

**SAN DIEGO UNIFIED PORT DISTRICT'S RESPONSE TO STAR & CRESCENT  
BOAT COMPANY'S MAY 26, 2011 WRITTEN SUBMITTAL OF COMMENTS**

**TENTATIVE CLEANUP AND ABATEMENT ORDER R9-2011-0001  
AND RELATED DRAFT TECHNICAL REPORT**

June 23, 2011

Designated Party Name: San Diego Unified Port District  
Represented by: William D. Brown  
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SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

The San Diego Unified Port District (Port) submits the following response to Star & Crescent Boat Company's (S&C Boat) comments on the Tentative Cleanup and Abatement Order (TCAO) and Draft Technical Report (DTR). S&C Boat asks to be removed from the TCAO/DTR as a "discharger" on the grounds that it is not the corporate successor of San Diego Marine Construction Company (SDMCC). However, a review of the facts confirms that the Regional Water Quality Control Board correctly identified S&C Boat as a discharger on this basis.

## I. BRIEF BACKGROUND

Rather than start with the incorporation of S&C Boat, a correct perspective on the factual background requires an earlier start. Oakley J. Hall, Sr. (Hall Sr.) founded SDMCC in the early part of 1900 and ran the corporation until his death in 1967. SDMCC originally comprised three different divisions, a marine division, a boat division and an investment division. As S&C Boat acknowledges, the boat division was commonly known as "Star and Crescent Boat Company." In 1972, after Hall Sr.'s death, SDMCC sold the marine division to a subsidiary of Campbell Industries. SDMCC then changed its name to S&C Investment.

On April 7, 1976, S&C Boat incorporated. There is no evidence S&C Boat had any assets or stock of its own at that point. Two days later, S&C Boat held a special meeting at which the original directors of that company resigned and new directors took their place. The new directors each had close ties with S&C Investment and many were also directors of S&C Investment. The new directors included Oakley Hall, Jr. (Hall Jr.), who had controlled SDMCC following his father's passing. At this same meeting, S&C Boat agreed to accept an offer by S&C Investment. Under the terms of this offer, S&C Boat accepted all assets and liabilities of S&C Investment's harbor excursion business in exchange for all of the stock of S&C Boat. Contrary to S&C Boat's repeated claim, there is no evidence in the record that S&C Investment held any other assets or was running any other businesses at the time it transferred the boat division assets and liabilities to S&C Boat. Rather, the earliest evidence of S&C Investment's other businesses is more than a year and a half after S&C Boat agreed to acquire the boat division. In 1991, S&C Investment dissolved.

S&C Boat's assertion that it is not the corporate successor of the boat division and SDMCC is untenable. For decades S&C Boat held itself out as the successor to these entities for marketing and business development purposes. By way of example, a 1994 S&C Boat proposal submitted to the Port asserts that S&C Boat's history is essentially Hall Sr.'s history "for the two are *inseparably linked*." (Exhibit A<sup>1</sup> [May 1, 1994 S&C Boat Response to Port Request for Proposals for Water Taxi Service], p. PORT011898 [emphasis added].) S&C Boat went on to state that Hall Sr. was its founder and driving force for over 50 years. (*Ibid.*) Similar references

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<sup>1</sup> Reference to alphabetic exhibits refer to the Port's exhibits attached to the Declaration of Scott E. Patterson in support of the Port's instant submittal and reference to numeric exhibits shall refer to S&C Boat's exhibits in support of its submittal.

to this history and lineage can still be found to this day on S&C Boat's website. (Exhibit I [Website screen images].) Now, when the "inextricable link" does not serve its interests, S&C Boat disavows any connection.

## **II. NUMEROUS GROUNDS FOR SUCCESSOR-IN-INTEREST LIABILITY EXIST**

One who acquires the assets of a corporation also acquires the liabilities of that corporation in four different scenarios:

- (1) When there is an express or implied agreement of assumption of liability;
- (2) When the transaction amounts to consolidation or merger of the two corporations;
- (3) When the purchasing corporation is a mere continuation of the seller; or
- (4) When the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability. (*Ray v. Alad*, (1977) 19 Cal. 3d 22, 28.)

The first scenario is met because S&C Boat assumed all liabilities at the time it acquired S&C Investment's assets. In addition, the facts support a finding that the second and third scenarios have also been satisfied as the transaction between S&C Investment and S&C Boat amounted to both a de facto merger and because S&C Boat was a "mere continuation" of SDMCC by way of S&C Investment.

### **A. S&C Boat Assumed S&C Investment's Liabilities**

Whether S&C Boat expressly or impliedly assumed liability for a portion of the Shipyard Sediment Site is a question of fact. (*In the Matter of the Petition of Purex Industries, Inc.*, State Board Order No. WQ- 97-04, 1997 Cal. ENV. LEXIS 3, \*10.) A review of the offer that S&C Boat accepted S&C Boat illustrates that the parties intended to transfer all of S&C Investment's boat operation assets along with all of S&C Investment's boat operation liabilities. Specifically, S&C Boat agreed to receive "all of [S&C Investment's] right, title, and interest of every kind and description in and to its business and assets pertaining to its harbor excursion business," "but subject to all liabilities of said business as of March 31, 1976, as relate to its harbor excursion business." (Exhibit 17 [Minutes of Meeting of Board of Directors of S&C Boat dated April 9, 1976], p. S&C0050.)

S&C Boat contends that it did not agree to accept all liabilities because the offer referenced an exhibit that listed assets and liabilities of the harbor excursion business. However, nothing in the offer indicates S&C Investment was retaining any harbor excursion business assets or liabilities or that S&C Investment intended to retain any harbor excursion business assets or liabilities. Rather, as noted, the central agreement was that S&C Boat would take on "all liabilities of said business."

Thus, when read in full context, the exhibit list served as nothing more than a list of the known harbor excursion business assets and liabilities, not a limitation on the intended scope of the transfer. Because S&C Investment was presumably unaware at the time of the liabilities at issue in this matter, the fact this liability was not included on the list is neither surprising nor material. It is not surprising because an unknown liability could not be specifically identified. (See *In the Matter of the Petition of Purex Industries, Inc.*, State Board Order No. WQ- 97-04, 1997 Cal. ENV. LEXIS 3, \*14.) It is not material because the express language of the offer makes clear the intent to transfer "all liabilities," not just known liabilities. In short, the agreement contains no language that would support the conclusion that S&C Investment intended to transfer known liabilities and to retain unknown liabilities.

S&C Boat's contention that S&C Investment "continued to own and operate its many other diverse assets, and continued to be responsible for the debts and liabilities associated therewith" finds no support in any evidence. (See, S&C Boat Written Submittal, p. 6.) S&C Boat cites as support S&C Investment minutes from December 1977 and later, more than a year and a half after the S&C Boat transaction. (*Id.*, at fn. 44; Exhibit 11.) Nothing in these minutes indicates S&C Investment was running any of the identified operations in April 1976 or earlier. Similarly, S&C Boat's person most knowledgeable testified in deposition that he was unaware of any other S&C Investment assets in April 1976, apart from those being transferred to S&C Boat. (Exhibit J [Excerpts from Palermo Deposition].) In sum, the only known S&C Investment operations in April 1976 related to the sole remaining SDMCC operation – the boat division. S&C Boat is thus not entitled to a presumption that S&C Investment retained any assets or liabilities at that time.

**B. Since S&C Boat Merged With S&C Investment it Assumed S&C Investment's Liabilities**

An entity may also be held liable for its predecessor's liabilities if the transaction amounts to a consolidation or merger.

**1. All Requisite Factors Establishing De Facto Merger Can Be Established**

Following *Ray*, the Court of Appeal in *Marks v. Minnesota Mining & Manufacturing Co.* (1986) 187 Cal.App.3d 1429, 1436, formulated the following inquiry for determining "whether a transaction cast in the form of an asset sale actually achieves the same practical result as a merger" for the purposes of successor liability: "(1) was the consideration paid for the assets solely stock of the purchaser or its parent; (2) did the purchaser continue the same enterprise after the sale; (3) did the shareholders of the seller become shareholders of the purchaser; (4) did the seller liquidate; and (5) did the buyer assume the liabilities necessary to carry on the business of the seller?" (*Ibid.*) All of the factors set forth in *Ray* are present here.

First, it is undisputed that S&C Boat transferred all of its stock in exchange for S&C Investment's assets and liabilities. For this same reason, the third element is also met. Because S&C Investment owned all of S&C Boat's stock, the S&C Investment shareholders would have been the owners of all of S&C Boat's stock.

As to the second element, S&C Boat "continued the same enterprise" as S&C Investment after the transfer. In particular, S&C Boat operated the same harbor excursion business using the same Star & Crescent name with the same vessels from the same locations. Likewise, as to the fourth element, S&C Investment ceased the only known business operations that it had at the time. There is no evidence S&C Investment continued any boating operations at San Diego Bay immediately after the transfer. Further, contrary to S&C Boat's central claim, there is no evidence that S&C Investment was conducting any other operations in April 1976, as opposed to December 1977 or later. Thus, while S&C Investment did not actually liquidate immediately after the transaction, there is no evidence that it continued conducting any business after the transaction until at least December 1977.

Finally, as noted above, the fifth element is satisfied as S&C Boat "assumed the liabilities necessary to carry on the business of the seller." S&C Boat specifically assumed the liabilities necessary to operate the harbor excursion division. These liabilities included specific notes payable, employee advances, charter deposits and vacation and holiday pay.

## **2. Additional Evidence Establishes Merger**

Any claim that S&C Boat and S&C Investment continued after the transaction as two clearly distinct operations is negated by review of S&C Investment's corporate documents and additional documents. In fact, for years after the transaction, S&C Investment continued to exert extensive control over S&C Boat finances and corporate decisions, as reflected in the following evidence:

- During an annual meeting of S&C Investment on December 23, 1977, S&C Investment agreed to increase the salaries and bonuses for S&C Boat as "required under the terms of the ... agreement" between S&C Investment and S&C Boat. (Exhibit 11 [Minutes from S&C Investment's Annual Meeting of Stockholders on December 23, 1977].)
- On June 8, 1979 S&C Investment again approved the schedule of dividends paid, bonuses and salaries to officers of S&C Boat. (Exhibit 13 [Minutes from S&C Investment's Board of Directors on June 8, 1979].)
- S&C Boat and S&C Investment purchased insurance together in 1979. (See Exhibit C [Minutes from S&C Boat's Board of Directors dated September 19, 1979 identifying "Marine Insurance for 1979-1980 is \$67,245.19, less Lake Mead Ferry Services (approximately \$8,000)."].) Lake Mead Ferry Service was a S&C Investment subsidiary Nevada Corporation. (See Exhibit 14 [Minutes from S&C Investment Board of Directors Meeting on March 9, 1981].)

- On March 9, 1981, S&C Investment guaranteed repayment of a loan issued to S&C Boat. Exhibit 14 [Minutes from S&C Investment Board of Directors Meeting on March 9, 1981].) In that same meeting S&C Investment again agreed to the schedule of dividends paid, bonuses and salaries to S&C Boat's directors and also indicated it had no objection to S&C Boat's desire to dissolve its Sub-Chapter S status.

Likewise, other documents indicate that S&C Boat continued to hold itself out as part of S&C Investment. Specifically, a lease with the Port on February 4, 1977, almost one year after the asset transfer, identifies S&C Boat as "a division of Star and Crescent Investment Co." (Exhibit B.) Based on the foregoing, S&C Boat cannot persuasively argue that it was a new and distinct corporation, free from the historic liabilities of S&C Investment that existed at the time of the asset transfer in April 1976.

### **S&C Boat Operated as a "Mere Continuation" of S&C Investment**

Under California law, a corporation acquiring the assets of another corporation is the latter's "mere continuation" upon a showing that "(1) no adequate consideration was given for the predecessor corporation's assets and made available for meeting the claims of its unsecured creditors," or "(2) one or more persons were officers, directors, or stockholders of both corporations." (*Ray, supra*, 19 Cal. 3d at 29.) While either element would suffice for successor liability under a continuation theory, both factors can be readily established.

#### **1. Transfer of Stock and Later Payment for Repurchase of Stock Does Not Amount to Adequate Consideration**

Mere continuation will be found when there is "insufficient consideration running from the new company to the old." (*Maloney v. American Pharmaceutical Co.*, (1988) 207 Cal. App. 3d. 282.) Here, S&C Boat was not an ongoing company with its own value when it "purchased" S&C Investment's harbor excursion business. In essence, S&C Investment traded all of its documented assets in April 1976 to a company which otherwise had "no assets, no liabilities, [and] no equity capital." (Exhibit 17 [Minutes from S&C Boat's Board of Directors Meeting], p. S&C0047.) Stock in a company whose only assets are the assets it just received is not adequate consideration.

S&C Boat appears to implicitly concede this point, instead arguing that adequate consideration was given because S&C Investment later sold the stock that it received for \$765,400. However, this does not disprove the absence of adequate consideration for numerous reasons. First, this was a later transaction, not the transaction at the relevant point – April 1976 when S&C Investment divested itself of the assets. Second, this "sale" involved a promissory note, under which S&C Investment apparently agreed to relinquish the only consideration it received for its assets in exchange for a promise to be paid five years later. Third, S&C Investment sold the stock to the directors of S&C Boat, Stephen P. Carlstrom, Judy Hall and Janet Miles, who also were Hall, Jr.'s children and wife. (See Exhibit 22 [Shareholder

certificates for S&C Boat dated October 26, 1976] and Exhibit K [Hall, Jr. Obituary].) In fact, Hall, Jr. had long before expressed to the Port his desire to transfer ownership of his harbor excursion business to his children. (Exhibit H [October 12, 1976 correspondence].)

As such, while the exact mechanisms of the transactions are somewhat blurry because of S&C Boat's failure to provide supporting documents, what can be determined is this. S&C Investment divested itself of all known assets in exchange for stock in a new company with no assets other than S&C Investment's assets. S&C Investment then later agreed, in essence, to front the price of the sale of this stock back to S&C Boat's leaders, who were the children and spouse of the man that had been controlling S&C Investment. This does not constitute adequate consideration.

## **2. There was a Commonality of Directors Between the Two Entities**

Regardless of whether adequate consideration was paid, "mere continuation" successor liability can be found on the basis of the similarity of the companies' leadership at the point of the transaction. Contrary to S&C Boat's claims, S&C Boat and S&C Investment had far more than one person in common. Rather, at the April 9, 1976 meeting for S&C Boat, the following directors and officers were elected, Hall, Jr. (President), Leona Jackson (Secretary), Stephen P. Carlstrom (Vice President), Kenneth Beiriger (Vice President/Treasurer), Judy Hall, Janet Miles and Raleigh Miles. These officers of this newly formed corporation were virtually identical to the officers of S&C Investment at the time. In particular, the officers of S&C Investment in the 1970's were O.J. Hall, Jr. (President) K.N. Beiriger (Vice President) and Leona Jackson (Secretary). (See Exhibits E [Correspondence dated November 6, 1973 to the Port from S&C Investment, K.N. Beiriger, V.P.], F [Correspondence dated January 14, 1975 to the Port from S&C Investment, Hall, Jr. President], and G [April 9, 1976 signed offer from S&C Investments, O.J. Hall, Jr. President and Leona Jackson, Secretary].)

S&C Boat also erroneously contends that there was no commonality of shareholders. However, S&C Boat has provided no evidence of who the shareholders were at this point in time and offers no explanation as to why its unsupported claims on this point should be credited. Regardless, as noted above, immediately after the transaction, the shareholders of S&C Boat were the same shareholders of S&C Investment because S&C Investment owned all of the S&C Boat stock. Thus, there was a high level of commonality between S&C Boat's directors and shareholders and S&C Investment's directors and shareholders.

## **III. SAN DIEGO WATER BOARD SHOULD ALSO NAME S&C INVESTMENT AS A DISCHARGER**

The San Diego Water Board should also consider naming SDMCC, Star and Crescent Boat Company, a division of SDMCC, S&C Investment and Star and Crescent Ferry Company as dischargers in addition to S&C Boat. (See State Water Board Order Nos. WQ 86-16 ("Multiple

parties should properly be named in cases of disputed liability.”); and WQ-89-14 (A dissolved corporation may be named in a Cleanup and Abatement Order).

#### **IV. CONCLUSION**

The evidence produced thus far presents a serious question as to whether these S&C Investment and S&C Boat maintained separate identities. In fact as established and admitted by S&C Boat, the two entities are “inseparably linked.” San Diego Water Board’s basis for assigning liability to S&C Boat has merit and it should not hesitate in continuing to name S&C Boat as a discharger. Thus, S&C Boat’s requests for revising the TCAO to remove S&C Boat as a responsible party and rescinding any designation as a “discharger” should be denied.



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13  
14 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

15  
16 SAN DIEGO REGION

17 In re Tentative Cleanup and Abatement Order )  
No. R9-2011-0001 (formerly No. R9-2010- )  
18 0002) (Shipyard Sediment Site) )  
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**DECLARATION OF SCOTT E. PATTERSON IN SUPPORT OF SAN DIEGO UNIFIED PORT DISTRICT'S RESPONSE TO STAR & CRESCENT BOAT COMPANY'S MAY 26, 2011 WRITTEN SUBMITTAL OF COMMENTS**

Presiding Officer: Grant Destache

1 I, Scott E. Patterson, declare:

2 1. I am an attorney at law, duly admitted to practice before the courts of this state,  
3 and am a partner with the law firm of Brown & Winters, attorneys of record for the SAN DIEGO  
4 UNIFIED PORT DISTRICT (PORT) in the above-referenced matter.

5 2. I have personal knowledge of all the matters stated herein and, if called as a  
6 witness, I could competently testify thereto, except as to those matters stated upon information  
7 and belief, and as to those matters, I believe them to be true.

8 3. I am informed and believe that attached as "Exhibit A" is a true and correct copy  
9 of Star & Crescent Boat Company's (S&C Boat) response to the Port District's "Request for  
10 Proposals for the Operation of a Water Taxi Service from the Fish Harbor Pier located at 891  
11 West Harbor Drive, San Diego, California", dated May 19, 1994. This response was included  
12 with the Port's document production in response to S&C Boat's request for Production of  
13 Documents, Set No. 1, in the Federal Action entitled: *City of San Diego v. National Steel &*  
14 *Shipbuilding Company, et al.*, United States District Court, Southern District of California, Case  
15 No. 09-CV 2275 W WVG. (Port's Production)

16 4. I am informed and believe that attached as "Exhibit B" is a true and correct copy  
17 of a lease between the Port and S&C Boat, a division of Star and Crescent Investment Company  
18 (S&C Investment), dated February 4, 1977. This document was included in the Port's  
19 Production.

20 5. I am informed and believe that attached as "Exhibit C" is a true and correct copy  
21 of the minutes from S&C Investment's Board of Director's Meeting, dated September 19, 1979.  
22 This document was included in the Port's Production.

23 6. I am informed and believe that attached as "Exhibit D" is a true and correct copy  
24 of correspondence from K. N. Beiriger for O. J. Hall, Jr., S&C Investment, to Donald Nay, Port  
25 Director, dated June 15, 1979. This correspondence was included in the Port's Production.

26 7. I am informed and believe that attached as "Exhibit E" is a true and correct copy  
27 of correspondence from K. N. Beiriger, V. P., S&C Investment, to Port dated November 6, 1973.  
28 This correspondence was included in the Port's Production.

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1 8. I am informed and believe that attached as "Exhibit F" is correspondence dated  
2 January 14, 1975. This correspondence was included in the Port's Production.

3 9. I am informed and believe that attached as "Exhibit G" is a true and correct copy  
4 of the offer from S&C Investments by O. J. Hall, Jr., President and Leona Jackson, Secretary,  
5 dated April 9, 1976. This document was included in the Port's Production.

6 10. I am informed and believe that attached as "Exhibit H" is a true and correct copy  
7 of correspondence from Bradley J. Schultz, Port Property Manager, to O. J. Hall, Jr., S&C  
8 Investment, dated October 12, 1976. This correspondence was included in the Port's Production.

9 11. Attached as "Exhibit I" are true and correct copies of excerpts from Flagship's  
10 (formerly S&C Boat) website, [www.flagshipsd.com](http://www.flagshipsd.com), June 2011. The first page, of the two page  
11 exhibit, is a copy of the pop-up which appears when the website is initially accessed. The  
12 second page of the two page exhibit can be located by following the "About Us" link on the top  
13 right-hand side of the homepage of the website.

14 12. Attached as "Exhibit J" are true and correct copies of excerpts taken from the  
15 deposition of George Palermo, President of S&C Boat, dated February 22, 2011.

16 13. Attached as "Exhibit K" is a true and correct copy of an obituary printed obtained  
17 following a link from the website [www.legacy.com](http://www.legacy.com). In particular, on the website's homepage,  
18 users are instructed to search for obituaries throughout the United States by a person's name.  
19 Oakley Josiah Hall, Jr. was the first result listed upon entry of Oakley Hall into  
20 the search field. Upon following the Oakley Josiah Hall, Jr. link, the obituary was obtained.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct and that this declaration was executed this 23rd day of June 2011, at  
23 Cardiff- by-the-Sea, California.

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25 \_\_\_\_\_  
26 Scott E. Patterson  
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**EXHIBIT A**

*Response to the District's:*

"Request for Proposals for the Operation  
of a Water Taxi Service from the Fish Harbor Pier  
located at 891 West Harbor Drive, San Diego, California

*Submitted by:*

**STAR & CRESCENT BOAT COMPANY**

May 19, 1994

# Marketing Plan

## Main Objective and Goal:

The primary objective is to establish a water taxi service to meet the demand of the local and visitor markets. Marketing and sales efforts should achieve \$150,000. in annual sales (based upon previous water taxi operation), with a small net profit in the first year of operation.

Major water taxi marketing strategies to achieve this goal include the following points:

1. Print and distribute informational brochures throughout various visitor industry locations (hotels, visitor information centers, San Diego Convention Center).
2. Referrals by frontline employees of hotels, restaurants and other primary visitor and recreational locations serviced by the water taxis.
3. Implement a public relations campaign via our membership in San Diego Convention & Visitors Bureau targeting travel writers, journalists and individual travelers to San Diego seeking information. Public relations efforts (news releases, familiarization tours, etc.) directed toward local print publications and broadcast media and city officials.
4. Cooperative advertising and promotional packages (land & sea) with restaurants and businesses located at water taxi locations would be coordinated and promoted by front line representatives.
5. Advertising and promotional sales campaigns would key on holidays and special events.
6. Proposed advertising budget is four percent of gross water taxi sales.

These are the primary concepts related to the most important elements of a probable marketing plan for the first year and would establish a successful water taxi service on San Diego Harbor.

## The History of Star & Crescent Boat Company

Any history of San Diego's Star & Crescent Boat Company is essentially a history of Oakley J. Hall for the two are inseparably linked. Oakley was S&C's founder and driving force for over 50 years.

Oakley's stepfather, Captain Rufus Creswell, met the widowed Mary Hall during the 1880's in Seattle and they fell in love. With Rufus' help Mary became the first woman on the west coast to obtain a motor boat operator's license. They were married on November 18, 1892 and later during that same month they moved with young 13-year-old Oakley to San Diego where, with his step-dad's help, he would soon embark on a nautical career of his own.

In 1896, young Oakley, working for his stepfather, made use of the 35-foot POINT LOMA as San Diego's first harbor excursion craft, taking passengers on a tour of the as-yet-underdeveloped harbor. He operated the boat under his mother's license because he was too young to have one of his own. In 1898 Captain Creswell received a government contract to transport soldiers and supplies between San Diego and the newly built Fort Rosecrans on Point Loma. He would entrust Oakley to perform this service for him once

again using the POINT LOMA. The ferry business in San Diego was booming and Captain Creswell decided it was time to form a company and do it right. He became the president and owner of the Point Loma Ferry Company, which he ran between the Santa Fe Wharf (at the site of present day Seaport Village) and Point Loma.

Business moved along until 1908 when Captain Creswell purchased the Star Boat Company from Captain Elmer O. Luiz. Captain Creswell continued running his very successful Point Loma Ferry Co. but transferred his base of operations from Santa Fe Wharf to his newly acquired Star Boat House at the foot of H street (present day Market Street). Service was also expanded to include harbor excursions, trips to the Coronado Islands, and the rental of launches, sailboats and rowboats to the public. They even ran water taxis to Navy landings on North Island. Rufus' wife Mary became the vice president, secretary and treasurer of the Point Loma Ferry Co. while Oakley was an engineer and boat operator.

Oakley had learned a great deal back in 1903 when he was employed as an engineer for a short time at the same Star Boat House and Captain Creswell would come to own five years later. It was around this time that a man by the name of Ralph J. Chandler entered the boat business by purchasing the McKinley Boat Company, which he would later rename the Crescent Boat Company. It wouldn't take long before the Crescent Boat Co. would become very important to Oakley J. Hall.

In 1912 Oakley was appointed manager of the Star Boat Company. His first test was just around the corner. Competition had become pretty stiff between his Star line and Ralph Chandler's Crescent. Oakley realized that the solution was not to continue the fight but rather to join forces. In May of 1915, during San Diego's Panama-California Exposition, Hall and Chandler pulled off a successful merger and the Star & Crescent Boat Company was born. The Crescent Boat House, which was just south of the newly-built Broadway Pier (the area between present day Broadway and Navy Piers), was a better facility than the Star Boat House and it became their base operations. Oakley was appointed president, Captain Creswell would assume the vice presidency, and Ralph Chandler became the secretary and treasurer. They continued running the ferry to Point Loma that Captain Creswell's Point Loma Ferry Co. had run. Twice daily harbor excursions

lasting for three hours each were run at 10:15 a.m. and 2:15 p.m. aboard the CRESCENT. Entertainment aboard was furnished by musicians and singers and the cost was 50 cents. They also offered a \$1.00 round trip to the Coronado Islands. Water taxi service likewise continued.

Over the coming years the number of ships moored in the bay would increase dramatically and the sailors based on these ships would use S&C water taxis to get from ship to shore and back again. Some years down the road Oakley J. Hall would eventually buy out Ralph Chandler's interest in Star & Crescent.

In 1918 he began ferry service between S&C Boathouse and North Island. The cost was 5 cents for a one-way ride across the bay and this would earn it the affectionate name of "Nickel-Snatcher."

Shipyards were prevented from building excursion vessels during the war so among other things Hall set out to increase his fleet of tugs. It would be the North Island Ferry, however, which would receive most of his attention during this time. S & C would have to vacate their boat house at the foot of Broadway in order to give the Navy added space for their ships. The structure was torn down and a new ferry terminal was constructed at the site of the old Star Boat House at the foot of Market Street (excursion vessels would continue to depart from the foot of Broadway but at a different facility).

This new ferry terminal would house a bar and grill for waiting passengers. The number of workers stationed on North Island was at an all-time high and the entire North Island ferry fleet was running around the clock to keep up with the demand. It must be clarified that there were actually two different Nickel Snatcher routes. One took sailors stationed on the island to a location known as "Main Landing" while the other took civilian workers to "East Beach". Stories of civilian workers operating illegal dice games aboard the East Beach ferry are humorously retold even today. The gamblers always seemed to sense that the captain might be on to them. Every time he would leave the wheelhouse to break up the game they would remove all evidence from view, leaving the poor captain scratching his head in bewilderment. Surely hundreds of dollars must have changed hands during these "floating" crap games.

Hall had the vessel SILVERGATE constructed during the fall of 1940 and upon completion it was immediately put into North Island service. It had a capacity of 350 people but unfortunately even this addition to the ferry fleet was not enough to handle the demand. Hall did what had to be done. He had a fleet of five square-headed vessels designed specifically to handle the peak rush hours.

The first of these boats was named the JUANITA and was completed in 1942. The POINT LOMA followed in 1943 and the DEL MAR, GLORIETTA, and RAMONA joined the fleet in 1944. S & C now had a ferry fleet which could handle any demand, large or small, 24 hours a day. Oakley would run some of S & C's small launches during the wee hours of the night and the square-heads would take over for the daytime crush. The little vessel SILVERGATE would be relieved of ferry duty after the war in order to assume its new role as S & C's excursion boat. In the decade to come the wooden-hulled SILVERGATE would be replaced by a larger steel-hulled excursion vessel. This little relic of a bygone era would prove again and again to be too much of a fighter to die. It remains in operation as the ferry today.

History dictates that we should, once again, operate the Water Taxi.



INSTRUCTIONS PERTAINING TO  
INFORMATION REQUIREMENT CERTIFICATES

A member of the District's Board of Port Commissioners is on the Board of Directors of Bank of Commerce. Before this Commissioner can vote on transactions presented to the Board, state law requires the Commissioner to determine if the parties to a transaction have a financial relationship with the Bank.

To facilitate the reporting of financial relationships with Bank of Commerce, the District has prepared Information Requirement Certificates for (1) Individuals, (2) Partnerships, and (3) Corporations. Each party to a transaction presented to the Board must complete the appropriate Certificate(s). These Certificates are on the following three pages.

It is not only necessary for each proposer to complete a Certificate, but also each general partner if the proposer is a partnership, and each stockholder holding more than 25% of the corporate stock if the proposer is a corporation. All appropriate Certificate forms must be submitted with your proposal.

N/A

San Diego Unified Port District  
INFORMATION REQUIREMENT CERTIFICATE  
FOR PARTNERSHIPS\*

A member of the Board of Port Commissioners is on the Board of Directors of the Bank of Commerce. A member of a governing board of a public agency, who is also an officer, director or employee of a financial institution, needs to ascertain if parties contracting before the public agency have a financial relationship with the firm with which the board member is associated. The following information is to be supplied by the contracting party:

\_\_\_\_\_  is  
(Name of Contracting Party)  
(please print or type)  is not

a borrower or depositor, debtor or creditor  
of the Bank of Commerce

\_\_\_\_\_  
Signature of Person Authorized to  
Sign for the General Partnership

\_\_\_\_\_  
Title

Date: \_\_\_\_\_ 1994

**\*ALL PARTS OF THIS CERTIFICATE MUST BE COMPLETED PRIOR TO SUBMITTING THE CONTRACT TO THE BOARD OF PORT COMMISSIONERS. EACH GENERAL PARTNER OF THE PARTNERSHIP (CONTRACTING PARTY) MUST ALSO COMPLETE A DIFFERENT CERTIFICATE FORM FOR INDIVIDUALS.**

San Diego Unified Port District  
INFORMATION REQUIREMENT CERTIFICATE  
FOR CORPORATIONS\*

A member of the Board of Port Commissioners is on the Board of Directors of the Bank of Commerce. A member of a governing board of a public agency, who is also an officer, director or employee of a financial institution, needs to ascertain if parties contracting before the public agency have a financial relationship with the firm with which the board member is associated. The following information is to be supplied by the contracting party:

Star & Crescent Boat Company  is  
\_\_\_\_\_  
(Name of Contracting Party)  
(please print or type)  is not

a borrower or depositor, debtor or creditor  
of the Bank of Commerce

George Palermis President  
Signature of Person Authorized to Sign for Corporation Title

Date: 5-12 1994

**\*ALL PARTS OF THIS CERTIFICATE MUST BE COMPLETED PRIOR TO SUBMITTING THE CONTRACT TO THE BOARD OF PORT COMMISSIONERS. ANY STOCKHOLDER HOLDING MORE THAN 25% OF THE OUTSTANDING STOCK OF THE CORPORATION (CONTRACTING PARTY) MUST ALSO COMPLETE A DIFFERENT CERTIFICATE FORM FOR INDIVIDUALS.**

AGREEMENT TO ENTER INTO LEASE FOR THE  
OPERATION OF A WATER TAXI SERVICE FROM THE FISH HARBOR PIER  
LOCATED AT 891 WEST HARBOR DRIVE, SAN DIEGO, CALIFORNIA

Proposer's Name: Star & Crescent Boat Company  
dba San Diego Water Taxi  
P.O. Box 751  
Address: P.O. Box 751  
San Diego, CA 92112  
Telephone: ( 619 234-4111

THIS IS AN AGREEMENT TO ENTER INTO THE LEASE FOR THE OPERATION OF A WATER TAXI SERVICE FROM THE FISH HARBOR PIER LOCATED AT 891 WEST HARBOR DRIVE, SAN DIEGO, CALIFORNIA. The undersigned, hereinafter referred to as "Proposer," hereby submits a proposal to the San Diego Unified Port District, hereinafter referred to as "District," in accordance with the District's "Request for Proposals for the Operation of A Water Taxi Service From the Fish Harbor Pier Located at 891 West Harbor Drive, San Diego, California," and in accordance with the terms, covenants, and conditions contained in the Lease attached hereto and made a part hereof.

Proposer understands, agrees and warrants that:

1. Proposer has carefully read and fully understands the Lease and will execute said Lease if selected by District.
2. Proposer is qualified and has the capability to successfully undertake and perform the responsibilities and obligations of the Lease.
3. Proposer has fully completed the Proposer's questionnaire and it is submitted herewith, together with all supplemental material required therein, and that all information contained in or supplementing said questionnaire is true and correct to the best of Proposer's knowledge.
4. The applicable completed Proposer's Information Requirement Certificate(s) are submitted herewith.

5. Proposer's deposit in the amount of Two Thousand Five Hundred Dollars (\$2,500) in the form of a cashier's or certified check, made payable to the San Diego Unified Port District, is submitted herewith. The District reserves the right to cash such check and hold the proceeds thereof.
6. Said deposit shall be held by District as a guarantee securing the obligations Proposer agrees to assume in this proposal. In the event Proposer is selected by District, said selection shall constitute an Agreement to Enter into the Lease offered by District. If Proposer fails to (i) timely execute the Lease or (ii) timely provide the security deposit described in Paragraph 8 below, this Agreement to Enter into Lease may be terminated for breach. In such event, Proposer's Two Thousand Five Hundred Dollar (\$2,500) deposit shall be retained by District as liquidated damages. It is further agreed that actual damages to District are extremely difficult and impractical to ascertain and determine. Liquidated damages, or a portion thereof, may be waived at the sole discretion of the Port Director of District.
7. In the event District selects Proposer, Proposer shall, within ten (10) days of the District's selection, execute and deliver to District two copies of the Lease offered by District.
8. In the event District selects Proposer, Proposer's Two Thousand Five Hundred Dollar (\$2,500) deposit will be applied toward fulfillment of the required security deposit, described in Paragraph 47 of the Lease.
9. This proposal may be withdrawn at any time prior to the date and time fixed for receiving proposals for entering into the Lease, but this proposal may not be withdrawn for sixty (60) days after the said date and time fixed for receiving proposals; provided further, if Proposer is selected by the Board within said sixty (60) days, Proposer shall not have the right to withdraw this proposal.
10. All materials submitted by Proposer to District shall become the property of District.
11. District shall have a period of sixty (60) days after the date and time fixed for receiving proposals in which to accept or reject this proposal, and this proposal and all documents related thereto shall remain in full force and effect throughout said sixty- (60) day period. If District does not accept this proposal, Proposer's Two Thousand Five Hundred Dollar (\$2,500) deposit will be returned to Proposer within twenty (20) days following the formal acceptance and award of the Lease to another Proposer or within seventy-five (75) days after the date and time fixed for receiving proposals, whichever occurs first.

12. The proposal is submitted with the understanding that the property and the improvements thereon, including the ticket booth and vessel boarding facilities, are being offered in an "as is" condition as of the effective date of the Lease and that Proposer is solely responsible for performing all independent investigations, obtaining all governmental permits and licenses, providing an adequate number of water taxi vessels, installing any additional furnishings, fixtures and equipment, and making any necessary repairs.
13. Proposer understands and agrees that District is seeking a qualified water taxi service operator; has the right to accept this proposal; reserves the right to not select this, any or all proposals; may waive any and all informalities or irregularities; may waive a portion of the experience requirement; may request clarification or additional information it deems necessary; and may timely permit the correction of errors.
14. Proposer understands that the water taxi service may only carry passengers; carrying of luggage and equipment such as bicycles is prohibited; water taxis are not permitted to berth at the Fish Harbor Pier facilities; no food, beverage, or gift sales are permitted at the premises or aboard the water taxis; Port Director of District has the right to establish the hours and method of operation; chartering and harbor excursions are not permitted to or from the premises; Lessee is required to maintain and repair premises, including ticket booth, ramp, float and associated pilings; and Lessee is required to conform to all requirements contained in the Negative Declaration entitled, "FISH HARBOR PIER WATER TAXI LANDING, San Diego Embarcadero" (UPD 83356-102; Document No. 21694).
15. Proposer understands that there is a \$10,000 cancellation fee payable by terminating party if the Lease is cancelled and lessee is not in default under the Lease.
16. Proposer agrees that nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Proposer and District and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provisions give any third persons any right of subrogation or action over or against any party to this Agreement.
17. Any attempted transfer or assignment of this Agreement or any rights or duties hereunder, whether by operation of law or otherwise, shall be void and no rights conferred thereby. Further, any such attempt or any change in form or ratio of ownership of Proposer (whether Proposer is a corporation,

partnership, joint venture, or other form of business entity), except as a result of death or disability, without the prior written consent of District, which consent District may grant or deny at its sole discretion, shall be void and shall absolutely and conclusively terminate Proposer's rights hereunder. The personal qualifications of the person or persons controlling Proposer are part of the consideration for this Agreement and such person or persons shall maintain active control and supervision of performance of this Agreement. Proposer hereby represents that the Lease referred to in this Agreement is for the purpose of operation of the premises and not for the purpose of speculation. Proposer understands and agrees that if District consents, or is deemed or required by law to consent, to a transfer or assignment of this Agreement, then as a condition precedent to such consent and as additional consideration for this Agreement, Proposer shall pay to District an amount equal to the excess, if any, of the net consideration received by Proposer as a result of such transfer or assignment over the sum of the verifiable costs and expenses paid or incurred by Proposer (i) prior to said transfer or assignment in connection with developing its proposal to the Request for Proposals for this Agreement and, (ii) in performing its obligations and satisfying the conditions precedent under this Agreement.

(NOTE: If Proposer is a partnership, all general partners must sign this Agreement. If Proposer is a joint venture, an authorized member(s) must sign. If Proposer is a corporation, the authorized corporate officers must sign the Agreement and the corporate seal must be affixed.)

PROPOSER

Dated: 5-12, 1994

By: *Seeger Palmer, President*  
(please sign)

By: *Lloyd A. Schwartz*

LLOYD A. SCHWARTZ  
Secretary

N/A

(The following is to be completed only if applicable.)

GUARANTY

If the Proposer is selected by District to enter into the Lease, the undersigned agrees to guarantee the performance of Proposer under said Lease and will execute and be bound by the provisions of the Guaranty pages made a part of said Lease (see pages 68 - 69).

GUARANTOR

Dated: \_\_\_\_\_, 1994

\_\_\_\_\_  
(please sign)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT B**

PROPERTY FILE RECORD

FILE No. SD 11-2-22638

ROUTE TO:

1. ACCT. Amey 2. ENG. S

RETURN AS SOON AS POSSIBLE

LE A S E

THIS LEASE, made and entered into this 4<sup>th</sup> day of February, 1977, 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, 1977, and ending on January 31, 1978, unless sooner terminated as herein provided.

PORT008033

2. RENTAL: Lessee agrees to pay to Lessor rent in accordance with the following schedules and procedures:
- (a) A minimum of Fifty-Nine Thousand Dollars (\$59,000) 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 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 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 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 thirty (30) 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 thirty (30) 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

FEB 2

, 1977

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:



**EXHIBIT C**

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.

-2-

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

S&C000304

**EXHIBIT D**

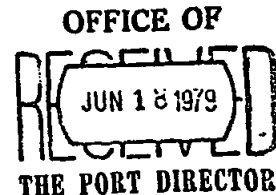


**STAR AND CRESCENT INVESTMENT COMPANY**

*General Offices*  
570 North Harbor Drive  
Post Office Box A-2111  
San Diego, California 92112  
Telephone (714) 231-0252

June 15, 1979

Mr. Donald L. Nay, Port Director  
San Diego Unified Port District  
P. O. Box 488  
San Diego, California 92112



Dear Mr. Nay:

The Hall family and the Star & Crescent operations have been on the San Diego Harbor front since 1908. We have always had, and continue to have, an interest in the betterment and the development of the various harbor facilities.

We have watched with considerable interest the redevelopment of Harbor Drive and the proposed commercial usage for the old U.S. Navy Landing building.

We explored the possibility of a commercial Marina at this facility but discarded the idea after watching the tow boats moving the large cargo ships at the Navy pier. We, therefore, turned our attention to the Olson-Johns building on the C Street Mole.

With the Imperial House Restaurant management we have reviewed this area for a fine Class A restaurant and bar, and wherein the Harbor Excursion vessels could dock to take on food for charters, and also to provide a novel form of enclosed veranda type eating facility.

We would like to have the bar on the second story of the building (after enlargement to approximately 6500 sq. ft.), and while the Coastal Commission might not go along with this, our thoughts on the matter are that there is no ocean view being obstructed from the walking or visiting public. In fact, with the bar facility at second story height the public could get a view otherwise missed.

We have the experience to operate a restaurant since our partner in this venture is Al Vollenweider, a successful restaurant operator

**ACTION TAKEN:**

7-10-79: No action taken on Star and Crescent letter. Board requested future discussion on "G" Street Mole, planning considerations.

Mr. Donald L. Nay, Port Director  
June 15, 1979  
Page 2.

Present indications are that the initial operation will cost \$750,000, and in the future an expansion of approximately 3500 sq. ft. making a total involvement in excess of \$1,000,000.

We have reserved from the Secretary of State the name Harbor House of San Diego so that a Harbor House restaurant will again be on the waterfront.

If your office is favorably inclined to this project we will continue to develop architectural schematics and further our proposal to you. While we have not decided on an architectural firm it could possibly be Innis-Tennebaum in order to offer some continuity in design concept.

We would appreciate your thoughts. O. J. Hall, Jr., is out of the city and will return approximately July 11.

Sincerely,

  
K. N. Beiriger  
for O. J. Hall, Jr.

KNB:lj



**EXHIBIT E**



**STAR AND CRESCENT INVESTMENT COMPANY**

General Offices  
570 North Harbor Drive  
Post Office Box 751  
San Diego, California 92112  
Telephone (714) 234-4111

November 6, 1973

San Diego Unified Port District  
P. O. Box 488  
San Diego, California 92112

Attention: Mr. Donald E. Hillman, Jr.  
Property Manager

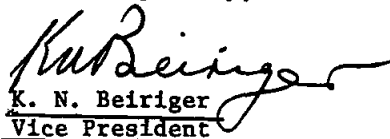
Gentlemen:

Confirming Mr. O. J. Hall, Jr's. conversation with you this date, the attached map attempts to reflect the area we would like to give up under our lease, and the additional area we would like to take over.

The red lines on the attached indicate the present lease, and the black lines indicate the revised area. Within this revised area are three pile dolphins in present Parcel 4 to which the Port Authority's barge had been originally anchored. This float has been removed and we would like to remove these piles and use them as a fendering device to protect the walkway for the women's rest room in the Excursion Building. The proposed runs approximately 24,200 sq. ft, exclusive of the Harbor Excursion Building, and the present runs 20,076 sq. ft.

We would like your permission to remove these dolphins immediately since we have pile drivers working at this location.

Yours very truly,

  
K. N. Beiriger  
Vice President

KNB:lj

RECEIVED

SAN DIEGO UNIFIED  
PORT DISTRICT  
Property Department

PORT000041

**EXHIBIT F**



**STAR AND CRESCENT INVESTMENT COMPANY**

General Offices  
570 North Harbor Drive  
Post Office Box 751  
San Diego, California 92112  
Telephone (714) 234-4111

January 14, 1975

San Diego Unified Port District  
P. O. Box 488  
San Diego, California 92112

Attention: Mr. Bradley J. Schultz

Gentlemen:

Enclosed are signed triplicate originals of Lease covering our Harbor Excursion operation, for the period of one year commencing February 1, 1975.

Yours very truly,

*O. J. Hall, Jr.*  
O. J. Hall, Jr. *JH*  
President

LJ  
encls.

**RECEIVED**

JAN 14 1975

SAN DIEGO UNIFIED  
PORT DISTRICT  
Property Department

**EXHIBIT G**

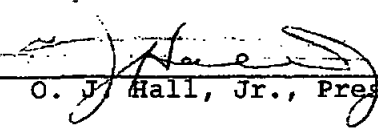
STAR & CRESCENT INVESTMENT CO., a California corporation, hereby offers to transfer to you all of STAR & CRESCENT INVESTMENT CO.'s right, title, and interest of every kind and description in and to its business and assets pertaining to its harbor excursion business, as set forth in a schedule as of March 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 of its capital stock, all of a par value of \$10.00 per share, to STAR & CRESCENT INVESTMENT CO., a California corporation.

Dated: April 9, 1976

STAR & CRESCENT INVESTMENT CO.,  
a California corporation

By   
O. J. Hall, Jr., President

By   
Leona Jackson, Secretary

PORT000331

**EXHIBIT H**

bcc: Don L. Nay

October 12, 1976

Mr. O. J. Hall, Jr.  
Star and Crescent Investment Co.  
P. O. Box 751  
San Diego, CA 92112

Dear Mr. Hall:

In our telephone conversation, we discussed the transfer of ownership of your harbor excursion operation to your children. You presently have a Lease and two Tideland Use and Occupancy Permits in the name of Star and Crescent Boat Co., a division of Star and Crescent Investment Co., a corporation. For these three agreements, please send the District a termination notice. This notice should contain a specific termination date and should be conditioned upon a new Lease and new Permits being granted to Star and Crescent Boat Co., a California corporation. Prior to preparing the new Lease and Permits for execution, we will need the enclosed Lessee's Questionnaire completed by Star and Crescent Boat Co.

You also have a Lease with the District in the name of O. J. Hall, Jr. In order to transfer this leasehold interest, we will require a lease surrender and a new lease signed by Star and Crescent Boat Co. This transaction will require approval by the Board of Port Commissioners. If you wish to proceed on the transfer of this lease, please let me know.

Sincerely,

BRADLEY J. SCHULTZ  
Assistant Manager  
Property Department

BJS/pb

Enclosure

PORT000045



**EXHIBIT I**



## FLAGSHIP IS THE NEW SAN DIEGO HARBOR EXCURSION

We have been proudly serving San Diego since 1915. That's 95 years! Like most San Diego staples, we have changed a great deal since first established. Not only does our company offer unforgettable tours and excursions, but we also boast the finest fleet in the San Diego bay, expert event planners for any type of chartered event, and award-winning dining. After extensive research, we have determined that our new name reflects the experience and services offered by the company. Through this name change, we are renewing our commitment to the San Diego tourism, events, and dining industries and working to engage more people in the unique experience Flagship Cruises & Events has to offer.

Hear first about special offers and news on our new Facebook, Twitter, and Email list

**CLOSE** 

## **Flagship - Cruises & Events**

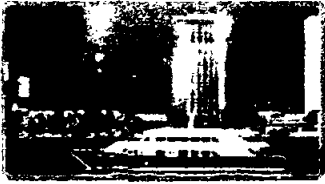
### **The Ultimate Waterfront Dining Experience**

Flagship Cruises & Events has been serving San Diego since 1915, and our commitment to providing the best venues, restaurant dining and nautical adventures remains the same. Flagship Cruises & Events (formerly San Diego Harbor Excursion) invites you to experience the Flagship difference aboard one of our luxurious yachts. [See Our Fleet](#)

Copyright © 2011 Star & Crescent Boat Company

## Flagship - Cruises & Events

### About Flagship



Flagship Cruises & Events may have a new name, but our commitment to the best events, dining, and nautical adventures remains the same. Flagship Cruises & Events (formerly San Diego Harbor Excursion) has been serving San Diego since 1915.

Flagship has been a staple in San Diego events and tourism for almost a century. We have been there since the beginning and as San Diego has grown, so has the company. With a history of providing jobs and actively helping the community, Flagship has deserved its place as an indispensable component of San Diego's waterfront transportation.

So the next time you are thinking of venturing off dry land make sure to choose Flagship. With the finest fleet in San Diego, superior service, unforgettable weddings and events, gourmet dining, and unparalleled tours and adventures, you know you're always in the right hands with Flagship.

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## **Flagship - Cruises & Events**

### **In The News**

#### **Flagship Cruises & Events**

Easter Brunch Cruise now taking reservations [Click here to View Article](#)

New Prime Rib Dinner Cruise available for a limited time only. [Click here to View Article](#)

Valentine's Day Cruises...Flagship offers a unique experience. [Click here to View Article](#)

Flagship Announces Parade of Flight Spectator Cruise. [Click here to View Article](#)

Executive Chef Brings Gourmet Dining to Cruise Company. [Click here to View Article](#)

San Diego Harbor Excursion announces New Name!

[Click here to View Article](#)

Flagship (Formerly San Diego Harbor Excursion) has been a San Diego staple for almost a century. As a pivotal component of the events and tourism industry, Flagship frequently appears in the local and national press. For press inquiries please [Contact Us](#).

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**EXHIBIT J**

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



530 B Street  
Suite 350  
San Diego, CA  
92101  
800 649 6353 toll free  
619 260 1069 tel  
619 688 1733 fax  
bookadepo.com

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Complaint  
Appellate

ATTORNEYS AT LAW  
225 BROADWAY, SUITE 1900  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE: (619) 231-5858  
FACSIMILE: (619) 231-5853

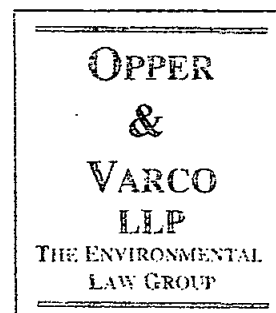
SUZANNE R. VARCO  
svarco@envirolawyer.com

RICHARD G. OPPER  
ropper@envirolawyer.com

LINDA C. BERESFORD  
lindcb@envirolawyer.com

www.envirolawyer.com

April 21, 2011



Scott Patterson, Esq.  
BROWN & WINTERS  
120 Birmingham Drive, Suite 110  
Cardiff By The Sea, CA 92007

Re: Tentative Cleanup and Abatement Order no. R9-2011-0001

Dear Mr. Patterson:

Enclosed please find the signed deposition transcript of George Palermo taken on February 22, 2011. Mr. Palermo has signed the deposition and has made the following changes:

Page no. 15, line no. 20, change "present" to "president"  
Page no. 25, line no. 8, change "correct" to "I don't know"  
Page no. 97, line no. 12, change "down" to "town"

If you have any questions, please feel free to call.

Sincerely,  
OPPER & VARCO LLP



Suzanne R. Varco

SRV/jlk  
cc: Service List (attached)

1           A.    He's referring to Item 2 in the schedule.

2           MS. VARCO:  Make sure, because he said  
3           "locations."  So make sure you understand which one he's  
4           asking you about before you answer.

5           THE WITNESS:  Item 2.

6           MR. PATTERSON:  I was referring to Item 2.  
7           Thank you for the clarification.

8           THE WITNESS:  And Item 3, we never operated from  
9           any portion of the B Street Pier.  We never did.  And  
10          Item 4, we have operated -- we do not operate from there.  
11          We do not operate from No. 4.

12          BY MR. PATTERSON:

13          Q.    Have you ever operated from that location?

14          A.    If that's the same one as I think,  
15          570 North Harbor Drive, one and four, I think, are  
16          combined.  And I think -- I shouldn't say what or when.

17          Q.    So those appear to you, both one and four, to be  
18          describing an area that you would refer to as  
19          570 North Harbor?

20          A.    I believe so, yes.

21          Q.    Are there any areas that Star & Crescent Boat  
22          Company presently leases that we've not already talked  
23          about?

24          A.    No.

25          Q.    Are you aware of any assets of the investment



company that would not have been transferred to Star & Crescent Boat Company --

MS. VARCO: Vague.

BY MR. PATTERSON:

Q. -- as part of this transaction?

MS. VARCO: I'm sorry. Vague as to "investment company."

MR. PATTERSON: Star & Crescent Investment Company.

THE WITNESS: No.

BY MR. PATTERSON:

Q. And do you have any information regarding the transfer of liabilities or assumption of liabilities discussed in the document?

A. No.

Q. Do you know whether following the transaction there were ever any disputes between Star & Crescent Investment Company and Star & Crescent Boat Company regarding any of the the assets to be transferred?

A. No.

Q. And same question with respect to any liabilities.

A. No.

Q. I can't recall if I asked you this question. 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 Dated: This 9<sup>th</sup> day of March, 2011  
12 at San Diego, California.

13  
14   
15 Anne M. Zarkos RPR, CRR  
16 CSR No. 13095

**EXHIBIT K**

**Oakley Josiah Hall Jr.**

HALL, Jr., OAKLEY JOSIAH La Jolla, CA- Oakley Josiah Hall Jr. passed away at Scripps Memorial Hospital on August 5, 2005. He was born on June 22, 1914 in San Diego, CA, where he spent most of his life. He lived in Hollywood, CA for a short time, where he graduated from Curtiss Wright Aviation School. He returned to San Diego where he joined his Father, Capt. O.J. Hall in the Star and Crescent Companies which included the Old Pedestrian Ferry known as the "Nickel Catcher", the original Harbor Excursion Co., San Diego Marine Construction Co. and various oil barges and tug boats with which he became known as the best Salvage Master on the Pacific Coast. The ship building company built many of the tuna services that are still sailing the seas today. In later years he formed the Star and Crescent Investment Co., which included the Florida Mining Co., the Lake Mead Ferry Boat Co. in Las Vegas and various other business ventures in the Las Vegas area. In 1954 he married Irene Houser Carlstrom where they merged his three daughters and her son and had a remarkable, happy and united family. The family enjoyed many happy years at their second home at Lake Tahoe. Mr. Hall will be remembered by all who knew him as a man of high integrity. He is survived by his wife Irene E. Hall of Escondido, CA; ~~son Stephen P. Carlstrom of Lake Ozark, MO; daughters, Janet E. Miles and Judy E. Hall of San Diego, CA; Joan E. Willis of San Angelo, TX; grandchildren, Bill, Adam, Stephen Jr., Scott, Debbie and Steve. Six great-grandchildren and three great-great-grandchildren.~~ There will be a private family Memorial Service and the family asks in lieu of flowers, donations can be made to the Salvation Army, P.O. Box 269, Alexandria, VA 22313 or the Aztec Doberman Rescue Club, 9821 Dunbar Lane, El Cajon, CA 92021 Please sign the guest book at [obituaries.uniontrib.com](http://obituaries.uniontrib.com)

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