19 A. I don't know how they were conducted prior to
20 the merger.

21 Q. You're not aware of it becoming a different type
22 of information, though, is what I'm asking.

23 MS. VARCO: Misstates the testimony.

24 BY MR. PATTERSON:

25 Q. I understand that you may not -- yeah. I'm not

1 Stephen Carlstrom. Do you remember that? You can pull
2 it out if you want to refresh your memory.

3 A. Sure. What page number?

4 Q. Page 4 of Exhibit 7, I think it was.

5 A. Okay.

6 Q. It's a list of officers there; correct?

7 A. Yes.

8 Q. And who are the officers listed?

9 A. You want me to read them to you --

10 Q. Sure.

11 A. Hall, Jackson, Carlstrom, and Beiriger.

12 Q. And Mr. Carlstrom has been an owner of Star &
13 Crescent Boat Company, hasn't he?

14 A. I don't know.

15 Q. Well, you previously testified he had never been
16 an owner of the company. Now you're saying you're not
17 sure.

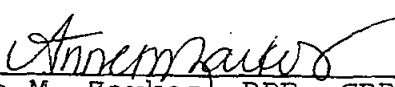
18 A. Because I don't know what company you're talking
19 about. I can tell you and represent that our company,
20 this gentleman and none of the people on that page have
21 ever been an owner. Nobody's ever been an owner in this
22 company except the three individuals I named. If you're
23 going back to a period of time before that, I don't know
24 what those people owned or what they had or who they
25 were.

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I, ANNE M. ZARKOS, Certified Shorthand
Reporter for the State of California, do hereby certify:

That the witness in the foregoing deposition was by me
first duly sworn to testify to the truth, the whole
truth and nothing but the truth in the foregoing cause;
that the deposition was taken by me in machine shorthand
and later transcribed into typewriting, under my
direction, and that the foregoing contains a true record
of the testimony of the witness.

Dated: This 9th day of March, 2011
at San Diego, California.



Anne M. Zarkos RPR, CRR
CSR No. 13095