

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT TO NEGOTIATE EXCLUSIVELY (the "Agreement") is entered into this 17TH day of March, 1987 by and between the REDEVELOPMENT AGENCY OF THE CITY OF EAST PALO ALTO, a public body, corporate and politic (the "Agency"), duly created, established and authorized to transact business and exercise its powers under and pursuant to the Community Redevelopment Law, Part I of Division 24 of the Health and Safety Code of the State of California (the "Community Redevelopment Law"), and THE CITY OF EAST PALO ALTO, a municipal corporation (the "City"), each having its office at 2415 University Avenue, East Palo Alto, State of California 94303 and DE MONET INDUSTRIES, INC., a California corporation (hereinafter called "Redeveloper"), having an office for the transaction of business at 1450 Fashion Island Boulevard, San Mateo, State of California 94404.

RECITALS:

WHEREAS, Redeveloper desires to make a proposal for redevelopment of an area of the City in pursuit of the objectives stated in the City's General Plan; and

WHEREAS, the general purpose of this Agreement is to enter into a period of exclusive negotiations among City, Agency and Redeveloper to reach agreement on, and enter into, a Disposition and Development Agreement (as defined below) and Statutory Development Agreement (as defined below) within the broad parameters set forth in this Agreement consistent with the respective goals and objectives of City, Agency and Redeveloper.

THE AGENCY, CITY AND THE REDEVELOPER HEREBY AGREE AS FOLLOWS:

I. NEGOTIATIONS

A. Negotiation Period.

The term of this Agreement shall be from the date hereof until September 15, 1988 (the "negotiation period"). During the negotiation period of this Agreement, Agency and Redeveloper shall seek in good faith to negotiate a Disposition and Development Agreement (as defined below), and the City and Redeveloper shall seek in good faith to negotiate a development agreement ("Statutory Development Agreement") pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7 of the California Government Code, Sections 65864 et seq., for the development of that certain area of the City bounded by the University Avenue overpass, Woodland Avenue, Manhattan Avenue and Highway 101, as more particularly shown on Exhibit A attached hereto and incorporated herein (the "Site"). Redeveloper shall cause to be prepared a metes and bounds legal description of the Site for attachment to this Agreement as part of Exhibit A, at Redeveloper's sole cost. The Site constitutes a portion of an area of the City which has been designated for study as a redevelopment project area. The general development concept contemplated by the Redeveloper for the Site is approximately 1,200,000 - 1,500,000 square feet of office and/or hotel and retail uses, along with necessary parking, landscaping and on-site and off-site improvements (the "Development"), to be built in three (3) to six (6) phases over four (4) to ten (10) years.

However, it is understood and agreed that the scope of the Development is subject to negotiation during the negotiation period.

If a mutually satisfactory Disposition and Development Agreement has not been negotiated and executed by Redeveloper and Agency, and a mutually satisfactory Statutory Development Agreement has not been negotiated and executed by Redeveloper and City, each within the negotiation period, then this Agreement shall automatically terminate at the end of such period, provided that either Redeveloper, Agency or City shall have the right to extend the term of this Agreement for up to one (1) additional year if failure to enter into a Disposition and Development Agreement and/or Statutory Development Agreement results from delays for any reason in processing or obtaining necessary discretionary approvals or permits for the Development (the "Approvals"). City, Agency, and Redeveloper shall not unreasonably withhold consent to reasonable requests by Redeveloper, City or Agency, as applicable, for additional extensions of the term of this Agreement.

B. Good Faith Negotiations.

The Redeveloper and the Agency agree to negotiate in good faith during the term of this Agreement to prepare an agreement (the "Disposition and Development Agreement") to be entered into between Redeveloper and Agency. The purpose of the negotiation shall be for the disposition by Agency to Redeveloper of certain real property in the Site, if necessary (Redeveloper

to continue to use reasonable efforts to enter into agreements with owners of property in the Site which provide for the direct purchase of such property from such owners upon obtaining all Approvals), and for construction and development by Redeveloper of the Development. Agency agrees (for the negotiation period) not to negotiate with any other person or entity regarding the disposition or development of the Site for any purpose.

Redeveloper and City agree to negotiate in good faith during the term of this Agreement to prepare a Statutory Development Agreement. This negotiation shall be for the development of the Site and construction and development of the redevelopment project on the Site. City agrees (for the negotiation period) not to negotiate with any other person or entity regarding development or construction of the Site for any purpose.

C. Initiation and Processing of Approvals.

Agency and City agree to undertake and diligently process during the term of this Agreement all actions, surveys, studies and procedures necessary to finalizing and granting the Approvals, including without limitation those necessary to establish a redevelopment project area which includes the Site under the Community Redevelopment Law, to establish a Redevelopment Plan for the Site, and to prepare an Environmental Impact Report. The foregoing shall not limit City's or Agency's discretion in its findings or actions, but is an agreement to undertake the proceedings necessary for exercising such

discretion in good faith and in an expedient and diligent fashion.

D. Initial Deposits to Agency and/or City.

Redeveloper shall pay to the City the sum of One Hundred Eighty Thousand Dollars (\$180,000) and to Agency the sum of Twenty Thousand Dollars (\$20,000) for an aggregate payment of Two Hundred Thousand Dollars (\$200,000) as consideration to the City and Agency for entering into this Agreement within five (5) business days from full execution and delivery of this Agreement. Redeveloper agrees that it shall advance to the Agency and/or City up to Two Hundred Thousand Dollars (\$200,000), as provided below, for the Agency's and/or City's actual and reasonable costs and expenses incurred for outside consultants, independent contractors, and additional staff necessary to be employed by the Agency and/or City to undertake the proceedings, actions and studies for the Development and the Site contemplated by this Agreement. Redeveloper shall have approved such costs and expenses pursuant to a written budget (the "Budget") to be prepared by Agency in advance of the Agency and/or City incurring the same. It is expressly agreed and understood that costs for the surveying and metes and bounds description of the redevelopment project area which includes the Site shall be included in the Budget. Upon approval of the Budget by Redeveloper, Redeveloper shall advance the Two Hundred Thousand Dollars (\$200,000) in four (4) good faith deposits with Agency in the amount of Fifty Thousand Dollars (\$50,000) each, for use in

payment of budgeted approved costs and expenses. At such time as there remains less than Ten Thousand Dollars (\$10,000) of each such deposit after payment of approved costs and expenses, Redeveloper shall make the next good faith deposit with Agency for budgeted costs and expenses in the amount of Fifty Thousand Dollars (\$50,000). After exhaustion of the full Two Hundred Thousand Dollars (\$200,000) so deposited by Redeveloper in accordance with this Paragraph, further deposits or payments by Redeveloper for use by Agency or City shall be as agreed to by Redeveloper in its sole discretion. In the event Redeveloper elects not to pay additional necessary costs for undertaking the proceedings, actions and studies required by this Agreement to be undertaken by Agency and/or City, Agency and/or City shall have the right to terminate this Agreement by written notice to Redeveloper. Upon such termination, Redeveloper shall be responsible for all costs and expenses incurred for budgeted work performed and budgeted costs which became payable prior to such termination, and shall be entitled to a return of any of the deposits that have not been so applied. Upon delivery of notice of termination, the City and Agency shall have cancelled all budgeted work payable from the deposits to minimize further costs to Redeveloper. Agency or City shall enter into written contracts with all consultants and independent contractors to be paid from such funds, which contracts shall state the total amount to be paid to such consultants or independent contractors, or if such persons are to be paid on an hourly basis, such

contracts shall contain a good faith estimate of the charges for services and materials to be provided. Redeveloper, Agency and City shall consult with each other regarding the Agency's and City's outside attorneys, consultants and independent contractors. Redeveloper shall be provided with copies of all invoices and statements to be paid from such funds concurrently with Agency's or City's receipt of same. All such expenditures shall be reconciled with Redeveloper on a monthly basis.

E. Additional Deposits to City and/or Agency. In the event the Disposition and Development Agreement and Statutory Development Agreement are executed by Redeveloper, City and Agency, as appropriate, and all Approvals have been granted to Redeveloper, Redeveloper shall deposit with City or Agency Two Hundred Thousand Dollars (\$200,000) as additional consideration for the City and Agency entering into this Agreement and performing the terms of this Agreement, within five (5) days from receipt by Redeveloper of the Approvals and full execution and delivery by the appropriate parties of the Disposition and Development Agreement and Statutory Development Agreement. Development fees or other charges or exactions in connection with Development shall be negotiated as part of the Disposition and Development Agreement and/or Statutory Development Agreement.

II. PURCHASE PRICE, RENTAL AND/OR OTHER CONSIDERATION

The purchase price, rental and/or other consideration to be paid by the Redeveloper under the Disposition and Development

Agreement will be established by negotiation between Agency and Redeveloper.

III. REDEVELOPER'S PROPOSED DEVELOPMENT

A. Architectural Concept.

Design and architecture of the Development will be developed during the negotiation of the Disposition and Development Agreement and Statutory Development Agreement and shall be submitted by Redeveloper to Agency and City through basic concept drawings and preliminary schematic plans for Agency and City approval.

B. Redeveloper's Findings, Determinations, and Studies, Reports, Plans and Drawings.

As requested by Agency and City, from time to time, the Redeveloper agrees to make periodic oral progress reports and periodic written reports advising Agency and City on all matters and all studies being made to the extent that they do not include confidential matters. Redeveloper anticipates, and agrees to use best efforts to provide for, the employment of City residents in the construction and development of the Site.

IV AGENCY'S RESPONSIBILITIES

A. Redevelopment Project Financing.

Property tax increment financing as negotiated between the parties during the negotiation period will be utilized as permitted by law in the redevelopment of portions of the Site. The parties shall also explore other financing including but not

limited to benefit and/or improvement assessment districts for qualified improvements.

B. Agency Public Hearing.

If the negotiations between Agency and Redeveloper culminate in a Disposition and Development Agreement signed by the Redeveloper, such an agreement becomes effective only after and if the Agreement has been considered and approved by Agency and City after a public hearing and other procedures as prescribed by law.

C. City Public Hearing. If the negotiations between City and Redeveloper culminate in a Statutory Development Agreement, such an agreement becomes effective only after and if the Agreement has been considered and approved by City after a public hearing and other procedures as prescribed by law.

V PURPOSE OF THIS AGREEMENT

By its execution of this Agreement the Agency is not committing itself to or agreeing to undertake: (a) a disposition of land to the Redeveloper either within or outside a Site; (b) the exercise of jurisdiction over land outside an adopted Site; or (c) any other acts or activities requiring the subsequent independent exercise or discretion by the Agency, the City, or any agency or department thereof. It is specifically acknowledged that the proposed Development requires that the Site be designated a redevelopment project pursuant to the Community Redevelopment Law, and that the City and Agency must make certain findings in their sole discretion and judgement to make such

designation. The parties recognize that one or more of the conditions to the Redeveloper's proposed Development may fail to be met as a result of subsequent studies, reviews and proceedings involving the exercise of discretion by the Agency, City or any agency or department thereof. This Agreement 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. Agency and City execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the Agency and City as to any Disposition and Development Agreement and Statutory Development Agreement and all proceedings and decisions in connection therewith.

In the event for any reason (other than failure by Redeveloper to pay the sums required pursuant to this Agreement or to negotiate in good faith) all Approvals for the Development are not granted by the City and/or Agency, and within five (5) years from the date hereof the City and/or Agency subsequently desires to approve any project within the Site area, Redeveloper shall be given first opportunity to be the developer to do such project on the same terms and conditions as proposed for such project. However, in the event that the Approvals are delayed by events beyond the control of any party hereto, the time period for such right of first opportunity shall be extended for an additional two (2) years for a total of seven (7) years from the date hereof. City and Agency shall promptly notify Redeveloper in

writing of any such project proposed, and Redeveloper shall respond in writing within thirty (30) days from receipt of such notice as to whether or not Redeveloper desires to exercise its right of first opportunity. The foregoing shall not apply to projects involving single existing parcels, or projects proposed on land area of 15,000 square feet or less. This Paragraph shall survive the termination of this Agreement.

VI MISCELLANEOUS

This Agreement shall be governed by and construed in accordance with California law. This Agreement shall be binding upon and shall inure to the benefit of the parties, and their successors and assigns. Redeveloper may withdraw the Development and terminate this Agreement upon written notice to the Agency at any time, in which event any advances made by Redeveloper under Section I.D shall be returned to Redeveloper after applying such advances to budgeted costs and expenses incurred by Agency or City prior to such termination. Neither Agency nor City may terminate this Agreement without Redeveloper's prior written consent.

(continued on Page 12)

DATED this 19th day of March, 1987.

REDEVELOPMENT AGENCY OF THE CITY OF
EAST PALO ALTO, a public body,
corporate and politic

By: *E. A. Mouton*
Chairperson

By: *James E. White*
Executive Director

ATTEST:

"AGENCY"

By:

Russell V. Jones
Secretary

CITY OF EAST PALO ALTO, a
municipal corporation

By: *Barbara A. Mouton*
Mayor

By: *James E. White*
City Clerk

APPROVED AS TO FORM:

"CITY"

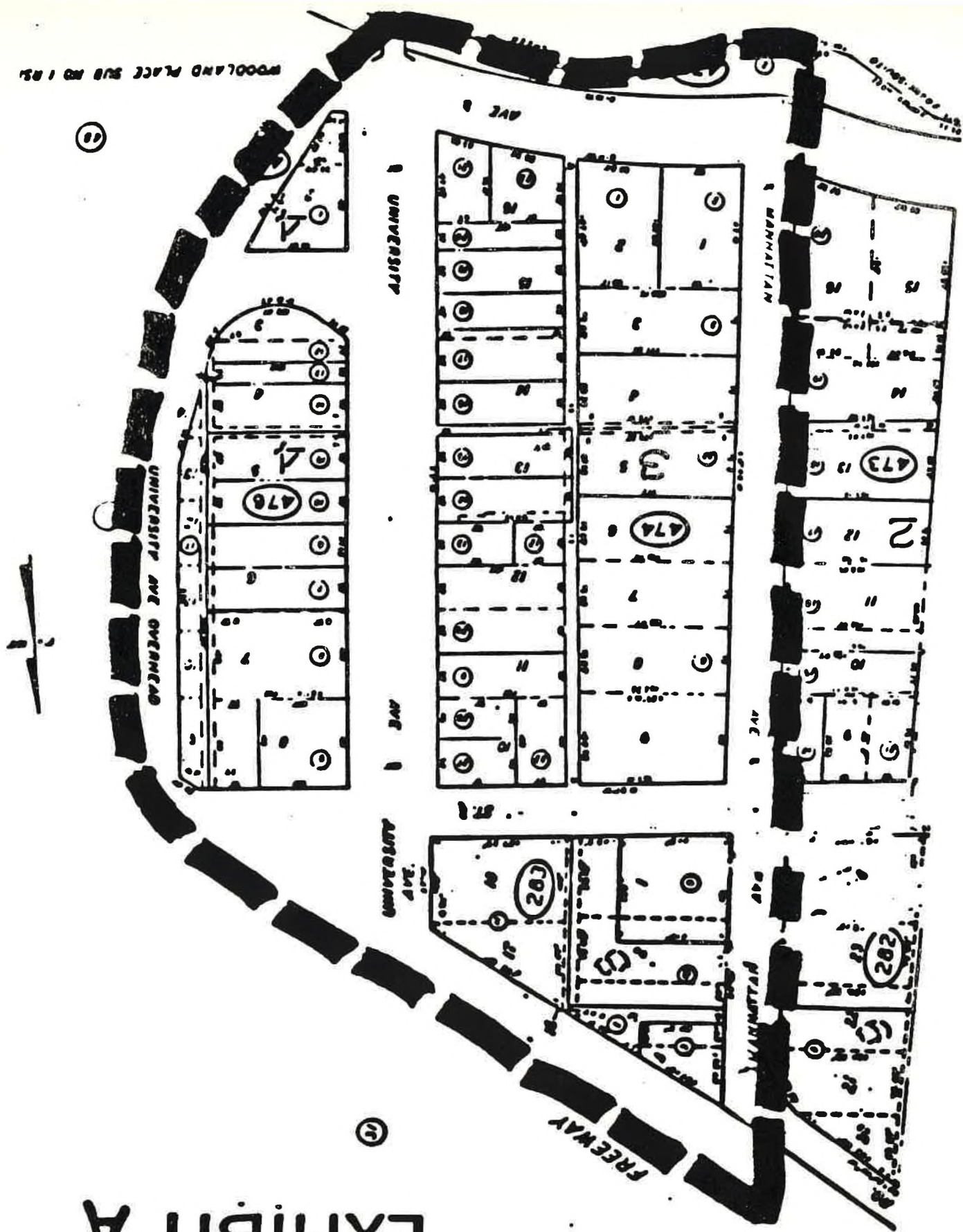
Robert W. Fisher
City Attorney

DE MONET INDUSTRIES, INC., a
California corporation

By: *Joaquin De Monet*
JOAQUIN DE MONET, PRESIDENT

"REDEVELOPER"

EXHIBIT "A"



WOODLAND PLACE SUB NO 1 RS

(6)

(5)