

What's The Real Deal



Mayor William Vines

By William Vines

Mayor of East Palo Alto
A recent press release indicated that the City of East Palo Alto be proud of the Development Agreement with DeMonet Industries. This press release listed out several reasons for this optimism. There must, in my opinion, be facts to back up assumptions of such importance. I believe that the best way to assess this actual benefits that are to be anticipated for the City of East Palo Alto is to have a look at the Development Agreement and see what it says.

"6. Replacement Housing. Agency shall provide, or cause to be provided, replacement housing for the Project pursuant to its Replacement Housing Plan. If Agency desires Developer to provide replacement housing, Agency and Developer shall negotiate in good faith to arrive at a plan acceptable to Agency and Developer for implementation and construction of replacement housing which shall be economically feasible as reasonably determined by Agency and Developer. Failure to the parties to reach a mutually acceptable plan shall not be a default hereunder by either party, or entitle either party to terminate this Agreement.

Page 9
"3. City Parcel. City holds a real property interest in two and seventy-nine hundredths (2.79) acres ("City Parcel") comprising the Site, which are public streets or rights of way. On the

Closing Date, in consideration for this Agreement, Agency shall cause City to transfer to Developer, at no cost to Developer, by Deed or other appropriate documentation its interest in the City Parcel. Developer shall have the right to negotiate with City an agreement pursuant to which City shall transfer the City Parcel to Developer.

"6. Distribution. The Net Profits on Sale shall be distributed eighty percent (80%) to Developer and twenty percent (20%) share there shall be first reimbursed to Developer the amount of the Community Redevelopment Fee paid or payable pursuant to Sections 801.1, 801.2, 801.3 and 801.4 of this Agreement (excluding therefrom, however, the amount of the Community Redevelopment Fee constituting an Agency Advance pursuant to Section 902.2 hereof). By way of example, in the event Net Profits on Sale equal Fifty Million Dollars (\$50,000,000.00), as defined by this Section 801.5, Developer's eighty percent (80%) share would be Forty Million Dollars (\$40,000,000.00) and Agency's twenty percent (20%) share would be Ten Million Dollars (\$10,000,000.00). From Agency's Ten Million Dollars (\$10,000,000.00), Developer would be entitled to deduct Seven Million Two Hundred Thousand Dollars (\$7,200,000.00), less that portion of the Community Redevelopment Fee constituting an Agency Advance

pursuant to Section 902.2 hereof, as a reimbursement of the Community Redevelopment Fee, and Agency would receive a net Two Million Eight Hundred Thousand Dollar (\$2,800,000.00) payment plus that amount of the Community Redevelopment Fee constituting an Agency Advance pursuant to Section 902.2 hereof, and its share of Net Profits on Sale. If the Phases are sold separately and the full Community Redevelopment Fee has not been recovered on the sale of the Phase, the remainder of the Community Redevelopment Fee (excluding the amount constituting an Agency Advance pursuant to Section 902.2 hereof), shall be recovered by Developer from Agency's share of Net Profits on Sale from any sale of the remaining Phases until received in full. If Agency's twenty percent (20%) share of Net Profits on Sale is less than the amount of the Community Redevelopment Fee, in no event shall Agency be required to pay Developer any such shortfall.

"7. No Partnership. Agency and Developer hereby acknowledge and agree that they do not intend to be partners by reason of this agreement or the provisions of this Section 800. Agency acknowledges and confirms that Agency and Developer have conferred specifically concerning the contingent and uncertain nature of Agency's interest in Net Profits on Sale, and Agency understands and agrees that Agency's interest in the Net Profits on Sale is highly speculative in nature, and the payment thereof is dependent on a number of contingencies and factors that may not be within either party's control. Developer has not made any representations to Agency regarding whether any Net Profits on Sale will be generated by the Project or any part thereof.

"8. Sale in Phases-Allocation of Costs. In the event the South Office Building and the North Office Building and Retail Pavilion are sold separately, the Net Profits on Sale shall be calculated with respect to the Phase sold, and to the extent that the Project Costs, although allocable to the Phase sold, are not precisely determined for the Phase, the Project Costs shall be allocated to the Phase sold based on the square footage of the legal parcels of land underlying the South Office Building and the North Office Building and Retail Pavilion.

"C. [Section 803] Affirmative Action-Jobs Developer shall use its best efforts to comply with the City's following jobs affirmative action programs.

"1. Jobs Training. City is in the process of establishing a jobs training program ("Training Program") which shall require compliance with the provisions thereof by all public and private entities desiring to do business with the City. Developer shall cooperate in good faith to implement the reasonable requirements of any Training Program upon commencement of construction of the first Phase of the Project.

"2. First-Source Local Hiring. City is preparing a final first-source local hiring program ("Hiring Program") which requires compliance with the provisions thereof by all public and private entities desiring to do business with the City. Developer shall cooperate in good faith to implement the reasonable requirements of the Hiring Program in effect as of November 1, 1990.

"3. Equal Opportunity Policy. Developer shall comply with the provisions of the City's Equal Opportunity Policy, the terms of which are incorporated by reference herein.

"F. [Section 806] References to Re-Entry Tenants. Developer shall consider granting preferences for space to business tenants ("Re-Entry Tenants") relocated from the Site and desiring to re-enter the Project, provided that the Re-Entry Tenants' businesses are compatible with other uses in the Project, and that the Re-Entry Tenants meet all reasonable and standard tenant qualifications; subject, however, to (i) space availability, and (ii) priorities for uses agreed upon by Agency and Developer.

"IX. [Section 900] FINANCIAL OBLIGATIONS

"A. [Section 901] Agency Obligation. Developer shall pay all costs and expenses associated with the Project and required to be paid pursuant to this Agreement, except those costs relative to the Hotel Parcel to be reimbursed to Developer by Agency pursuant to Section 902 below.

"B. [Section 902] Agency Advances. Agency shall reimburse to Developer the pro rata share of the following costs allocable to the Hotel Parcel up to an aggregate amount of Six Million Two Hundred Thousand Dollars (\$6,200,000.00) ("Agency Ad-

vances"), subject to the limitation set forth in Section 903 hereof. The pro rata share of the following amounts allocable to the Hotel Parcel shall be determined on the basis of the square footage of the Hotel Parcel over the total square footage of the Site (excluding CalTrans or other governmental or municipal easements and rights of way, if any):

"C. [Section 903] Reimbursement Agreement. The Agency Advances shall be reimbursed to Developer pursuant to a Reimbursement Agreement, Assignment of Interest and Fiscal Administration Agreement (collectively, "Reimbursement Agreement") in substantially the form and content shown on Exhibit I and incorporated herein by this reference; provided that for thirty (30) days after execution by both parties of this Agreement, Agency and Developer may make changes requested by either party's bond counsel to the Reimbursement Agreement, provided further that the changes do not materially change the substance thereof or the rights or obligations of the parties thereunder. The Reimbursement Agreement shall be delivered at Close of Escrow to Developer, and provides for reimbursement from tax increment for Agency Advances made to the Closing Date. All Agency Advances made from and after the Closing Date to be reimbursed through the Reimbursement Agreement shall bear interest at the Interest Rate, but in no event shall the total sum to be reimbursed by Agency, including interest thereon at the Interest Rate, exceed Six Million Two Hundred Thousand Dollars (\$6,200,000.00).

"4. Developer's Proposal Rejected. If Developer's alternative development proposal for the Hotel Parcel is not selected by Agency, Developer shall sell the Hotel Parcel to the Hotel Parcel Developer selected by Agency for at least the then fair market value of the Hotel Parcel determined by the procedures set forth in Section 609 hereof, together with the costs of all improvements constructed thereon and connected therewith, but in any event not less than the Project Costs allocable to the Hotel Parcel, and otherwise in accordance with terms and conditions, including a date for closing escrow for the sale, acceptable to Developer and the Hotel Parcel.

"H. [Section 1008] Amend-

ment of Redevelopment Plan. Agency shall not implement amendments to the Redevelopment Plan in any manner which would affect Developer's rights under this Agreement including, without limitation, the right to finance, acquire, construct, develop or use the Site pursuant to this Agreement or the SDA without prior written consent of Developer. Agency explicitly reserves to itself the right to amend the Redevelopment Plan to expand the boundaries of the Project Area, and, subject to the foregoing sentence, as to any other issues not affecting Developer's rights under this Agreement with the SDA.

p.54

"B. [Section 1102] Alternative Development Proposals. If, at the end of the Feasibility Period, Agency and Developer have determined that the Hotel is not an economically feasible use for the Hotel Parcel, the provisions of Section 1007.2 shall apply. If the Hotel Parcel developer selected to acquire the Hotel Parcel and perform the obligations hereunder relating to the Hotel Parcel should for any reason other than as a result of Developer's default fail to acquire the Hotel Parcel, the provisions of Sections 1007.3 and 1007.4 hereof shall apply."

p.55

The major anticipated benefit to the City is hinged on the development of a hotel. It is worth noting that throughout the DDA, the infeasibility of the hotel is a principal consideration. Therefore, given no assurance whatsoever that we will reap any significant benefits from a hotel that will not be built, isn't it reasonable to insist that the hotel be as definite as the office building?

There has been, over the years, many different ways used to dispossess and disenfranchise the citizens of East Palo Alto. For example, the county locating the majority of the junkyards and the county's major hazardous waste treatment plant in East Palo Alto; the City of Palo Alto annexing our land to the south and the City of Menlo Park annexing our land to the north. None of these debilitating acts are more undesirable than to have our own city leadership give away opportunity for significant benefit to accrue to its citizenry. The Demonet University Circle project looks beautiful on paper. The question that we must answer is, when do we get our fair share of the economic pie?