



Resolution

Approving an Agreement for the Purchase of the Ownership Rights to the Romeo Wharf for the San Mateo County Harbor District

Whereas, the Board of Harbor Commissioners on behalf of the San Mateo County Harbor District, has agreed to purchase the ownership rights to the Romeo Wharf under that certain Agreement to Purchase; and

Whereas, that certain Agreement to Purchase is attached herto and by this reference made a part hereof.

Therefore, be it resolved by the Board of Harbor Commissioners of the San Mateo County Harbor District that the Agreement to Purchase the ownership rights of the Romeo Wharf is hereby Approved; and

Therefore, be it further resolved, that the President of the Commission is authorized to sign on behalf of the Board of Harbor Commissioners for the San Mateo County Harbor District.

Approved this 3rd day of April 1996 at the regular meeting of the Board of Harbor Commissioners by a vote of the Ayes and Nays as follows:

For: Campbell, Sherer, Lee, Stone, Parravano

Against: --

Abstaining: --

Attested

BOARD OF HARBOR COMMISSIONERS

Dorothy Baughman
Deputy Secretary

Sally Campbell
President

AGREEMENT

The Agreement is made and entered into by and between the San Mateo County Harbor District, a political subdivision of the State of California (District) and Tony Romeo, Albert Romeo, Stella Riccio and Donna Ghafouri as Trustee of the Dominic Romeo and Vera Romeo Trust (Romeos).

RECITALS:

1. There is a dispute between District and Romeos, regarding the ownership of a certain wharf, commonly known as Romeo Wharf, situated on the submerged lands in Pillar Point Harbor. The Romeos' claim title to the wharf based on the fact that they built it and have exercised all rights and privileges incident to ownership since it's construction. The District claims title to the wharf based on the fact that it is permanently affixed to real property owned by the District and therefore is part of the real property.

2. The purpose of this Agreement is to settle the dispute as to title between the parties.

3. District represents that it has the authority to enter into this Agreement.

4. Romeos represent that they claim ownership of the wharf subject only to a lease with David Mallory dba Morning Star Fisheries dated June 16, 1986, on a month to month tenancy, a copy

of which is attached hereto as Exhibit A.

5. Romeos represent that the wharf is free and clear of all liens, mortgages, security agreement, options, claims, charges, easements, encroachments and restrictions, excluding a license granted by Romeo Packing Co., an adjacent property owner, the subject of which is reflected in a separate agreement between District and Romeo Packing Co. executed contemporaneously with this agreement.

6. Romeos represent that they have received no notice of any violation of any applicable federal, state or local statute or regulation, including without limitation, any applicable building, zoning, environmental protection or other law, ordinance or regulation affecting the Romeo wharf and that to the best of their knowledge there are no such violations.

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants, agree as follows:

1. The District shall buy, and the Romeos shall sell, all of the claims of Romeos, of whatever nature and however based, to ownership of the wharf.

2. The purchase price shall be the sum of \$185,000.00 payable as follows:

- a) The sum of \$18,500.00 upon the execution of this agreement.
- b) The balance by a promissory note executed by the

District, providing that the balance of the purchase price of \$166,500.00 shall be paid over a period of ten (10) years in monthly installments of \$1,890.57. Interest on the balance due on the note shall be paid at the rate of six and one half (6.5%) percent per annum. All payments on the note shall be applied first to interest accrued and then to principal.

c) Payments shall be made on the first day of the month following the close of escrow of this agreement and on the first day of each month thereafter until the full amount of the note is paid.

d) Payment shall be made c/o Stella Riccio, 1621 Greenwich Street, San Francisco, CA 94123, or such other place designated in writing by the Romeos.

e) This note shall provide that the payee shall pay a late charge of ten (10%) percent per annum on the amount of any installment due on said promissory note if said installment is not paid for more than thirty (30) calendar days after the due date.

3. In the event District fails to pay any sum then due after thirty (30) days written notice to do so, Romeos may declare this agreement to be terminated. In such an event, all claims to ownership of the wharf that have been transferred to the District pursuant to this agreement, shall revert to the Romeos, and the Romeos shall retain all monies paid to them at the time of termination as payment in full and in satisfaction of any and all

claims for damages arising out of this agreement. In this regard the promissory note given by District for the payment of the balance of the purchase price shall become void and unenforceable.

(4) Until such time as the purchase price is paid in full, District shall maintain sufficient fire and extended insurance coverage for the repair or reconstruction of the wharf in the event it is damaged or totally destroyed. The District shall be the loss payee of said insurance, provided, however, that should the wharf be totally destroyed and the District elects not to rebuild it, then the insurance proceeds shall be paid to the Romeos in satisfaction of any unpaid balance on the promissory note. Any insurance proceeds that are not required to pay the balance due on the promissory note shall be paid to the Harbor District. The District shall maintain liability insurance for claims arising from the condition of the Wharf and shall indemnify and hold harmless the Romeos from any claim for damage emanating from the condition of the wharf and from any claim for damage or injury occurring on the wharf not caused by the negligence of the Romeos. District shall deliver to Romeo, at the close of escrow certificates of insurance evidencing the above referred to insurance coverage. District shall bear the risk of loss after close of escrow subject to its right to seek damages and/or indemnity from any other party that causes such loss,

5. Romeos guarantee to District that there are no other valid claims to ownership of the wharf and indemnify District for any

loss that may arise from such claims and shall defend District in any lawsuit to assert such claims at Romeos' expense.

6. District and Romeos are currently parties to that certain Lease dated September 12, 1991 attached hereto as Exhibit B. The parties agree that said Lease shall terminate upon the close of escrow of this transaction and that neither party will be bound by the terms and conditions of said Lease beyond the date of close of escrow of this Agreement. Upon the termination of said Lease, District hereby agrees to release any interest in or right to the security deposit currently on deposit at Bank of America, NT&SA, Columbus Branch, No. 268, San Francisco, CA., in account #02681-04985 and account #02688-00893.

7. District waives compliance with the provisions of the California Commercial Code relating to bulk transfers in connection with this sale of the claims of title to the Romeo Wharf, subject to the indemnities of Romeos contained in this Agreement. Nothing in this paragraph shall estop or prevent either Romeos or District from asserting as a bar or defense to any action or proceeding brought under that law that it does not apply to the sale contemplated under this Agreement.

8. District has conducted an inspection of the premises and is purchasing the Romeo Wharf in an "AS IS" condition.

9. This Agreement shall not be deemed executed and shall have no legal effect unless there is executed concurrently herewith an agreement granting a nonrevocable license to District to traverse the lands of the Romeo Packing Co., a California

corporation for the purpose of ingress and egress to the said wharf, and District has obtained title insurance providing that District has title to said License in the amount of \$185,000.00.

10. All costs and expenses incurred in the sale of the Romeos claims to title to the wharf shall be borne by District and Romeos in the following manner:

a) Romeos shall pay the cost of securing title insurance insuring District's License to the right of way described in the License Agreement between the District and the Romeo Packing Co.

b) All real property taxes, if any, shall be prorated as of the date of closing this sale.

c) District shall pay the cost of recording all instruments required to be recorded.

d) District and Romeos shall pay any and all costs and expenses arising from the performance of this Agreement and the License Agreement, excluding income tax, unless otherwise specifically excepted, in equal proportions.

e) It is the position of the parties that no sales tax should be imposed on this transaction. However, in the event a sales tax is properly imposed, the parties agree that each shall bear one-half of said tax.

11. The District and Romeos shall jointly open an escrow with Old Republic Title Company in Redwood City, California, for the purpose of closing this transaction and the issuance of title insurance. The escrow costs, not including the premiums for title

insurance, shall be borne equally by the parties.

12. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

13. a) All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the fifth day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and property addressed as follows:

To Romeos at: c/o Stella Riccio
1621 Greenwich Street
San Francisco, CA 94123

To District at: General Manager
San Mateo County Harbor District
PO Box 39
El Granada, CA 94018

b) Any party may change its address for

purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

14. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any of the provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

15. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. This Agreement has been drafted jointly by the District and the Romeos.

17. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

18. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California as applied to

contracts that are executed and performed entirely in California.

19. Time is of the essence in this Agreement.

20. This agreement shall be binding and shall enure to the benefit of the heirs, executors, administrators, successors and assigns of District and Romeos except as otherwise provided in this agreement.

21. This agreement shall be recorded with the County Recorder of San Mateo County, California.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on this ____ day of _____, 1996.

DISTRICT

SAN MATEO COUNTY HARBOR DISTRICT

By _____
SALLY R. CAMPBELL, President

ROMEOS

TONY ROMEO

ALBERT ROMEO

STELLA RICCIO

DONNA GHAFOURI, as Trustee of the Dominic
Romeo and Vera Romeo Trust

APPROVED AS TO FORM:

KENNETH M. DICKERSON,
Attorney for District

JOHN C. RICCIO,
Attorney for Romeos