Meeting Date: 05 13 08

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☒ Info Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info consent)
☐ Other _____	☐ Other _____

Prepared By: Michael More _____ Agenda Item No. I - 6

Reviewed By: City Manager _____ City Attorney Holmberg _____ Finance _____ Other *(Specify)*

DATE: April 30, 2008

TO: City Council

FROM: Michael More, Financial Services Manager
Finance Department

SUBJECT: **Fourth Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale (12 lots)**

RECOMMENDATION

That City Council approve and authorize the Mayor to execute a "Fourth Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale (12 lots)" pertaining to the sale of 12 lots located on Reef Way in the Oxnard Shores area of Oxnard, California to Elevar Seven, LLC ("Elevar"). (A-6830).

DISCUSSION

On January 7, 2007, the City Council approved an Agreement of Purchase and Sale (No. A-6830) ("Original Agreement") by and between the City of Oxnard ("City") and Elevar for the sale of 12 lots located on Reef Way in the Oxnard Shores area.

Prior to the expiration of the contingency period during which Elevar, under the terms of the Original Agreement, was to perform all investigations and determine whether or not Elevar desired to consummate the purchase and sale, Elevar notified the City that due to changed economic conditions, it was not able to achieve its projected sales price for finished homes and therefore would be unable to purchase the lots for the amounts set forth in the Original Agreement.

Staff has negotiated a reduction of the price per lot for the Purchase and Sale from $487,000 per single family lot to $325,000 per single family lot. This will result in a purchase price of $3,900,000 for 12 lots or $4,225,000 for 13 lots if a final subdivision of the property results in the creation of 13 lots.

Pursuant to the Fourth Amendment, Elevar also agrees that the transaction will be closed and the City will be paid the purchase price upon approval of a development agreement, the issuance of determinations concerning water service by staff, and the assurance of staff that Elevar's proposed

development is exempt from the Coastal permit requirements of section 17-57 of the Oxnard Municipal Code. Closing is expected to occur on June 27, 2008.

FINANCIAL IMPACT

A total of $3,900,000 will be recognized as revenue upon close of escrow, expected to occur on June 27, 2008. It is possible that escrow will not close until the next fiscal year (Fiscal Year 2008-09).

MJM

Attachment #1 - Fourth Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale

FOURTH AMENDMENT TO OXNARD SHORES, OXNARD, CALIFORNIA AGREEMENT OF PURCHASE AND SALE (12 lots)

(a) This Fourth Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale dated as of April __, 2008 ("Fourth Amendment"), is between the CITY OF OXNARD, a municipal corporation ("**Seller**"), and ELEVAR SEVEN, LLC, a California limited liability company ("**Buyer**") and amends the Oxnard Shores, Oxnard, California Agreement of Purchase and Sale, approved by the City Council on January 9, 2007 (No. A-6830) ("Original Agreement"), as amended by that certain First Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale dated as of February 27, 2007 ("First Amendment"), as further amended by that certain Second Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale dated as of September 5, 2007 ("Second Amendment"), and as further amended by that certain Third Amendment to Oxnard Shores, Oxnard, California Agreement of Purchase and Sale dated as of January 22, 2008 ("Third Amendment"), pertaining to the sale of twelve (12) single-family lots on Reef Way in Oxnard, California.

1. All initially capitalized terms used herein have the same meaning as in the Original Agreement unless otherwise indicated.

2. Section 1.2 of the Original Agreement is amended as follows:

Notwithstanding anything set forth in Section 1.2 of the Original Agreement, the purchase price of the property shall be three hundred twenty-five thousand dollars ($325,000) for each single family lot included as part of the Land. Based on the existing tentative map approved by the City Council of the City of Oxnard as Resolution No. 13,355 passed and adopted on September 25, 2007, such purchase price will be three million nine hundred thousand dollars ($3,900,000) based on twelve (12) lots. In connection with the recordation of a "Final Map" for the land, should the real property consist of more than twelve (12) single-family lots, then the purchase price shall be increased by three hundred twenty-five thousand dollars ($325,000) per lot for each lot more than twelve (12) lots and should the real property consist of less than twelve (12) single-family lots as a result of conditions imposed by a governmental agency, then the purchase price shall be decreased by three hundred twenty-five thousand dollars ($325,000) per lot for each lot less than twelve (12) lots. For example, if there are thirteen (13) single-family lots, then the purchase price shall be four million two hundred twenty-five thousand dollars ($4,225,000).

3. Section 2.2 of the Original Agreement as amended by the First Amendment, Second Amendment and Third Amendment, is hereby further amended as follows:

The contingency period shall in any and all events end on May 9, 2008.

4. Section 2.3 of the Original Agreement is amended as follows:

Notwithstanding anything set forth in Section 2.3, with respect to conditions to Buyer's obligation to purchase the property, the parties agree as follows:

(a) The Seller has as of the date of this Fourth Amendment obtained final non-appealable approval from all governmental agencies of (a) a tentative tract map subdividing the land into twelve (12) single-family lots with conditions acceptable to Buyer ("Tentative Map"); (b) a coastal development permit authorizing the subdivision of the land into twelve (12) single-family lots with conditions reasonably acceptable to Buyer ("CDP"), and (c) the Zone Change.

(b) The sole conditions remaining to Buyer's obligation to close under Section 2.3 of the Original Agreement are (i) the execution (and approval by the City Council of the City of Oxnard) development agreement between Buyer and the City reasonably acceptable to Buyer, vesting in Buyer, the right to construct twelve (12) single-family residences on the land ("Development Agreement"), (ii) a determination of the Development Services Director in accordance with Section 17-57(c)(2) of the Oxnard Municipal Code that the development and construction of a single-family home on each of the lots of the real property is categorically excluded from the permit conditions of Section 17-57 of the Oxnard Municipal Code ("Exemption Determination"), and (iii) the City of Oxnard issuing to Buyer "will serve" letter or the equivalent thereof obligating the City of Oxnard to provide water, sewer and municipal waste removal for each of the lots, subject to payment of applicable fees (collectively, the "Remaining Conditions").

(c) All other conditions of Buyer's obligations to close set forth in Section 2.3 of the Original Agreement are waived.

(d) Closing shall occur on June 27, 2008.

5. Notwithstanding anything to the contrary contained in this Amendment or the Original Agreement, as previously amended, if after the Closing a challenge to the Development Agreement is filed (including, without limitation, an appeal pursuant to California Government Code Section 65009(c)(i)(d)) or an attempt to repeal the Development Agreement by referendum is commenced, or both, and such challenge or referendum is not resolved in a manner reasonably acceptable to Buyer within six (6) months after the earlier of (a) the filing of the appeal, and (b) the commencement of the referendum process, then the City shall within sixty (60) business days after the written request of Buyer, repurchase the entire Property from Buyer in its then as-is condition without any representations or warranties from Buyer for an amount equal to the sum of (i) the purchase price paid by Buyer to acquire the Property, (ii) all closing costs incurred by Buyer to purchase the Property, and (iii) all costs incurred by Buyer after the Closing in connection with the design and development of the Property, including, without limitation, all costs incurred to satisfy the conditions to record the Final Map, all design and development fees and all construction costs; provided, however, that Buyer shall convey title free and clear of any liens and encumbrances not present immediately prior to Closing, other than liens and encumbrances (a) required to be recorded or imposed as a condition to recording the Final Map, (b) approved in writing by Seller, or (c) caused by the acts or omissions of the Seller.

6. Notwithstanding anything to the contrary contained in this Amendment or the Original Agreement, Seller shall reasonably cooperate with Buyer so that (a) Buyer can satisfy all conditions of approval to the Tentative Map required to record the Final Map, and (b) record the Final Map, prior to the Closing. If the Final Map has not been recorded as of the Closing, Seller shall reasonably cooperate with Buyer so that Buyer can record the Final Map as soon as commercially practicable after the Closing. If, notwithstanding Buyer's commercially reasonable efforts, the Final map is not recorded within six (6) months after the Closing, then the City shall within sixty (60) business days after the written request of Buyer, repurchase the entire Property from Buyer in its then as-is condition without any representations or warranties from Buyer for an amount equal to the sum of (i) the purchase price paid by Buyer to acquire the Property, (ii) all closing costs incurred by Buyer to purchase the Property, and (iii) all costs incurred by Buyer after the Closing in connection with the design and development of the Property, including, without limitation, all costs incurred to satisfy the conditions to record the Final Map, all design and development fees and all construction costs; provided, however, that Buyer shall convey title free and clear of any liens and encumbrances not present immediately prior to Closing, other than liens and encumbrances (a) required to be recorded or imposed as a condition to recording the Final Map, (b) approved in writing by Seller, or (c) caused by the acts or omissions of the Seller.

7. Buyer shall have the right after the Closing to seek approval of a new Tentative Map and Final Map providing for the development of thirteen (13) or fourteen (14) single-family lots on the land. Approval of this new Tentative Map and Final Map shall not be a condition to Closing. If, however, Buyer obtains a Final Map dividing the land into thirteen (13) or fourteen (14) single-family lots within two (2) years after the Closing and an amendment to the Development Agreement which covers these additional lot(s), the purchase price shall be increased, despite the fact that Closing has occurred, as provided in Section 3 hereinabove. The increment in the purchase price shall be paid no later than sixty (60) days after the recordation of the subdivision creating the additional single-family lot(s) and the execution (and approval by the City Council of the City of Oxnard) of a final, non-appealable (without any appeals being filed or if filed, resolved in a manner reasonably acceptable to Buyer) amendment to the Development Agreement between Buyer and the City reasonably acceptable to Buyer, vesting in Buyer, the right to construct a single-family residence on the thirteenth (13th) and fourteenth (14th) lot on the land, as applicable.

8. Except as hereby amended, the Agreement remains in full force and effect in every respect.

9. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof.

10. The parties hereto have executed this Amendment effective the date set forth in the first paragraph of this Amendment.

Seller: CITY OF OXNARD,
a municipal corporation

_____
Dr. Thomas E. Holden, Mayor

Buyer: ELEVAR SEVEN, LLC,
a California limited liability company

By: _____
Name DANIEL KRENTHAL
Its: MANAGER

APPROVED AS TO FORM:

_____
Gary L. Gillig, City Attorney

ATTACHMENT NO. 1
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