

Aufmuth, Fox & Baigent

A Professional Corporation

Attorneys

November 8, 1988

Dr. Virgus Streets
Redevelopment Director
Community Development
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303

Re: Agreement to Negotiate Exclusively/University Circle

Dear Virgus:

As we previously discussed, enclosed is a draft Agreement for Extension of the Term of the Agreement to Negotiate Exclusively for review by the Redevelopment Agency and its counsel. As we discussed, with the likely litigation on the horizon and the unexpectedly long period of time it has taken us to get to the Redevelopment Plan stage of approvals, we do not feel that the September 15, 1989 deadline is adequate to allow sufficient time to address all of the concerns that will need to be addressed in order to negotiate a final project for the University Circle Redevelopment Area that meets the needs of the City of East Palo Alto. The Agreement to Negotiate Exclusively specifically contemplated the possibility of further extensions which we all agreed would not be unreasonably withheld.

Please follow up as may be necessary to finalize this Agreement to Extend at your earliest convenience. Let me know if I can be of any assistance.

Very truly yours,

AUFMUTH, FOX & BAIGENT
A Professional Corporation

By: 

Julia M. Baigent, Esq.

JMB:sdr

cc: Mr. Joaquin de Monet
Mr. William Skibitzke
Mr. Walter Miller

AGREEMENT FOR EXTENSION OF TERM
OF AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Agreement for Extension of Term of Agreement to Negotiate Exclusively ("Agreement to Extend") is entered into effective as of the _____ day of November, 1988, by and among the Redevelopment Agency of the City of East Palo Alto, a public body, corporate and politic (the "Agency"), the City of East Palo Alto, a municipal corporation (the "City") and De Monet Industries, Inc., a California corporation ("Redeveloper").

RECITALS:

A. On March 17, 1987, the Agency, City and Redeveloper entered into that certain Agreement to Negotiate Exclusively (the "Agreement"), wherein the parties agreed, among other things, to negotiate in good faith to enter into a Disposition and Development Agreement and Statutory Development Agreement, for the development of a redevelopment project (the "Project") for certain property within the City bounded by the University Avenue over-pass, Woodland Avenue, Manhattan Avenue and Highway 101 (the "Site").

B. Pursuant to Paragraph I.A of the Agreement, Agency, City and Redeveloper extended the term of the Agreement (and the negotiation period as described therein) until September 15th, 1989.

C. Certain actions required to be completed by the Agency and the City prior to entering into any Disposition and Development Agreement or Statutory Development Agreement among

the Agency, the City and Redeveloper, including without limitation the approval and adoption of a Redevelopment Plan for the Site, have not to date been completed without fault on the part of the Agency, the City or the Redeveloper.

D. In order to allow sufficient time for the parties to negotiate a Disposition and Development Agreement and Statutory Development Agreement and such other approvals and permits as may be necessary for the Project pursuant to the intention of the Agreement, the Agency, City and Redeveloper have agreed to extend the Term of the Agreement on the terms and conditions herein set forth.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All terms capitalized herein shall have the same meaning as defined in the Agreement unless otherwise specifically defined in this Agreement to Extend.

2. Extension of Term. The Term of the Agreement (and the negotiation period as defined therein) is hereby extended until the later of: (a) September 15, 1990; or (b) eighteen (18) months from the date that there is a final binding determination in a court having jurisdiction of any legal or administrative proceedings brought by any party to challenge, question the validity of or otherwise affect any approvals or actions by the Agency or City which are necessary or reasonably required prior to commencement of construction of a Project by Redeveloper

("Legal Action"), and lapse of all rights to appeal, seek writ of mandate or otherwise challenge, seek reversal of or question such final determination. Furthermore, Redeveloper's right of first opportunity pursuant to Paragraph V of the Agreement shall exist for a period of five (5) years from the end of the Term of the Agreement as herein modified.

3. Redeveloper's Obligations. Paragraph I.D of the Agreement is hereby modified to provide that Redeveloper shall advance to the Agency up to One Hundred Fifty Thousand Dollars (\$150,000) for the Agency's and/or City's actual and reasonable costs and expenses incurred for attorneys necessary to be employed by the Agency and/or City to answer or defend any Legal Action as set forth in this Paragraph. Redeveloper shall have approved the budget for costs and expenses for any such Legal Action which shall be prepared by the Agency in advance of the Agency and/or City incurring the same. Upon approval of said budget, Redeveloper shall advance the above-stated monies in six (6) good faith deposits with the Agency in the amount of Twenty-Five Thousand Dollars (\$25,000) each for use in payment of budgeted approved costs and expenses. Redeveloper shall be consulted regarding, and have the right to approve the legal counsel to be employed by the Agency and/or City, which approval shall not be unreasonably withheld. At such time as there remains less than Five Thousand Dollars (\$5,000) of each such deposit after payment of the budgeted approved costs and expenses, Redeveloper shall make the next good faith deposit with

the Agency of Twenty-Five Thousand Dollars (\$25,000). In the event Redeveloper determines in its business judgement that the likelihood for success in any such Legal Action, time necessary to complete such Legal Action or cost for such Legal Action or proceedings do not justify continued pursuit thereof the Agency and/or City, or otherwise determines in its business judgement that pursuit of such proceedings is not desirable, Redeveloper may deliver written notice thereof to the Agency. Upon receipt of such written notice, the Agency shall promptly instruct its legal counsel to cease pursuit of such Legal Action excepting only those mandated to be completed by law. Redeveloper shall be responsible only for those costs and expenses reasonably incurred up to the date of receipt by Agency of said notice, except as otherwise agreed to by Redeveloper in its discretion in writing. The Agency and City shall have a written agreement with any legal counsel representing them setting forth that such legal counsel shall not incur costs and expenses in excess of One Hundred Fifty Thousand Dollars (\$150,000), or such lesser sum as Redeveloper, Agency and such counsel shall agree, without prior written notice to and written approval from the Agency and Redeveloper. Redeveloper shall be provided with copies of all invoices and statements to be paid from the above-referenced funds concurrently with the Agency's or City's receipt of the same. All such expenditures shall be reconciled with Redeveloper on a monthly basis.

4. Notices. For purposes of the Agreement as herein modified, notices shall be deemed received when personally delivered, or forty-eight (48) hours from the date postmarked thereon after deposit for delivery with Federal Express or other national courier or after deposit in the United States Mail, registered or certified, return receipt requested, addressed as follows:

If to Agency:

East Palo Alto Redevelopment Agency
2415 University Avenue
East Palo Alto, California 94303

Attention: Executive Director of Redevelopment

If to Redeveloper:

De Monet Industries, Inc.
1450 Fashion Island Boulevard
San Mateo, California 94404

Attention: Mr. Joaquin de Monet
Mr. William Skibitzke

With a copy to:

Julia M. Baigent, Esq.
Aufmuth, Fox & Baigent
400 Hamilton Avenue
Suite 205
Palo Alto, California 94301

5. Acknowledgement of Intent. This Agreement to Extend shall not limit the Agency's or the City's discretion in its findings or actions as may be necessary for any of the Approvals. This Agreement to Extend does not constitute a disposition of property or exercise of control over property by the Agency or City and does not require a public hearing. Nothing herein shall be deemed to obligate the Redeveloper to third parties, including

without limitation any legal counsel employed by the Agency and/or City, and any such liability is hereby expressly disclaimed and denied.

6. Ratification. Except as set forth above, the Agreement and its terms and provisions are hereby ratified and confirmed

and shall remain in full force and effect for the Term of the Agreement as extended herein.

This Agreement to Extend is hereby executed effective as of the date set forth above.

Redevelopment Agency of the City of East Palo Alto, a public body corporate and politic

By: _____
Chairperson

By: _____
Executive Director

Attest:

By: _____
Secretary

City of East Palo Alto, a municipal corporation

By: _____
Mayor

By: _____
City Clerk

Approved as to Form:

Legal Counsel

De Monet Industries, Inc., a California corporation

By: _____
Joaquin de Monet
President