

Project Terms Sheet

Project Name: Hayward Airport Tech Center

Project Sponsor: Montecito Development Company, LLC and a TBD Special Purpose Entity

Sponsor Contact Information: Karl Higgins (619) 888-5525 and email at:
karl@mdevair.com

Aviation

or

Non-Aviation

Business Terms:

New Development

or

Existing Facility

Term: 50 Years

Site: Former California Air National Guard location aka CANG

Option to Extend Term: None, but Right Of First Offer [ROFO] for new lease.

Rent and Fees: A two phase development consisting of:

- **Phase 1**--a 8.8ac +/- site [subject to lease plat creation by the Developer and accepted by the City] suitable for an advanced manufacturing facility or similar industrial use and;
- **Phase 2**—Subject to successful financing, a public safety or civic use on the remaining balance of the site; Without successful financing within a 24 month period from execution of the lease, Developer may propose an alternative use subject to then current General Plan and Zoning.
- Entitlement Period ENA Fee for Phase 1: 10% of the as negotiated ENA Fee annually until:
 - reclassification of the entire site to non-aeronautical use by the FAA;
 - entitlements have been secured from all local, state and federal agencies;
 - all mitigation sites and actual mitigation activities have been approved by all local, state and federal agencies;
 - as an additional consideration, to offset a portion of the ENA fee, the Developer agrees to provide the City with the results of all soils investigations, biological field examinations, engineering analysis and the like, at the sole expense of the Developer.

Developer shall be entitled to offset the cost of its investigations and analyses of the Premises and such offset shall be on a dollar-for-dollar basis, which offset shall be applied against the ENA fee otherwise payable. Developer shall provide City with copies of all invoices related to the request for offsets against the ENA annual fee at least 30 days prior to the due date of the annual ENA fee.

- If, before the date that is twenty-five [25] months following the Effective Date, and despite Lessee's commercially reasonable and diligent efforts, Lessee is unable to obtain Approval from the FAA for reclassification of the land to a non-aeronautical status, then:
 - Lessee may terminate the Lease by delivery of a notice to Lessor of its election to terminate; and thereupon, this Lease shall immediately terminate; or
 - Lessee may elect to delay the Commencement Date by written notice to Lessor until such time as the Approval from the FAA to reclassify the site to non aeronautical use has been obtained from the FAA, provided that Lessee has demonstrated to Lessor that Lessee has diligently pursued the FAA Approval. This includes timely submissions of all applications, supporting materials, and the like. Such determination by Lessor to be in its reasonable discretion.
- Construction Period Rent: \$5,000 per month starting on the effective lease date, defined as the date a grading permit and building permits have been approved by City officials. A total period ending on the 24th month after grading and building permits have been issued by the City and all regulatory and administrative agencies and offices.
- Lease-Up Period Rent: \$7,500 per month starting on the 25th month and ending on the 36th month.
- Ground Rent Operating Period: (\$0.46 per square foot per year) Defined as years 4-50
- Ground Rent Adjustment: Minimum guaranteed rent performance threshold shall be increased by 2.25% annually except on revaluation years.

Revaluation Dates: On anniversary date of lease Operating Period start in Years 11, 21, 31, and 41_

Basis of Rent Revaluations: Value of land, per square foot, with comparable regional use(s) Rent shall be adjusted on each tenth (10th) anniversary date of the Rent Commencement Date (each such date, the "FMV Adjustment Date"), to the fair market rental value of the Property as of the FMV Adjustment Date, such adjustment not to exceed five percent (5%) of the Fixed Rent then in effect

- **Phase 2**—A sublease issued from Developer to a City or public agency as sublessee for an estimated 8ac +/- project to commence once a certificate of occupancy has been issued by the City to the Developer for the Phase 1 building and, subject to successful financing for a public safety or civic use. Then, Developer may, in its sole discretion, elect to begin work on the Phase 2 project in advance of a certificate of occupancy being issued for the Phase 1 building. Without successful financing within a 24 month period from

execution of the lease, Developer may propose an alternative use subject to then current General Plan and Zoning.

- Entitlement Period Fee for Phase 2: 10% of the ENA fee annually until:
 - reclassification of the entire site to non-aeronautical use by the FAA;
 - entitlements have been secured from all local, state and federal agencies;
 - all mitigation sites and actual mitigation activities have been approved by all local, state and federal agencies;
 - as an additional consideration, to offset a portion of the ENA fee, the Developer agrees to provide the City with the results of all soils investigations, biological field examinations, engineering analysis and the like, at the sole expense of the Developer. Developer shall be entitled to offset the cost of its investigations and analyses of the Premises and such offset shall be on a dollar-for-dollar basis, which offset shall be applied against the ENA fee otherwise payable. Developer shall provide City with copies of all invoices related to the request for offsets against the ENA annual fee.
- Construction Period Rent: \$5,000 per month starting on the effective lease date, defined as the date a grading permit and building permits have been approved by City officials. A total period ending on the 24th month after grading and building permits have been issued by the City and all regulatory and administrative agencies and offices.
- Lease-Up Period Rent: \$7,500 per month starting on the 25th month and ending on the 36th month.
- Ground Rent Operating Period: \$13,350 per month Defined as years 4-50 until lease end.

Ground Rent Adjustment: Minimum guaranteed rent performance threshold shall be increased by 2.25% annually except on revaluation years.

Revaluation Dates: On anniversary date of lease Operating Period start in Years 11, 21, 31, and 41_

Basis of Rent Revaluations: Value of land, per square foot, with comparable regional use(s). Rent shall be adjusted on each tenth (10th) anniversary date of the Rent Commencement Date (each such date, the "FMV Adjustment Date"), to the fair market rental value of the Property as of the FMV Adjustment Date, such adjustment not to exceed five percent (5%) of the Fixed Rent then in effect.

Security Deposit Amount: Equal to 3 months operating period ground rent, payable in cash or letter of credit prior to the effective date of the lease. Deposit is refunded at the end of year 1 of the lease.

Improvements: Construction of a public safety or civic space plus parking lot and landscaping. Actual size of building(s) and use to be determined.

Use of Premises:

Allowable: General business park office uses, commercial, public safety and or civic functions and potentially a vehicular fueling station.

Insurance: \$2,000,000 general liability, fire for 100% of the value, workman's compensation if applicable, and vehicle if applicable.

Maintenance: Property to be maintained in a first-class condition with reasonable wear and tear accepted plus include standard lease end maintenance provision. Standard lease end maintenance provision will include a joint inspection in the last 10 years of the lease to determine what maintenance work may be required on the premises that is the sole expense and responsibility of Lessee in Phase 1 or Sublessee in Phase 2. The maintenance work may include, but is not limited to, the following:

- 1) Interior and exterior building improvements, including roof, doors, windows, signage, street facades, painting, flooring, fixtures (i.e., lights, toilets, and sinks), et cetera.
- 2) The replacement of asphalt, and the cut and repair of any concrete features in the truck courts and in the parking lot of the Premises.
- 3) The repair, replacement, and upgrade of HVAC.
- 4) The repair, replacement and upgrade of plumbing and electrical systems in the offices and warehouse areas.

Right Of First Offer: Developer and City agree a Right Of First Offer [ROFO] is hereby granted to Developer or the Special Purpose Entity to propose a new lease of up to 50 years in duration for the property in whole or in part. The offer period will commence at the beginning of Year 35 in the existing lease with the intent any new lease will commence upon the expiration of the original lease.

Other: Lessee may sublease using a lease or rental agreement that has been approved by the City. Lease to include standard assignment, lessor processing fees, encumbrances, and other clauses not specifically called out on this term sheet. Property reverts to the City at the end of the lease term.



Lender Provisions:

1. Definition: Lender

Lender: Refers to each and every lender or an Affiliate of such lender that meets the following criteria:

- Is a beneficiary under a Leasehold Mortgage that has been officially recorded in the office of the County Recorder.
- Has provided notification to the Landlord regarding the recording of the security instrument mentioned in the Leasehold Mortgage.

2. Lender-related definitions:

i. Eligibility Requirements: a. Total assets exceeding \$400,000,000.00; b. Capital, statutory surplus, or shareholder's equity of \$200,000,000.00; c. Regular engagement in the business of making or owning or investing in commercial real estate loans, including mezzanine loans, or developing or operating commercial real estate properties.

ii. Institutional Lender: Defined as any of the following: a. Entities meeting the Eligibility Requirements; b. Investment companies, money management firms, or qualified institutional buyers; c. Investment funds, limited liability companies, limited partnerships, or general partnerships where certain conditions are met.

iii. Leasehold Mortgage: Any mortgage, deed of trust, or other security instrument that: a. Encumbers the Improvements, the Leasehold Estate, or any interest in the Leasehold Estate; b. Is held by an Institutional Lender or other approved subordinate Lender; c. Is subject to the jurisdiction of the courts of the State and not immune from suit.

iv. Permitted Fund Manager: Any Person that is: a. A nationally recognized manager of investment funds investing in debt or equity interests relating to commercial real estate; b. An Institutional Lender investing through a fund with committed capital under management of at least \$200,000,000.

3. Tenant's Right to Mortgage.

Tenant shall have the right, subject to the written approval of the Landlord, to secure a Leasehold Mortgage for the purpose of constructing improvements and/or financing/refinancing existing improvements.

4. Assignment of Mortgage.

Lender may assign the Leasehold Mortgage without the prior approval of Landlord being required; however, the Lender must provide the Landlord with advance written notice of its intent to assign the Leasehold Mortgage. This notice must be sent promptly following the assignment and include specific details such as the name and address of the assignee,

copies of all documents to be recorded, and any other documents relevant to the Leasehold Mortgage as specified by the Landlord.

5. Production of Documents.

The Tenant is obligated to provide the Landlord, in a timely fashion, with true and correct copies of all Leasehold Mortgage documents. This includes any documents related to the creation of the Leasehold Mortgage, as well as any subsequent amendments or supplements and recording data.

6. Mortgage not Assignment.

The Leasehold Mortgage does not constitute a Transfer and the mortgage holder is not considered an assignee of the Lease or of the Leasehold Estate. However, if the Leasehold Mortgage goes into foreclosure or is assigned to another party, that party (the purchaser or assignee) will be considered an assignee of the Lease. Any assignee other than the Lender will still require the Landlord's written consent, just like any other assignment of the lease by the Tenant.

7. Cure Rights: Notice Requirement:

The Landlord is obligated to provide copies of any notices related to default, termination, or matters that could lead to default to every Lender. Similarly, the Tenant must also provide copies of such notices to every Lender upon receiving them from the Landlord. Delivery of notices must follow pre-determined and agreed upon regulations.

8. Notice of Termination and Cure Periods:

If an Event of Default occurs that allows the Landlord to terminate the lease, the Landlord can only proceed with termination if it provides notice to the Lender as specified by the lease terms. During the termination notice period, the Lender has the option to cure the Event of Default to prevent termination of the lease. To exercise this right, the Lender must: i. Notify the Landlord of its intention to cure the default; ii. Pay or ensure payment of all rent and other payments that are due and in arrears, as specified in the termination notice, within the thirty (30) sixty (60) day period; iii. Begin to comply, or demonstrate good faith efforts towards compliance, with any non-monetary requirements of the lease that are in default and can reasonably be fulfilled by the Lender.

9. Performance of Tenant Obligations by Lender:

If the Landlord chooses to terminate the lease due to the Tenant's default, but a Lender takes steps to remedy the default as outlined above, the specified date for termination fixed by the Landlord will be extended. As long as the Lender complies with the requirements outlined in the lease terms, the lease will not terminate.

10. No "Subordination of Fee" Periods

Tenant acknowledges that the Landlord has not agreed to encumber the Landlord's reversionary interest in the Premises or to subordinate the fee.

11. Estoppel Certificate.

The Landlord agrees to provide the Lender with a certificate within fifteen (15) Business Days upon written demand. This Estoppel Certificate confirms: i. Whether the Lease is in full force and effect and unmodified; ii. Whether any notice of termination has been served on the Tenant; iii. Whether the Landlord is aware of any defaults or events that could lead to a default under the Lease; iv. The date to which net rent has been paid; v. Any known defaults under the Lease.

12. No Amendment Without Lender's Consent:

As long as any portion of the loan secured by a Leasehold Mortgage remains unpaid, the Landlord is prohibited from entering into any agreement with the Tenant to modify the lease agreement without the prior written consent of the relevant Lender.

13. Waiver of Noncurable Defaults:

In the event of a foreclosure by the Lender (or its nominee) on the Tenant's interest in the Lease, the Landlord agrees to waive any noncurable defaults that are personal to the Tenant and exist at the time of foreclosure.

14. Consent Requirement for Surrender or Termination:

The Tenant cannot surrender the Lease, terminate the Lease, or surrender any part of the property without the prior written consent of the Lender, except in cases of expiration of the lease term or termination by the Landlord as per the provisions of the Lease.

15. New Lease Upon Termination:

If the Lease is terminated prematurely for any reason, including bankruptcy or insolvency proceedings, the Landlord agrees to enter into a new lease (referred to as a "New Lease") with the Lender or its designee for the remainder of the original lease term.

16. Subordination of Mortgage or Encumbrance:

Any mortgage or encumbrance on the fee title to the property or the Landlord's reversionary interest therein must be expressly made junior, subject, and subordinate to: the Lease, any New Lease, the leasehold estate created under this Lease or any New Lease, all rights of the Tenant and Lender set forth in the Lease.