

**SUMMARY REPORT PURSUANT TO  
SECTION 33433 OF THE CALIFORNIA HEALTH AND SAFETY CODE  
ON A  
DISPOSITION AND DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF MONTEREY, THE CITY COUNCIL AS SUCCESSOR  
AGENCY AND SUCCESSOR HOUSING AGENCY OF THE CITY OF MONTEREY  
REDEVELOPMENT AGENCY  
AND  
SILVERIE PROPERTIES, LLC.**

The following Summary Report has been prepared pursuant to California Health and Safety Code (HSC) Section 33433. The report sets forth certain details of the proposed Disposition and Development Agreement (the "DDA") between the following parties:

1. The City of Monterey (City); and
2. Monterey Hotel Apartments, Inc. (MHA), an affiliate of Silverie Properties, LLC. (Silverie).

The purpose of the DDA is to complete eighteen (18) Very Low (VL)-, Low (L) - and Median (M)-Income affordable rental apartments at 406 – 410 Alvarado Street (the "Housing Project") consistent with a June 26, 2007 Development Agreement - Affordable Housing among PRI, LLC (PRI), the Redevelopment Agency of the City of Monterey (RDA) and the City of Monterey (the "Development Agreement"). The Development Agreement established the RDA's and City's interest in the Housing Project as lender by providing a loan in the amount of \$3,000,000 (the "City/Agency Loan") to PRI, the owner and developer to construct and develop the Housing Project. Upon receipt of all entitlements and issuance of the Building Permit B05-0671 on August 18, 2006, PRI was authorized to begin construction of the Housing Project. Construction was stopped in March 2009 in part because of substantial cost overruns. PRI was unable to complete the Housing Project and defaulted on the City/Agency Loan. As a consequence and after several years of effort, the City as Successor Housing Agency to the RDA gained ownership of the partially completed Housing Project in December 2013. Execution of this DDA is a critical step towards completion of the Housing Project. The Housing Project complies with the July 19, 1983 adopted Greater Downtown Redevelopment Project Area, the City of Monterey General Plan and the Downtown Specific Plan. Completion of the Housing Project in accordance to the DDA will also fulfill an enforceable obligation of the City as Successor Agency to the RDA (the "Successor Agency") and Successor Housing Agency (the "Housing Agency"), as required under HSC section 34177.

The following Summary Report is based upon information contained with the DDA, and is organized into the following seven sections:

- I. **Salient Points of the DDA:** This section summarizes the background, the project constraints and major responsibilities imposed on the City and Silverie by the DDA.
- II. **Costs of the DDA to the City:** This section details the total costs to the City associated with implementing the DDA.
- III. **Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted Under the City's General Plan, Zoning Ordinance and the Greater Downtown Redevelopment Project Area:** This section estimates the value of the interests to be conveyed determined at the highest and best use permitted under the

requirements imposed by the City's General Plan, Downtown Specific Plan, Zoning Ordinance and the Greater Downtown Redevelopment Project Area.

- IV. **Estimated Value of the Interest to be Conveyed Determined at the Use and with the Conditions, Covenants, and Development Costs Required by the DDA:** This section summarizes the valuation estimates for the project based on the required scope of development, restrictions on development; and the other conditions and covenants required by the DDA.
- V. **Consideration Received and Comparison with the Established Value:** This section describes the compensation to be received by the City, which will be forwarded to the Housing Agency for future housing programs, and explains any difference between the compensation to be received and the established value of the site.
- VI. **Blight Elimination:** This section describes the existing blighting conditions on the site, and explains how the agreement will assist in alleviating the blighting influence.
- VII. **Ability of Silverie to Perform DDA:** This section will describe the process used to select Silverie as developer most qualified to complete the Housing Project

This Summary Report is to be made available for public inspection prior to the approval of the DDA.

## I. Salient Points of the DDA

The City Council will consider executing a DDA with MHA that will lead to completion and a long term lease of an airspace condominium unit that is located within the Monterey Hotel mixed-use building at 406 – 410 Alvarado Street (the "Monterey Hotel"). Silverie's rights to complete the construction of the Housing Projects will be assigned to MHA pursuant to the terms of an assignment and assumption agreement. Silverie will remain responsible to ensure that the Housing Project is constructed. The subject airspace condominium unit and an undivided interest in the common area (collectively, the "Residential Site" or "apartment condominium unit") are owned by the City. The residential condominium unit contains eighteen (18) separate unfinished apartments. The commercial condominium unit and an undivided interest in the common area which includes the Monterey Hotel (collectively, the "Commercial Site") is owned by PRI. City ownership of the Residential Site gained through a deed in lieu of foreclosure. At this time the Housing Project is partially complete. The building exterior is finished but the interior of the apartments is unfinished. The City is responsible to complete the apartment portion of the mixed-use building. PRI is responsible for completion of the hotel and commercial portions of the mixed-use building.

To facilitate the completion of the Housing Project, the City is allocating a maximum of \$1,200,000 of Housing Agency funds (the "Housing Funds") to Silverie to complete the construction of the apartment interiors. The City is further considering a long term, minimum fifty-five (55) year lease with Silverie to operate and managing the apartment units at VL, L and M below market rate affordable rental apartments.

The DDA establishes City's responsibility as: 1) provide the Housing Project to Silverie in an "AS IS" condition with remediation of adverse conditions; 2) provide a maximum of \$1,200,000 in Housing Funds to Silverie to cover remaining construction costs; 3) execute a 55-year lease with Silverie; and 4) accept rent at the fair market value, payable from a share of net proceeds from the Housing Project at 75% (Silverie) / 25% (City) and (5) accepting a completion guarantee from Dan Silverie in lieu of performance and labor/material bonds.

The DDA establishes Silverie's responsibility as: 1) responsibility to cover any costs to complete the construction of the Housing Project above \$1,200,000; 2) completion of the Housing Project consistent with approved plans and receipt of final occupancy permit; 3) execute a 55-year lease with the City; 4) operate and manage the Housing Project as affordable housing as 3 VL, 9 L and 6 M for the full term of the lease; and 5) maintain affordable rents consistent with City's Low and Moderate-Income Housing Ordinance No. 3344, and Housing Funds requirements as set forth in Sections 33334.2 and 33334.3 of the California Health and Safety Code.

#### Background and Project History

- *Zoning:* Visitor Accommodation Facility ("VAF") & Community Commercial District ("C-2"). Existing Hotel is designated Historic Overlay H-1 Landmark. Existing hotel and hotel addition are zoned VAF. Apartment portion of project and commercial space below apartments are zoned C-2.
- *Active Permits:* Planning entitlements ("Entitlements") for the Mixed-Use Project are Use Permit 05-224 to Reopen Use Permit 98-184 & Parking Adjustment 00-196. Building Permits B-05-0671, B-06-0510 and B-08-0265.
- *Approved Use:* Four (4)-Story, 18,385 square feet (sf) of additional space to the existing Monterey Hotel. Existing Hotel contains 45 rooms. Approved addition increases hotel rooms by 24 for a total room count of 69, adds 4,611 sf of retail space at street level, constructs basement parking for 18 vehicles and constructs 18 apartment units. Use Permit 98-184 Condition No. 8 requires 15% of apartment units to be allocated for low and moderate-income households. This condition requires allocation of no less than three (3) apartment units to low and moderate-income households.
- *City Financing Assistance:* On April 6, 2006, the RDA authorized low interest RDA Loan for \$1.8 million and secured a State HOME grant for \$.8 million to supplement the RDA loan and facilitate development of the housing component of the Monterey Hotel project as affordable housing. On November 1, 2005, the RDA authorized a \$.4 million increase in the RDA loan. The final loan amount provided by the RDA and City to PRI totaled \$3 million. The provision of a RDA loan changed the affordable unit requirement to require all 18 units to be designated as affordable. To assure construction and maintenance of the apartment units at below market rate rents affordable to VL, L and M households, and to comply with Housing Funds requirements, a Regulatory Agreement to Provide Low and Moderate Income Housing has been recorded (the "Regulatory Agreement"). The Regulatory Agreement requires all 18 of the apartment units in the Apartments to be allocated for VL, V and M households. The required mix of affordable units is: 3 units at VL; 9 units at L; and 6 units at M. Rents are to be consistent with the City of Monterey Housing Program affordability requirements as specified in Low and Moderate-Income Housing Ordinance, Ordinance No. 3344 C.S. and Housing Funds requirements set forth in Sections 33334.2 and 33334.3 of the California Health and Safety Code.
- *Commercial Financing Assistance:* The City provided no assistance to the Commercial Parcel. However, the commercial portion of the project, including the hotel addition,

commercial storefront and parking garage was financed by a commercial lender. The approximate commercial loan amount is \$11 million (the "Bank Loan") and it was provided to PRI.

- *Project Default:* PRI was unable to complete the Hotel Project and the commercial project with approved loan funds. Commercial lender (Rabobank) notified City and PRI of default and stopped funding. The RDA subsequently stopped funding. The Monterey Hotel was approximately 60% complete. Work stopped and liens were filed for unpaid work. A Receiver was appointed by the court to manage the hotel and manage the construction site. Barry Swenson Builder (BSB) was the contractor of record at the time work was stopped on the Monterey Hotel.
- *Partial Resolution of Default, Settlement Agreement and Intercreditor Agreement:* Rabobank, the court-appointed receiver, BSB and RDA negotiated agreements to release additional funds to clear liens and fund additional construction to complete exterior finish of the building to protect the building ("Weatherization Contract") and secure the asset. An intercreditor agreement authorized RDA and court-appointed receiver time to process a condominium plan map for purpose of partial reconveyance of the Agency/City Loan and the Bank Loan. Rabobank agreed for period of time not to pursue foreclosure. The Weatherization Contract was agreed to with BSB and the exterior work was completed by BSB. However, construction is not completed on the interior and the Housing Project is not yet eligible for a final occupancy permit. An additional construction contract is necessary to complete the Housing Project for final occupancy. Initial construction and Weatherization Contract were performed by one general contractor, BSB.
- *Condominium Map:* Originally, PRI intended to process a Tentative Map and Condominium Plan to separate the residential apartment portion of the building from the commercial portion (hotel, retail and parking basement) as a single three dimensional air space unit. Intent was to place Agency/City loan in first lien loan-position on the apartment condominium air space unit and the commercial loan would be released, through a partial reconveyance, from first lien loan-position on entire property to first lien loan-position on the hotel/commercial air space unit. PRI did not complete the map or the loan reconveyance.

In accordance to the Intercreditor Agreement, the Receiver processed a Tentative Parcel Map and Condominium Plan (Parcel Map Document Recorded No. 2010077178 recorded on December 30, 2010). Following recordation of the Parcel Map and Condominium Plan, the Receiver was required to complete the partial reconveyance of the commercial loan to first position on the commercial condominium parcel and the Agency/City Loan to first position on the apartment condominium parcel. The Parcel Map and Condominium Plan and associated easement deeds are posted on the City Website.

- *Partial Reconveyance of Loans:* Receiver, Rabobank and RDA determined loan reconveyance would occur after Weatherization Contract was completed, Notice of Completion filed, lien period expired, fire sprinkler work is completed and interim occupancy is approved by the Building Official. The Weatherization Contracts were completed. Reconveyance of Rabobank and Agency/ City loans has been completed. The reconveyance placed the City loan in first position on the apartment condominium unit. This action allowed the City to independently pursue ownership of the apartment condominium unit through a deed in lieu of foreclosure procedure.
- *Court-Appointed Receiver:* Receiver completed all tasks and has been released from the receivership by the court.
- *City Ownership of Apartment Condominium Air Space Unit:* The City, as Successor Housing Agency (due to the dissolution of all California redevelopment agencies in January 2012) gained ownership of the apartment condominium unit in December 2013.
- *Project Not Complete:* The Housing Project interior finishes are incomplete at this time. The Commercial Site or hotel portion is funded and hotel finish construction is in process. On May 16, 2014, the City and PRI executed a Reimbursement Agreement for cost sharing of common area improvements (also known as the Common Space Parcel). Construction funded under the Reimbursement Agreement is incomplete and in process. Funding to complete the interior of the apartment units is obligated by the City but is not in contract for construction. The City has obligated \$1,200,000 in Housing Funds to complete the Housing Project. These Housing Funds are approved by the State of California Department of Finance as a “Recognized Enforceable Obligation” and shown on the Monterey City Recognized Obligation Payment Schedule (“ROPS”). The City is further required to complete the Housing Project as affordable units consistent with the Regulatory Agreement.

At this time, the apartments in the Housing Project are framed on the interior and substantially complete on the exterior. Electrical, mechanical and plumbing systems in are roughed in. Remaining work includes but is not limited to complete electrical, mechanical, plumbing, drywall, patching, painting, kitchen and bathroom finishes and fixtures, lights carpet vinyl doors and appliances. The Housing Project is to be completed consistent with entitlements, Building Permit, Building Permit Plan Set construction plans, inspection reports and supplemental specifications prepared by the project architect.

- *Architect of Record:* The City is in contract with the Architect of Record for the Mixed-Use Project to provide architectural services required to complete construction of the Housing Project. The Architect of Record is The Paul Davis Partnership, Architects and Planners. The City contract establishes the Architect of Record scope of work.
- *Selection of Developer:* The City determined completion of the Housing Project will be most feasible economically if undertaken by a developer under a disposition and

development agreement and a lease of the Housing Project (both the air space condominium unit and the completed improvements. On March 6, 2015, the City issued a Request for Proposal ("RFP") requesting proposals from qualified developers to complete the Housing Project.

Silverie was one of four developers that responded to the RFP. The City's evaluation of the proposals concluded that Silverie was the most qualified proposal. The Silverie proposal showed the lowest cost to complete and it indicated that any need for additional funding, Silverie will obtain from commercial banks and/or private funding. City staff and community members who participated in the assessment found that Silverie is well experienced in construction and that it will be able to complete the project within its proposed budget. Silverie was selected by the City Council on September 1, 2015 to commence the negotiations for a disposition and development agreement and lease. On December 10, 2015 the City Council and Silverie executed an Exclusive Negotiation Rights Agreement authorizing further negotiations leading to this DDA. Silverie intends to transfer its development rights to MHA, an affiliate. Silverie will remain responsible for the completion of the Housing Project.

## II. Costs of the DDA to the City

As described below, the Housing Project will cost the City a total of \$4,980,904. One million two hundred thousand dollars (\$1,200,000) is budgeted from Housing Funds to complete the Housing Project, and it is only available to fund completion of the Housing Project. In accordance with requirements in the Redevelopment Agency Dissolution Act these Housing Funds are a Recognized Obligation Payment and they may only be used for construction of the Housing Project. This is the total amount of funds available to complete construction of the Housing Project.

Silverie will enter into a 55 year lease, in which Silverie will pay the fair market rent of the Housing Project. The rent will be payable through a shared net rent structure, in which the City will receive twenty-five percent (25%) of the net operating proceeds from the Housing Project. The rent payment is projected to provide the City in the first operating year rent in an annual amount that will range between \$18,500 and \$24,000. The lower amount of rent is based on the gross revenue received for rents which are subject to the rent limits imposed by the Regulatory Agreement. The higher amount of rent will be received if a portion of the tenants receive vouchers from the Monterey County Housing Authority under the Section 8 Housing Choice Vouchers (HCV), program, in which the tenants are still charged no more than thirty-percent (30%) of their income, but Silverie can charge the fair market rents for these units as established by the Monterey County Housing Authority. All rent payments received from Silverie as rents payments for the Housing Project will be placed in the Housing Fund and available to be used to fund future low and moderate-income housing projects or activities.

If the DDA and lease are approved and the apartments are completed as described in this Summary Report the City Housing Fund investment in the project will total \$4,980,904 (\$276,717 per unit).

City/Agency Loan	\$3,000,000
City/Agency Grant	\$1,200,000
All costs associated with project management, weatherization, legal, receiver, foreclosure, water damage remediation and common area reimbursement.	\$ 780,904
<b>Total Costs</b>	<b>\$4,980,904</b>

### **III. Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted Under the City's General Plan, Zoning Ordinance and the Greater Downtown Redevelopment Project Area**

HSC Section 33433 requires that the City, acting as Successor Agency and Housing Agency, identify the fair market value (FMV) of the interests being conveyed at the highest and best use allowed under the requirements imposed by the Greater Downtown Redevelopment Plan for the Greater Downtown Redevelopment Project Area (as amended from time to time, the "Redevelopment Plan"). The valuation is based on three assumptions: 1) near-term development is required; 2) the entitled 18 apartments (including 3 designated to be affordable per the Use Permit) contained within the condominium unit as a component of the Monterey Hotel project is the highest and best use; and 3) apartment construction is complete and ready for occupancy. The FMV does not take into consideration any extraordinary use limitations imposed by the City.

The most recent valuations of the apartment condominium unit were prepared in 2011 and 2013. All of the value conclusions are based on a completed project, an income analysis and a 6% Capital Return Rate. In 2011 a FMV income analysis concluded the apartment condominium value at \$2,470,000. A restricted rent income analysis considering the City's extraordinary use limitations concluded the apartment condominium value at \$1,812,000 (the Restricted Affordable Rent Value). A 2013 FMV income analysis prepared by PRI established the apartment condominium value at \$2,500,000. A Restricted Affordable Rent Value analysis prepared for the City by a local commercial real estate broker established the apartment condominium at \$1,850,000. Based on these conclusions the FMV of the apartment condominium is \$2,500,000 and the Restricted Affordable Rent Value is \$1,850,000. The City's extraordinary rent restrictions result in a value that is \$650,000 less than FMV.

### **IV. Estimated Value of the Interest to be Conveyed Determined at the Use and with the Conditions, Covenants, and Development Costs Required by the DDA**

The estimated value of the interest to be conveyed has been determined based on an income analysis of the entitled Housing Project subject to consideration of the City imposed income limits and rent restrictions. These restrictions require the 3 apartment units to be rented at VL rents, 9 apartment units to be rented at L rents and 6 apartments to be rented at M rents. The restrictions will remain in place for 55-years. The Restricted Affordable Rent Value of the apartment condominium is \$1,850,000. This is the value of interest to be transferred to Silverie with the conditions, covenants and development costs required by the DDA and lease.

### **V. Consideration Received and Comparison with the Established Value**

The DDA and lease will convey the apartment condominium unit to Silverie for 55-years and provide \$1,200,000 to fund completion of the apartment units. The value of the conveyance is \$1,850,000. The DDA establishes a shared rent structure that will provide the City twenty-five percent (25%) of net proceeds. Silverie will retain seventy-five percent (75%) of net proceeds. First year rent to the City is conservatively estimated to be \$18,500. This represents income at a 0.01% Capital Return Rate of the Restricted Affordable Rent Value. This return rate is only 16% of the more typical 0.06% Capital Return Rate for leases of this type (long term with full responsibility assigned to lessee). The rent that the City will receive is less than the estimated

value of the apartment condominium with the conditions, covenants and development costs required by the DDA and Lease.

HSC Section 33433 establishes that if the estimated consideration received is less than the estimated value with the conditions, covenants and development costs required by the DDA and lease, the Summary Report shall provide an explanation of the reasons for the difference.

There are multiple reasons why the consideration in this agreement is less than the estimated value with the conditions, covenants and development costs. The fundamental reason is that the project will not proceed as an affordable housing project if a requirement for greater consideration is imposed. The shared 75%/25% rent structure is necessary for the project to be feasible. The City is permitting the lease to be less than the estimated value to assure the project can be completed in the near term without any further contribution of Housing Funds above the \$1,200,000 recognized enforceable obligation.

The determinations that the project is infeasible without the terms and conditions set forth in the DDA and lease and the 75%/25% shared rent structure is fair and reasonable are based on the following findings:

1. The current "AS IS" condition of the Hotel Project, the relationship to the hotel, shared common entrance and exit corridors, the requirement to only develop the property as affordable housing and the restriction on rents make this a very difficult and challenging project to complete due to the limited financial projections from the restricted VL, L and M rent that are required pursuant to the DDA and lease.
2. The requirement that 100% of the apartments are designated to be below market, which does not provide for any market rate rents that can be used to subsidize management and maintenance expenses of the below market rate units.
3. A RFP process was followed to solicit proposals to complete the Housing Project with the City's limited Housing Funds.
4. Silverie submitted the only qualified response that proposed to complete the project without need of additional funds from the City. The Silverie proposal represents the City's best alternative to completing this project as affordable housing in the near term and without further contribution of City funds. The 75%/25% shared rent structure is the maximum rent acceptable needed to secure the DDA and lease.
5. Silverie will take on exceptional risks to complete the project and lease the property for 55-years. These risks include:
  - a. Responsibility for any costs that exceed \$1,200,000;
  - b. Strict limitations on increasing rents over time; and
  - c. One hundred percent (100%) responsibility for maintenance and capital repair of the apartment areas and 24% responsibility for maintenance and capital repair of the structure's common area for the term of the lease.
6. Restrictions placed on the project that require the City to complete the project as affordable housing compliant with HSC 50053 (b); or provide replacement affordable housing without the use of Housing Fund monies.
7. The rent structure is fair and reasonable in consideration that the City will retain ownership of the apartment condominium unit upon lease expiration and that the City received no other proposals through the RFP process that could complete the project without additional City funds.
8. There are no alternative proposals or plans available to the City at this time for completing the apartments as affordable housing.
9. The rent structure for the lease is fair and reasonable in consideration that the rents for all 18 apartments are restricted as a requirement of the DDA and lease.

10. The rent structure is fair and reasonable in consideration that the market does not develop affordable housing and local, state and federal government incentives or exactions are necessary to achieve below market rate housing, and provides a reasonable incentive for Silverie to complete the Housing Project.
11. In the event the City is unable to complete these affordable housing units the City will lose the \$1,200,000 in Housing Funds and be required to provide 18 replacement units without the use of Housing Fund monies.

## **VI. Blight Elimination**

The Monterey Hotel is partially complete. The exterior of the Housing Project is complete. The interior is partially framed with some infrastructure. Due to the design, portions of the Housing Project remain exposed to weather and there are continued instances of water damage and the need for remediation.

Completion of the Housing Project in the Project Area will further the City's goals of (i) providing affordable housing, (ii) providing and fostering economic revitalization, (iii) encouraging new private investments, (iv) providing employment opportunities, and (v) developing, where appropriate, visitor commercial uses.

Completion of the Housing Project will eliminate the current blighted condition of the airspace condominium. It will also facilitate completion of 18 new affordable rental units in the downtown.

## **VII. Ability of Silverie to Perform DDA**

Silverie was selected through a RFP process. It is the City's assessment is that the Silverie was the most qualified developer to submit a proposal to complete the Housing Project. The Silverie proposal showed the lowest cost to complete and it importantly indicated a commitment to complete the construction without need for additional funding from the City. If necessary, Silverie will obtain any additional funding from commercial banks and/or private funding. The assessment of staff and community members involved in reviewing proposals is that Silverie is well experienced in construction and that it will be able to complete the project within the budget.

Additionally Silverie:

- Is in process to construct 62 new units, including 12 moderate-income deed restricted units, in a small lot single family development within the City of Atascadero.
- Is involved with SBI Builders, Inc, and assisted in completing 53 multi-family affordable apartment units for the Housing Authority County of Monterey in 2012.
- Is the responsible developer and owner of the 91-unit Plaza Grande affordable housing project in the City of Salinas.