TO:        HONORABLE CITY COUNCIL
FROM:     CITY MANAGER                DEPARTMENT:  PLANNING AND
            COMMUNITY ENVIRONMENT
DATE:     APRIL 14, 2008               CMR: 206:08

SUBJECT: PRESERVATION OF THE BELOW MARKET RATE UNIT AT 502 THAIN
        WAY: 1) APPROVAL OF THE CITY’S ACQUISITION OF THE UNIT FOR
        THE PURPOSE OF RENOVATION AND RESALE TO A QUALIFIED BMR
        BUYER; AND 2) APPROVAL OF THE METHOD FOR SETTING THE
        RESALE PRICE

RECOMMENDATION
Staff recommends that the City Council:
1. Authorize the acquisition by the City of the Below Market Rate (BMR) unit located at 502 Thain
   Way (Barron Square) for the purpose of preservation, renovation and resale as a BMR unit to a
   qualified BMR buyer identified by PAHC Housing Services, LLC (PAHC) with a first right to
   repurchase by the current owner; and
2. Approve setting the resale price at the City’s total direct costs; and
3. Direct the City Manager or his designee to approve the final resale price, execute the certificate
   of acceptance and all other documents and deeds necessary to complete the purchase, renovation
   and the resale.

BACKGROUND
502 Thain Way is one of six, one-bedroom BMR units in the 65 unit Barron Square condominiums
located at Maybell Avenue and El Camino Real. The complex was built in 1979 and thus has some
of the oldest units in the BMR program. Barron Square is an attractive development with strong
sales values for the market rate units; the BMR units are located together in one building with two
similar market rate units at the rear of the complex. Unit 502 has not been occupied since late 2004.
Following a lengthy probate process, PAHC found little interest in the unit from the BMR waiting
list, primarily due to concerns about past problems with water intrusion and its poor interior
condition. A qualified applicant agreed to purchase the unit contingent upon his review of the mold
testing. The seller refused to accept any contingencies, claiming the right to sell the unit at market
price because the resale deadlines in the deed restrictions had been exceeded. On May 7, 2007,
Council authorized the purchase of the property by the City and the subsequent resale to the
purchaser, together with a deferred payment renovation loan of up to $45,000 and time for the
completion of the inspection report. (See Attachment A CMR: 227:07).
DISCUSSION
The City acquired the unit for $108,900 on June 5, 2007 and then entered into the purchase contract to resell the unit at the same price to the BMR purchaser. The purchaser contracted for a mold report; after reviewing the report, the purchaser decided to go ahead with his purchase of the BMR unit and escrow closed on September 5, 2007. Once he had ownership, the purchaser contracted for further investigation of the unit.

Earlier this year, the purchaser and his contractor met with Barron Square Homeowners Association (HOA) and PML Management Corporation (the company responsible for repairs and maintenance) to discuss the findings and recommendations in the inspection reports. The purchaser made both written and verbal requests to the HOA and PML to conduct the repairs necessary. The HOA refused to accept any responsibility for the mold remediation. The purchaser has decided that he cannot continue to pay the monthly mortgage, homeowner’s dues and taxes, which total about $1,100 per month, without having a place to live. On February 25, the purchaser gave the City and PAHC official notice of his intention to sell the property. As provided in the BMR deed restrictions, the City must exercise its right to purchase at the BMR resale price by April 24 or else the owner can claim the right to sell the unit without BMR price restrictions.

The staff recommendation is to repurchase and rehabilitate the unit and then resell it to a qualified BMR buyer from the waiting list at a price that recoups the City’s direct costs. As the legal owner, the City will be in a better position to negotiate a solution with the HOA regarding responsibility for the mold remediation costs and the common area repairs. If necessary, litigation against the HOA may be undertaken. In general, City practice has been to only take on ownership of BMR units as a last resort if there is no other way to preserve them in the program due to the financial risks and increased staff workload.

As the property owner, the City would need to pay the $545 monthly holding costs for property taxes and HOA dues and be directly responsible for the completion of the interior renovations. The City’s investment in the unit will total $121,700 as follows once the City takes title from the current owner:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
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<tbody>
<tr>
<td>$109,500</td>
<td>BMR price (based on June 2007 purchase price plus one-third CPI)</td>
</tr>
<tr>
<td>8,725</td>
<td>Amounts already paid to purchaser as reimbursement for construction and assessment costs</td>
</tr>
<tr>
<td>2,000</td>
<td>Estimated escrow, title costs for three purchase / sale transactions</td>
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<tr>
<td>1,475</td>
<td>HOA dues and taxes for the three months City already held the unit</td>
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<tr>
<td></td>
<td>$121,700 Total City expenditures by close of escrow</td>
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Future costs the City would incur include: 1) estimated $7,000 in holding costs for about one year; and 2) interior renovation estimated at $40,000. This would bring the City’s total investment in the unit up to $168,700.

Assuming the City can offer the renovated unit for resale for not over $170,000 (recouping all of the City’s direct costs), that price would be affordable, with a five percent down payment, to a single person with an income of $66,500, which equals 90 percent of the 2008 area median income. This
price is lower than the one-bedroom 800 High BMR units which sold for $189,450 with good demand from the waiting list. Due to the limited supply of new or completely renovated one-bedroom BMR units, staff believes this unit will be attractive to the waiting list and sell quickly once its problems are resolved and it has been completely renovated. The purchaser has requested that the City provide him with an opportunity to repurchase the unit once it is renovated and ready for occupancy. Staff supports his request and proposes that he be given a first right of refusal to repurchase at the resale price the unit would be offered to the BMR waiting list (as described above) for 30 days prior to the unit being advertised to the BMR waiting list.

If the City does not exercise its right to purchase by April 24 (within 60 days of the notice to sell), then the deed restrictions allow the owner to sell the unit at market rate and retain the proceeds; this would result in the loss of this unit from the BMR Program. Staff reviewed this course of action, but is not recommending it because there would probably further delays in remedying the conditions with the unit which could adversely affect the other five BMR units in the building. However, there is clearly a difference between the current BMR restricted price and the value at market rate that would provide an incentive for a potential buyer to purchase the unit, deal with its problems and then use it as a home or resell it for profit. For example, there are two market rate one-bedroom units on the second floor of the building which sold in the last three years for $486,000 and $510,000 respectively. While the upper floor units would have higher values, these prices give some indication of the market value of 502 Thain Way if it was in good condition and ready to occupy.

**RESOURCE IMPACT**
The BMR Emergency Fund (BMR Fund) has a current available balance of $455,000. This Fund will be used to pay all costs related to the preservation of the 502 Thain Way unit, including the purchase price, renovation, holding and transaction costs estimated at $170,000. The proceeds from the eventual resale will be deposited back into the BMR Fund to be immediately available for any future needs related to the preservation of BMR ownership units.

**POLICY IMPLICATIONS**
The staff recommendation does not represent any change to existing City policy, which is to protect and preserve the BMR ownership units in the City’s affordable housing stock.

**TIMELINE**
Should Council approve the staff recommendation, a purchase contract will be prepared and executed with the City as the buyer without any contingencies other than City review and acceptance of a preliminary title report with escrow to close as quickly as possible. Once the City has legal title to the unit, the City Attorney will initiate negotiations with the HOA and PML regarding the satisfactory completion of repairs and the remediation. If necessary, litigation against the HOA will follow. Lastly, the unit will be offered for sale to the BMR waiting list.

**ENVIRONMENTAL REVIEW**
The provision of City funds to preserve a single-family ownership unit as affordable housing is categorically exempt under Section 15326 of the California Environmental Quality Act (CEQA).
ATTACHMENTS
A) City Manager’s Report dated May 7, 2007 (CMR:227:07)

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Director of Planning and Community Environment

CITY MANAGER APPROVAL: ________________________________________
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Marcie Mitchell, BMR Administrator, PAHC Housing Services, LLC
Mr. Randy Lu, Owner of 502 Thain Way
Barron Square Homeowners Association (c/o Marla Degner, President)
PML Management Corporation (c/o Deborah McGraw)