

C-24-207



California  
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El Segundo, CA 90245  
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April 15, 2024

**VIA E-MAIL**

Jason Behrmann  
The City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

**Re: RESPONSE TO ELK GROVE'S DEVELOPMENT REQUEST FOR PROPOSALS**

**Project Elevate  
Elk Grove, California**

Dear Mr. Behrmann:

This letter of intent (the "**LOI**") will outline the basic terms and conditions pursuant to which CenterCal Acquisitions, LLC or a directly affiliated entity (the "**Purchaser**") would be willing to consider entering into a definitive written agreement (the "**Purchase Agreement**") to purchase from the City of Elk Grove (the "**Seller**") the property described below.

**A. THE PROPERTY.** The Property is an existing property with APN: 132-2110-004 located at the southeast corner of Elk Grove Boulevard and Big Horn Boulevard in Elk Grove, California, consisting of approximately 871,200 square feet of gross land area, shown on the attached Exhibit A and known generally as "**Project Elevate**" (collectively, the "**Property**").

**B. PURCHASE PRICE.** Seller will sell the fee interest in the Property free and clear of all liens and encumbrances, except for those explicitly agreed to by Purchaser during the Initial Determination Period, for an estimated purchase price of Four Million Dollars (\$4,000,000) (based on \$4.59 per square feet of gross land area) plus or minus prorations (the "**Purchase Price**") and subject to adjustment as agreed to between Purchaser and Seller based upon the First Appraisal and Second Appraisal, if applicable. Within approximately sixty (60) calendar days after the Elk Grove City Council's approval of this LOI, Seller shall, at Seller's sole cost and expense, deliver an appraisal of the Property to Purchaser (the "**First Appraisal**") which appraisal shall be prepared by a neutral third-party appraiser with appraisal instructions mutually agreed upon by both Seller and Purchaser. Within fourteen

(14) calendar days after receipt of the First Appraisal, Purchaser shall have the right to: (i) accept the First Appraisal; (ii) engage a neutral third-party appraiser to appraise the Property at Purchaser's sole cost and expense (the "**Second Appraisal**") and forward the Second Appraisal to Seller within approximately forty five (45) calendar days of Purchaser's decision to pursue such Second Appraisal or; (iii) cease negotiations under this LOI, and thereafter neither party shall have any further responsibility to the other. Within thirty (30) calendar days after Seller's receipt of the Second Appraisal, if any, Purchaser and Seller shall either: (i) reach agreement on the Purchase Price for the Property at fair market value based on the First Appraisal and Second Appraisal or; (ii) cease negotiations and discussions under this LOI, and thereafter neither party shall have any further responsibility to the other.

**C. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS.**

Purchaser shall agree to customary real estate conditions precedent to the closing of the transaction. Purchaser shall, however, be under no obligation to close the transaction unless and until the following specific conditions are satisfied or waived in writing by Purchaser. Should all the Purchaser conditions precedent set forth in the Purchase Agreement not be satisfied or waived (in Purchaser's sole and absolute discretion) in writing by Purchaser during the time periods specified, Purchaser shall have the option to terminate the Purchase Agreement in its sole and absolute discretion and, in the event of such termination, the "Deposit" (defined below) shall be returned to Purchaser (with all accrued interest).

1. Initial Determination Period. Purchaser shall have a one hundred twenty (120) calendar day period of time from the opening of escrow (the "**Initial Determination Period**") to conduct studies and investigations and to analyze all documents and matters pertaining to the Property, including, without limitation, a review of the physical condition and economic viability of the Property, and to approve the same in Purchaser's sole and absolute discretion. Seller will have five (5) business days from the opening of escrow to deliver to Purchaser all pertinent documentation outlined in Exhibit B, conditioned upon the same being within Seller's actual possession. Purchaser shall have the right to inspect the Property, with adequate prior notice, during regular business hours to satisfy itself as to all matters including the environmental and geotechnical condition of the Property provided that Purchaser shall not conduct any invasive testing at the Property without Seller's prior written consent.
2. Extended Determination Period. Unless this transaction has been terminated by Purchaser prior to the expiration of the Initial Determination Period, Purchaser shall have the right to extend the Initial Determination Period until all Entitlement Contingencies set forth below are satisfied (the "**Extended Determination Period**"). Such extension shall be effective upon written notice thereof given to Seller not later than two (2) business days prior to the date on which the Initial Determination Period (as it may have been previously extended) would otherwise expire. The Initial Determination Period, and the Extended Determination Period, are individually and collectively referred to as the "**Determination Period**".

3. Estoppel Certificates: Seller agrees to deliver to Purchaser, in form and substance satisfactory to Purchaser, estoppel certificates from each tenant or participant party to any governance instrument encumbering the Property.

**D. ESCROW.** Upon execution of the Purchase Agreement escrow shall be opened at an escrow company designated by Purchaser. Upon opening of escrow Purchaser shall deposit in escrow Two Hundred Thousand Dollars (\$200,000.00) (the “**Deposit**”) for the Property which shall be placed in an interest-bearing account at Purchaser’s election. The Deposit shall be fully refundable during and until the expiration of the Determination Period. Subject to Subsection C(2) hereinabove and Section E hereinbelow the Deposit shall become non-refundable to Purchaser as of the expiration of the Determination Period if Purchaser elects to proceed with the transaction at such time and the Deposit shall be credited to the Purchase Price at Closing; provided, however, that said amount shall be fully refundable to Purchaser in the event (a) of any default by Seller hereunder or the failure of a condition precedent to Closing within Seller’s control, (b) that, despite Purchaser’s diligent pursuit of the Entitlement Contingencies, Purchaser is unable to achieve satisfaction of the Entitlement Contingencies, or (c) that Purchaser is unable to obtain financing for the Proposed Project.

**E. ENTITLEMENT CONTINGENCIES.** Upon completion of the Initial Determination Period, the Purchase Agreement shall provide for the Extended Determination Period for the processing and completion of any and all entitlements and/or permitting to Purchaser’s satisfaction and/or all studies that may be required before permits are issued and before construction may commence. Such conditions shall include (a) Purchaser’s acceptance of the final approved Proposed Project (as hereinafter defined), including any modifications to comply with CEQA (as defined in Section O) requirements, (b) Purchaser’s acceptance of any offsite improvement obligations and any other conditions imposed by the City for the Proposed Project, and (c) receipt of all permits necessary to begin construction of the Proposed Project. No such obligations have been contemplated under the current offer. Such contingency of close shall be referred to as the “**Entitlement Contingencies**”. Purchaser agrees that the final approved project shall at a minimum include not less than 225 market rate housing units and affordable housing units in an amount equal to 15% or more of the market rate housing unit count, not less than 80,000 square feet of retail, not less than 10,000 square feet of office, and not less than 100 hotel keys/rooms, as further defined in Purchaser’s proposal dated 9/12/23, as amended by supplemental proposal dated 10/11/23, and as further amended by supplemental questions/answers/illustrations on 1/23/24, as may be further amended between the parties (the “**Proposed Project**”). The stipulated building restrictions related to the Proposed Project are to be placed in a covenant and recorded against the Property at Closing, thereby exerting a consequential impact on the Property's valuation.

**F. CLOSING.** This transaction and escrow shall close on the Property, if at all, on the date (the “**Closing Date**”) which is thirty (30) calendar days after the expiration of the Determination Period and satisfaction or waiver of all required conditions and contingencies for the Property, except in the case the Closing Date is extended as allowed under this Section

(F). Purchaser shall have one (1) year from the Closing Date to break ground on the Proposed Project, and shall diligently pursue completion thereof. If Purchaser is not going to break ground on the Proposed Project within this one-year period Purchaser may seek up to five (5) options to extend the Closing Date under the Purchase Agreement by one (1) year extension periods (singularly referred to as an “**Option to Extend**” and collectively referred to as the “**Options to Extend**”) upon the conditions set forth herein and subject to the payments set forth herein; provided Purchaser, upon ten (10) days prior written notice to Seller, may elect to have the Closing occur upon a time and date set forth in such notice to Seller. Purchaser shall provide Seller not less than twenty (20) calendar days advance written notice of its intent to exercise the first Option to Extend and seventy-five (75) calendar days advance written notice of its intent to exercise each subsequent Option to Extend and shall concurrently tender the applicable **Option Payment** to Seller. Purchaser shall have a unilateral right to exercise its Option to Extend for years one and two. Purchaser shall pay Seller a non-refundable Option Payment of One Hundred Thousand Dollars (\$100,000) for each of the first two Options to Extend for each one-year extension. Should Purchaser desire further extensions beyond the first two Options to Extend, Purchaser may request such further Options to Extend from Seller which Options to Extend shall be subject to approval or denial by Seller, all at Seller’s reasonable discretion, it being understood and agreed that Seller may not withhold its approval of an Option to Extend so long as Purchaser is using diligent efforts to cause the commencement of construction of the Proposed Project, all as determined by Seller in its reasonable discretion and all as may be further specified in the Purchase Agreement. Upon Seller’s express written approval of an Option to Extend for year three, four, or five, if at all, Purchaser shall pay Seller a non-refundable Option Payment of Three Hundred Thousand Dollars (\$300,000) for a year three Option to Extend, Four Hundred Thousand Dollars (\$400,000) for a year four Option to Extend, and Five Hundred Thousand Dollars (\$500,000) for a year five Option to Extend. In the case of a denial of any Option to Extend by Seller, the Purchaser shall have the right upon written notice to Seller to elect for the Closing Date to within one hundred twenty (120) days from receipt of Seller’s denial. Should Purchaser, subject to force majeure, fail to commence breaking ground on the Proposed Project within one (1) year of the Closing Date or; fail to substantially complete the Proposed Project within the time period set forth in a phasing schedule to be agreed upon between Purchaser and Seller to be set forth in the Purchase Agreement, Purchaser shall transfer the Property back to the Seller for the Fair Market Value paid by Purchaser plus the cost of all improvements and soft costs related to such improvements at the Property, but only to the extent such improvements and soft costs can reasonably be utilized by Seller or a subsequent owner of the Property. All Option Payments made shall be deemed earned by Seller and non-refundable to Purchaser and shall be applied to the Purchase Price at Closing.

The Purchase Agreement shall provide that if Seller has failed to satisfy any of the conditions precedent within Seller’s control described herein, Purchaser shall have the right, to (i) waive any such conditions, (ii) extend the Closing Date, or (iii) terminate the Purchase Agreement, and recover the Deposit. Purchaser shall have the right to further define conditions in the Purchase Agreement, to close on all or on a portion of the Property following the initial Closing Date, as well as maintain the right to assign the right to purchase all or a portion of the Property to another entity before such date; provided that no such assignment shall occur or be valid without the express written consent of the Seller, which consent shall

not be unreasonably withheld. Notwithstanding the foregoing, Purchaser shall have the right, upon not less than five (5) business days' notice, to assign the Purchase Agreement to an entity controlled by CenterCal without Seller's prior written consent.

**G. TITLE INSURANCE.** On the Closing Date it shall be a condition to closing that Purchaser shall receive an extended coverage ALTA owner's policy of title insurance with respect to the Property (with such endorsements as Purchaser shall require) issued by a title insurer designated by Purchaser in the amount of the Purchase Price and insuring Purchaser that marketable fee title to the Property is vested in Purchaser and is subject only to those specific matters disclosed by the current preliminary title report previously approved by Purchaser.

**H. CLOSING COSTS.** Seller shall pay: a) all documentary transfer and sales taxes; b) all recording fees; c) one-half of the escrow fees; d) the fees and expenses of its attorneys and other consultants; and e) any commissions payable to any listing broker. Purchaser shall pay: a) one-half of the escrow fees; b) the fees and expenses of its attorneys and other consultants; and c) the premium for its title insurance. All rentals, security deposits and other costs and expenses (if any) will be allocated between Purchaser and Seller in a manner customary in the county where the Property is located.

**I. CONCEPTUAL PLANNING COSTS.** Seller and Purchaser shall, following execution of the LOI, agree upon a budget for pre-application conceptual planning deliverables as outlined in Exhibit C (the "**Conceptual Planning Budget**"). The Conceptual Planning Budget will be split 50/50 between Purchaser and the Seller, with Seller reimbursing Purchaser upon thirty (30) days of receipt of an invoice from Purchaser for such costs; provided that in no event shall Seller's reimbursement obligation hereunder exceed \$250,000. The reimbursement is only for costs incurred by Purchaser prior to making its entitlement application to the City. The Seller will not reimburse for conceptual planning costs incurred after that date. Notwithstanding the foregoing, the Parties shall not incur any costs hereunder unless and until Seller and Purchaser have agreed upon the Purchase Price for the Property pursuant to the First Appraisal and Second Appraisal, if any. If Purchaser does not close on the Property, the Seller shall receive the rights to the ownership of all Conceptual Planning materials including documents, surveys, plans, designs, and architectural drawings, whether in draft or final form, for which the Seller reimbursed Purchaser, in whole or part, pursuant to this Section I.

**J. PURCHASER DEFAULT.** In the event the acquisition of the Property fails to close due to a default by Purchaser under the Purchase Agreement, Seller shall be entitled to retain the Deposit for the Property and all interest accrued thereon and the Option Payments, if any, as liquidated damages as Seller's sole remedy.

**K. SELLER DEFAULT.** In the event the acquisition of the Property fails to close due to a default by Seller under the Purchase Agreement, Purchaser shall be entitled to a refund of the Deposit for the Property, along with all interest accrued thereon, and Purchaser shall be entitled to pursue reimbursement of substantiated costs expended to date up to One Millions and No/00 Dollars (\$1,000,000) as Purchaser's sole remedy.

**L. LIMITATION ON DAMAGES.** The remedies set forth in paragraphs J and K represent the parties' sole and exclusive remedies for failure to close on the Property. Notwithstanding any other provision of this LOI or the proposed Purchase Agreement, neither party shall be liable to the other party, or at all, whether under theories of contract, tort, statute, strict liability, negligence, intentional act or inaction, or any other legal or equitable theory regarding or relating to the subject matter of this LOI or any proposed Purchase Agreement for any lost profits, or special, indirect, incidental, punitive, or consequential damages of any kind whatsoever.

**M. CONFIDENTIALITY.** To the extent permitted by law, all aspects of this LOI and related negotiations shall be held by Seller and Purchaser in the strictest of confidence. The confidentiality requirement shall not be in effect once this LOI, and/or the terms thereof, are placed on an Elk Grove City Council (the "**City Council**") open meeting agenda seeking approval to enter into this LOI and/or the Purchase Agreement, if any, as to any matters contained in the public agenda item. Nothing herein shall preclude the disclosure of matters required to be disclosed by court order, subpoena, and/or applicable law, including, without limitation, the California Public Records Act.

Purchaser understands that it is Seller's intent to present this LOI to City Council on April 24, 2024, or as soon as reasonably feasible thereafter, for Council's approval for staff to counter sign on the City's behalf. Upon receipt of a fully executed LOI, Seller will prepare a proposed Purchase Agreement for review and consideration by Seller and Purchaser. The Purchase Agreement will incorporate the terms of this LOI and other customary terms and provisions including, without limitation, covenants, conditions, indemnifications, prorrations and representations, and warranties of Seller and Purchaser.

**N. EXCLUSIVITY.** Upon mutual execution of this LOI, Seller hereby grants to Purchaser an exclusive negotiation period commencing upon the execution of this LOI and terminating upon the earlier of (a) the execution of the Purchase Agreement (provided that the Purchase Agreement includes a similar provision prohibiting the Seller from listing the Property or soliciting back-up offers), (b) the mutual agreement between Seller and Purchaser to cease negotiations, or (c) One Hundred and Eighty (180) calendar days from the date of execution of this LOI ("Exclusive Negotiation Period"). During such Exclusive Negotiation Period Seller (i) shall not, with regard to the sale of all or any portion of the Property, execute or negotiate terms of a letter of intent or purchase and sale agreement with any other potential buyer of the Property, and (ii) shall not, with regard to the sale of all or any portion of the

Property, respond to any request for proposal or otherwise correspond, either orally or in writing, with any other potential buyer of the Property. During such Exclusive Negotiation Period Purchaser (and any entity of which Purchaser has a controlling interest) shall not undertake, directly or indirectly, any act (including soliciting or entertaining offers or proposals from any other party or parties) concerning development of a similar project within a fifteen (15) mile radius of the Property. As used herein “similar project” means a mixed use (retail and office, and/or residential, and/or hotel) project with more than 175,000 square footage in the aggregate.

**O. LOI NON-BINDING/CEQA.** This LOI is merely an agreement to enter into good faith negotiations with respect to the Proposed Project and proposed Purchase Agreement according to the terms hereof so that a mutually acceptable Purchase Agreement can be submitted to the City Council for its consideration, all within the times provided herein, with all final discretion and approval remaining with the City Council as to any Proposed Project or proposed Purchase Agreement, and all proceedings and decisions in connection therewith, as well as any and all future land use entitlements and approvals with respect to development of the Property. This LOI does not bind either party and does not legally obligate approval of the Proposed Project or the entitlements or permits for the Proposed Project. In considering any Proposed Project, the Seller (City of Elk Grove) retains the absolute and sole discretion during the Determination Period, to (i) modify the Proposed Project as may, in the Seller/City’s sole discretion, be necessary to comply with the California Environmental Quality Act (“CEQA”) and any other applicable law, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Proposed Project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, and/or (iv) determine not to proceed with the Proposed Project in which case the Deposit shall be fully refundable to Purchaser. No legal obligations will exist unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, subject to all applicable governmental approvals. Until and unless the Purchase Agreement is signed by Purchaser, approved by the City Council and executed by the Seller, no agreement drafts, actions, deliverables or communications arising from the performance of this LOI shall impose any legally binding obligation on either Party to enter into the Purchase Agreement or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document governing development of the Property.

Sincerely,

CENTERCAL ACQUISITIONS, LLC,  
a Delaware limited liability company

By:



Scott Bohrer  
Vice President of Development

AGREED AND ACCEPTED THIS  
\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

5/1/2024 | 11:13 AM PDT

City of Elk Grove

By:  \_\_\_\_\_

Its: City Manager \_\_\_\_\_

\_\_\_\_\_ "Seller"

# EXHIBIT "A"

MAY 2018



**EXHIBIT "B"**  
**DOCUMENTS REQUESTED**

1. Last 3 year's property tax bills and Current Notice of Assessment Valuation
2. Tax Parcel Map
3. Current Schedule of Insurance
4. Current Reports
  - a. Environmental – Phase I Report
  - b. Soils
  - c. Radon
  - d. Geotechnical - Phase I Report
  - e. Ground Water Monitoring - Phase I Report
  - f. Building Structural
5. Current Preliminary Title Report
6. Underlying Recorded Documents
7. Current ALTA Survey
8. Description of Pending or threatened litigation involving the Property
9. Copies of any and all leases and associated amendments
10. Civil Plans and Specifications
11. Warranties
12. Any other usual and ordinary close-out documents and any other documentation relative to the construction of each Building and all other improvements made to the Property which Seller agrees to provide Purchaser.

**“EXHIBIT C”  
CONCEPTUAL PLANNING DELIVERABLES**

- a. Conceptual site planning for Proposed Project and Full Buildout masterplan
- b. Conceptual landscaping plans, concept lighting plan, concept signage package for Proposed Project
- c. One rendering for Proposed Project and one for Full Buildout masterplan
- d. Updated construction budget and operating pro-forma for Proposed Project
- e. A concept merchandising plan for Proposed Project
- f. Other supporting materials as necessary to finalize the scope of the Proposed Project