



Meeting Date: 11/15/2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Karl Lawson *Karl Lawson* Agenda Item No. **I-3**
 Reviewed By: City Manager *JPB* City Attorney *Holmberg* Finance *PC* Other (Specify) _____

DATE: November 2, 2011
TO: City Council
FROM: William E. Wilkins, Housing Director *[Signature]*
SUBJECT: Second Amendment to Resale Restriction Agreement with Jubal and Suzanne Marlatt

RECOMMENDATION

That City Council approve and authorize the Mayor to execute a Second Amendment to the Resale Restriction Agreement (Number 4704-08-HO) with Jubal and Suzanne Marlatt for their residence at 2160 Paseo Elegante (El Paseo) allowing the Marlatt family to continue to lease the residence to a low-income family through July 31, 2012.

DISCUSSION

In March of 2001, Jubal and Suzanne Marlatt purchased a home in the El Paseo development, an all-affordable project, consisting of 194 for-sale units sold to first-time homebuyers. Purchasers of these homes were subject to income limits, and certain restrictions which require purchasers to reside in the unit. Section 3 of the "Resale Restriction Agreement" executed at the time of purchase stipulates that units shall not be leased or assigned. Owners are required to live in the home, as a condition of receiving the various subsidies which made it possible for them to purchase the unit at an affordable sales price.

On January 27, 2009, City Council adopted an Amendment to the Resale Restriction Agreement (4704-08-HO; hereinafter "First Amendment") for the Marlatt family. Pursuant to the First Amendment, the Marlatts were granted authorization to lease the unit to an income-eligible family. The Marlatts had requested this exception based on the fact that Mr. Marlatt was at the time assigned by the U. S. Navy to be transferred to a post in San Diego.

The First Amendment approved in 2009, which waived the no-leasing requirement for a period of three years, will expire on December 18, 2011. Section 1 of the First Amendment permits the Marlatts to:

Second Amendment to Resale Restriction Agreement

November 3, 2011

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“...lease the Property to a low-income person at a rental cost not to exceed the amount of the Owner’s mortgage payment, the amount necessary to pay real property taxes, property insurance, earthquake insurance, HOA fees, security alarm, and landscape maintenance for a period not in excess of three years. In no event may the rent exceed an amount affordable to a low-income family...”

Currently, the family leasing the unit from the Marlatts is a participant in the Oxnard Housing Authority’s (OHA) Section 8 Housing Choice Voucher program, and thus is qualified as a low-income household. Under the Section 8 Program, the maximum contract rent for this unit is \$1800, with the Payment Standard capped at \$1969 (including tenant-paid utilities). The current rent for the unit is \$1780, excluding tenant-paid utilities. That lease expires on July 31, 2012.

Applicable regulations of the Department of Housing and Urban Development set parameters for the calculation of affordable rents for non-Section 8 units for low-income families, based on eighty percent (80%) of Area Median Income (AMI) for Ventura County. Applying the 30% rent calculation formula to the current AMI of \$71,200 annually (\$5933 per month) yields a permissible monthly rent of \$1762, an amount nearly identical to the \$1780 rent set forth in the current Section 8 lease.

On September 14, 2011, the Marlatts submitted a request to renew the agreement which allows them to lease the property. The Marlatts state that they are now assigned to the Naval Hospital in Bremerton, Washington, until at least June of 2013, after which time they expect to be re-assigned to another location for another three years.

The City has an interest in maintaining the unit as part of Oxnard’s affordable housing stock, and staff agrees that the current tenants residing in the Marlatts’ property should be protected for the remainder of their existing Section 8 lease and not be displaced during the term thereof. Staff cannot, however, recommend another three-year exemption from the owner-occupancy requirement set forth in the Agreement executed by the Marlatts in 2001. The statement by the Marlatts indicating the probability that they will be re-assigned to another location for an additional three-year period beyond June of 2013 means that for all practical purposes they would not be likely to live in the house at any time in the foreseeable future.

Staff thus proposes that the Marlatts’ exemption from the owner-occupancy requirement should expire concurrent with the expiration of the Section 8 lease on July 31, 2012. Staff further recommends that for the duration of the exemption, the Marlatts be required to maintain a rent level either at an amount not to exceed \$1780 per month (or if rented to a non-Section 8 participant family, not to exceed the \$1762 amount that is defined as affordable to a low-income family).

Approval of a Second Amendment to Resale Restriction Agreement would accomplish these ends, allowing the Marlatts to continue to own the home through July 31, 2012, while providing them with time to determine how to proceed following the expiration of the current Section 8 lease.

FINANCIAL IMPACT

There is no financial impact for the FY 2011-2012 budget.

ATTACHMENTS

- #1 - First Amendment to Resale Restriction Agreement dated December 18, 2008
- #2 - Proposed Second Amendment to Resale Restriction Agreement

**AMENDMENT TO RESALE RESTRICTION AGREEMENT
(LOW INCOME FAMILY/MARLATT)**

This "Amendment to Resale Restriction Agreement, Low Income Family" ("Amendment") amends that certain "Resale Restriction Agreement, Low Income Family" ("Agreement") entered into as of March 2, 2001 by and between the City of Oxnard ("City"), and Jubal L. Marlatt and Suzanne M. Marlatt ("Owner"). This Amendment is dated December 18, 2008.

RECITALS

The Agreement restricts Owner's right to transfer the residence (the "Property") which is the subject of the Agreement. The Agreement provides in Paragraph 3.(b) that "The Owner shall not lease or assign the right to occupy the home during the term of this agreement".

Owner wishes to enter into a lease of the Property for an additional period not in excess of three years to the new lessee which is a low income family. The City has examined Owner's claims of hardship with respect to Owner's need to lease the property for a period of three years, and is willing to allow Owner, under the particular facts and circumstances, to lease the property for a period of time not in excess of three years.

AGREEMENT

Owner and the City therefore amend the Agreement as follows:

1. Notwithstanding the terms of the Agreement, Owner may lease the Property to a low income person at a rental cost not to exceed the amount of the Owner's mortgage payment, the amount necessary to pay real property taxes, property insurance, earthquake insurance, HOA fees, security alarm, and landscape maintenance for a period not in excess of three years. In no event may the rent exceed an amount affordable to a low income family under the Agreement or law. If the property has not been leased within six months of this date of this Amendment, this Amendment shall be null and void.
2. This Amendment does not authorize any lease or transfer other than one lease for a period of not in excess of three years, except as provided in Paragraph 3.
3. The Housing Director may sign an additional amendment or amendments authorizing the re-leasing of the property, within a three year period, if in the opinion of the Housing Director it appears appropriate to do so.

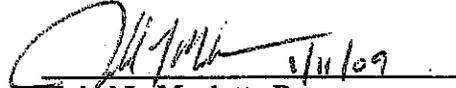
COUNCIL APPROVAL

DATE: 1-27-09 AGENDA # T-11

4. Except as amended by this Amendment, the Agreement remains in full force and effect.



**Dr. Thomas E. Holden, Mayor
City of Oxnard**



Jubal L. Marlatt, Buyer



Suzanne M. Marlatt, Buyer

ATTEST:


Daniel Martinez, City Clerk

APPROVED AS TO FORM:


Alan Holmberg, City Attorney

**SECOND AMENDMENT TO RESALE RESTRICTION AGREEMENT
(LOW-INCOME FAMILY/MARLATT)**

This "Second Amendment to Resale Restriction Agreement, Low-Income Family" (Second Amendment) amends that certain "Resale Restriction Agreement, Low-Income Family" ("Agreement") entered into as of March 2, 2001, by and between the City of Oxnard ("City") and Jubal L. Marlatt and Suzanne M. Marlatt ("Owner"), and that certain First "Amendment to Resale Restriction Agreement, Low-Income Family" dated December 18, 2008 ("First Amendment").

RECITALS

This Agreement restricts Owner's right to transfer the residence (the "Property") which is the subject of the Agreement. The Agreement provides in Paragraph 3.(B) that "The Owner shall not lease or assign the right to occupy the home during the term of this agreement."

In 2008, the Owners requested that the Agreement be amended based on a claim of hardship. The City examined Owner's claim of hardship with respect to Owner's need to lease the property, and approved the First Amendment allowing Owner to lease the property for a period of time not in excess of three years. The current family leasing the unit is a participant in the Oxnard Housing Authority (OHA) Section 8 Housing Choice Voucher program. The terms of that lease establish a rent of one thousand seven hundred eighty dollars (\$1780) per month, based on the tenant family's income. That lease is due to expire on July 31, 2012.

In September of 2011, Oxnard requested authorization to allow for the leasing of the property for an additional period of time. The City has examined the particular facts and circumstances and agrees to grant Owner's request with certain conditions, as set forth hereinbelow.

AGREEMENT

Owner and the City amend the Agreement and the First Amendment as follows:

1. Notwithstanding the terms of the Agreement or of the First Amendment, Owner may lease the Property to a low-income family at a monthly rental cost not to exceed an amount that is affordable to a low-income family under applicable law, based on 80% of the Median Income for Ventura County (currently one thousand seven hundred sixty dollars [\$1760]), or the permissible contract rent as set forth in the lease currently in effect between Owner and the current tenants of the Property (one thousand seven hundred eighty dollars [\$1780]), whichever is greater.
2. Owner will only lease the Property to a low-income family. In the event that the current tenant ceases to become a participant in the Section 8 program, or

otherwise terminates their tenancy, Owners agree to make every effort to continue to lease the Property to a participant family in the Oxnard Housing Authority's Section 8 Housing Choice Voucher program. Under no circumstance will Owner rent to a family that does not fall under the HUD definition of low-income.

3. The term of this Second Amendment shall be from December 18, 2011, through July 31, 2012.
4. Except as amended by this Second Amendment, the Agreement remains in full force and effect. Following termination of this Second Amendment, Owner shall be bound by all terms and conditions of the Agreement of March 2, 2001.

Dr. Thomas E. Holden, Mayor

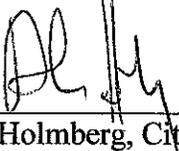
Julian L. Marlatt, Owner

Suzanne M. Marlatt, Owner

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney