RESOLUTION NO. R-83-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON APPROVING THAT CERTAIN DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF COLTON, THE COLTON HOUSING AUTHORITY AND EVERGREEN – COLTON & MT. VERNON, L.L.C. FOR THE SALE AND DEVELOPMENT OF CITY AND AUTHORITY REAL PROPERTY PURSUANT TO THAT DISPOSITION AND DEVELOPMENT AGREEMENT

WHEREAS, the City of Colton ("City") currently owns in fee that certain real property generally located at the northwest corner of Colton Avenue and Mt. Vernon Avenue in the City (APN 0161-221-03-0000) and legally described in Exhibit "A" attached to this resolution and incorporated by reference herein (the "City Parcel"), and;

WHEREAS, the Colton Housing Authority ("Authority") owns that certain real property generally located at the northwest corner of Colton Avenue and Mt. Vernon Avenue, adjacent to the City Parcel (APNs 0161-221-04, 05, 06, 37, 67, 70) (the "Authority Parcels"), the conveyance by separate resolution, of which is being considered by the Authority at a duly noticed public hearing on July 7, 2015, and;

WHEREAS, California Government Code Sections 37421 and 37422 provide that when the legislative body of a City finds that the public interest and convenience require the sale of public sites, it may adopt a resolution of its finding and intention to sell such property, and must provide for publication and public hearing of the proposed sale and;

WHERAS, the City Council of the City approved Resolution No. R-56-15 (Exhibit "B"), finding that the public interest and convenience require the sale of the City Parcel, publishing and setting the public hearing for July 7, 2015, and;

WHEREAS, the Planning Commission approved Resolution No. R-12-15 (Exhibit "C"), finding that the proposed sale of the City Parcel and Authority Parcels is in conformity with the General Plan, Zoned C-2 (General Commercial) with Residential Overlay, pursuant to California Government Code section 65402, and;

WHEREAS, EVERGREEN - Colton & Mt. Vernon, L.L.C. ("Developer") wishes to purchase the City Parcel and the Authority Parcels for the development of a Smart & Final Extra and an additional retail/restaurant building (the "Project") serving the needs of the regional community and expanding the City's sales tax base, employment and shopping opportunities, and;

WHEREAS, pursuant to an appraisal of the City Parcel and the Authority Parcels conducted by a licensed appraiser, Smothers Appraisal Services, the City Parcel and the Authority Parcels was appraised for a fair market value of $1,040,000, and Developer has offered to purchase the City Parcel and Authority Parcels for $1,050,000, and;

WHEREAS, City and Developer have negotiated a Disposition and Development Agreement ("Agreement"), in substantially the form attached hereto as Exhibit "D" and incorporated herein by this reference, for Developer to acquire the City Parcel from the City for

development of the Project, and

WHEREAS, the City held a public hearing on July 7, 2015, as set forth in Resolution No. R-56-15, to hear any protests regarding the conveyance of the City Parcel to the Developer.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON RESOLVES AS FOLLOWS:

SECTION I. **INCORPORATION OF RECITALS.** The recitals set forth above are true and correct and are hereby incorporated into this Resolution.

SECTION II. **FINDINGS.** The City finds that the public interest and convenience require conveyance of the City Parcel to Developer for economic development of the City Parcel as a Smart & Final Extra and an additional retail/restaurant building, which will create or maintain jobs within the City and alleviate conditions of economic and physical blight in the City, all of which benefit the health, safety and welfare of the City.

SECTION III. **PROTESTS.** The City has not received any protests regarding the conveyance of the City Parcel to Developer [OR The City has received protests regarding such conveyance and has overruled such protests by a four-fifths vote of its members,] and may proceed with the conveyance of the City Parcel to Developer.

SECTION IV. **APPROVAL OF AGREEMENT.** The City Council of the City of Colton hereby approves the Agreement in substantially the form attached hereto as Exhibit "D."

SECTION V. **IMPLEMENTATION.** The City Manager or his or her designee is hereby authorized and directed, on behalf of the City, to take any actions and execute any and all necessary documents to implement the Agreement.

SECTION VI. **CEQA.** The approval of the Agreement does not commit the City to a definite course of action in regards to the Project because the Project remains subject to the City's full exercise of discretion as a lead agency under Public Resources Code section 21000 *et seq.*, the California Environmental Quality Act ("CEQA"), to conduct environmental review of the Project, to approve or disapprove the Project, and to require the Project to undertake mitigation measures or alternatives as may be set forth in the environmental review document.

SECTION VII. **SEVERABILITY.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that the City would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION VIII. **NOTICE OF EXEMPTION.** The City Council hereby directs staff to prepare, execute and file a Notice of Exemption with the San Bernardino County Clerk within five days of the passage and adoption of this Resolution.

SECTION IX. **CERTIFICATION.** The City Clerk shall certify to the adoption of this Resolution.

SECTION X. **EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 7th day of July, 2015.

RICHARD A. DELAROSA
Mayor

ATTEST:

CAROLINA R. PADILLA
City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

APN: 0161-221-03

[Attached behind this cover page]

Exhibit "A"

Legal Description—City Parcel

APN# 0161-221-03

THE SOUTHERLY 427.12 FEET OF THE EASTERLY 150 FEET OF LOT 20, COLTON LAND AND WATER COMPANY ADDITION, TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 1 OF MAPS, PAGE 40, RECORDS OF SAID COUNTY.

NOTE NO. 1: A PORTION OF SAID BLOCK 20 IS COVERED BY MAP OF COLTON AVENUE TRACT RECORDED IN BOOK 19 OF MAPS, PAGE 88, RECORDS OF SAID COUNTY.

NOTE NO. 2: THE PROPERTY HEREIN DESCRIBED IS ALSO SHOWN ON LICENSED SURVEYOR'S MAP, RECORDED IN BOOK 6, PAGE 51, RECORD OF SURVEY

EXHIBIT "B"

Resolution R-56-15

(City Resolution of Intent to Sell Property)

(Attached behind this cover page)

RESOLUTION NO. R-56-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY AND DECLARING ITS INTENT TO SELL SUCH PROPERTY

WHEREAS, the City of Colton ("City") currently owns in fee that certain real property generally located at the northwest corner of Colton Avenue and Mt. Vernon Avenue in the City (APN 0161-221-03-0000) and legally described in Exhibit "A" attached to this resolution and incorporated by reference herein (the "Property"), and;

WHEREAS, the City desires to sell the Property by entering into a Disposition and Development Agreement ("DDA") with Evergreen Development Company, Inc., a California corporation ("Developer"), to, among other things, convey the Property to Developer to develop the Property as a grocery and dry good store and one (1) additional retail building or restaurant for purposes of economic development, and;

WHEREAS, California Government Code Sections 37420 through 37430 authorize the City to dispose of property, and;

WHEREAS, California Government Code Section 37421 provides that when the legislative body of a city finds that the public interest and convenience require the sale of public buildings and sites dedicated to public use, it may adopt a resolution of its finding and intention to sell such property, and;

WHEREAS, California Government Code Section 37422 provides that such resolution shall fix a time for hearing protests to the property conveyance, provide for publication of notice of the hearing, fix the time when the City will take final action regarding the property conveyance; and contain an accurate description of the property to be conveyed, and;

WHEREAS, pursuant to Government Code section 65402, the proposed disposition of the Property shall be presented to the City's Planning Commission ("Planning Commission"), and such disposition shall be contingent on a finding by the Planning Commission that the conveyance of the Property from City to Developer is in conformance with the City's general plan, and;

WHEREAS, the City wishes to declare its intent to dispose of and convey the Property pursuant to the terms of a DDA, fix a time for the hearing of any protests to the disposition, provide for publication of the notice of said hearing, and fix the time for final action on the disposition of the Property and approval of a DDA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council of the City hereby finds and determines that public convenience and necessity require the sale of the Property. The factors demonstrating that the public convenience and necessity require the sale of the Property include, but are not limited to the following: the Property will be utilized by Developer as a grocery and dry goods store and one (1) retail building or restaurant separate from the grocery and dry good store for purposes of economic development, which will create or maintain jobs within the City and alleviate conditions of economic and physical blight in the City, all of which benefit the health, safety and welfare of the City.

SECTION 3. Declaration of Intent to Sell; Fixing of Hearing. The City Council of the City hereby declares its intent to sell the Property pursuant to a DDA and fixes July 7, 2015 at 6:00 p.m. at Colton City Hall, 650 N. La Cadena Drive, Colton, as the date, time and location for hearing any protests to the proposed sale of the Property, for approval of the DDA, and of the final action date.

SECTION 4. Publication and Posting. In compliance with California Government Code section 37423, the City Council of the City hereby directs City staff to publish this resolution at least once in the Colton City News newspaper prior to July 7, 2015, and to post this Resolution for not less than ten (10) days in at least three (3) conspicuous places upon the Property prior to July 7, 2015.

SECTION 5. CEQA. The City Council of the City of Colton has determined that the sale of property in this Resolution is not a "project" requiring environmental review pursuant to the California Environmental Quality Act (Public Resources Code, sections 21000, *et seq.*); rather, a sale does not involve any commitment to any specific project and, as a result, is excluded from the definition of "project" in section 15378(b)(4) of the State CEQA Guidelines (Title 14 California Code of Regulations sections 15000, *et seq.*). The City Clerk is authorized and directed to file all appropriate notices pursuant to CEQA with the Clerk of the Board of Supervisors of the County of San Bernardino, California.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 7. <u>Effective Date</u>. This Resolution shall become effective immediately upon its adoption.

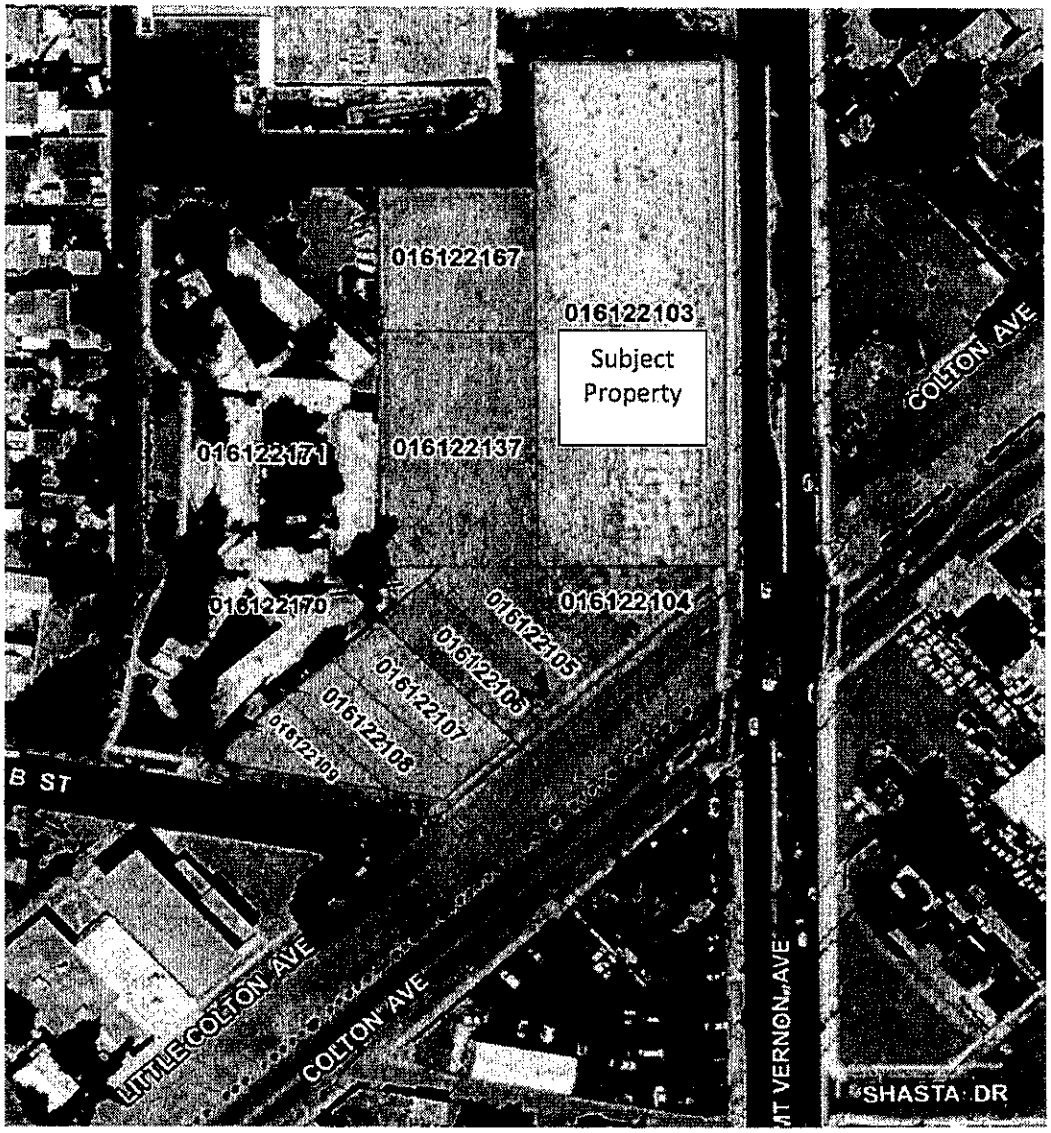
PASSED, APPROVED AND ADOPTED this 2nd day of June, 2015.

Richard A. DeLaRosa, Mayor

ATTEST:

Carolina R. Padilla, City Clerk

EXHIBIT "A"
TO RESOLUTION OF INTENT



LEGAL DESCRIPTION (APN: 0161-221-03)
THE SOUTHERLY 427.12 FEET OF THE EASTERLY 150 FEET OF LOT 20, COLTON LAND AND WATER COMPANY ADDITION, TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 1 OF MAPS, PAGE 40, RECORDS OF SAID COUNTY.
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EXHIBIT "C"

Resolution R-12-15

Planning Commission Resolution,

Finding of Conformity with General Plan

(Attached behind this cover page)

RESOLUTION NO. R-12-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COLTON, CALIFORNIA, FINDING THAT THE DISPOSITION OF CERTAIN PUBLIC PROPERTIES FOR COMMERCIAL DEVELOPMENT IS CONSISTENT WITH THE CITY'S GENERAL PLAN

WHEREAS, the City of Colton ("City") owns approximately 1.47 acres of that certain real property generally located at the northwest corner of Mount Vernon Avenue and Colton Avenue in the City of Colton, California ("City Property"); and

WHEREAS, the Colton Housing Authority ("Authority") owns approximately_1.47 acres of that certain real property generally located at the northwest corner of Mount Vernon Avenue and Colton Avenue in the City of Colton, California ("Authority Property"); and

WHEREAS, Evergreen Development Company, Inc., a California corporation (the "Developer") is in the process of purchasing approximately 0.44 acres of that certain real property located adjacent to and west of the City Property and Authority Property ("Developer Property"); and

WHEREAS, the Developer desires to acquire the City Property and Authority Property (collectively, the "Public Properties") for the purpose of redeveloping the Public Properties Property and Developer Property as a 27,600± square foot Smart & Final Extra grocery store and 4,400± square foot appropriate accompanying retail (the "Project"); and

WHEREAS, the City and the Developer have negotiated the terms of that certain Disposition and Development Agreement (Smart & Final) (the "Agreement") regarding the conveyance and development of the Public Properties; and

WHEREAS, the City and Authority wish to proceed with the sale of the Public Properties pursuant to the terms and conditions of the Agreement; and

WHEREAS, the Public Properties are designated for General Commercial use in the City of Colton's General Plan ("General Plan") and are zoned General Commercial (C2); and

WHEREAS, pursuant to Government Code Section 65402, the Planning Commission of the City of Colton must make a finding that the location, purpose and extent of the disposition of the Public Properties conforms with the City's General Plan; and

WHEREAS, after a duly noticed public meeting held on the 23rd day of June, 2015, and the consideration of all facts and circumstances, the Planning Commission desires to make a finding of General Plan conformance based upon substantial evidence.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Colton, California, in Regular Session assembled this 23rd day of June, 2015, that the proposed disposition of the Public Properties by the City and Authority to Developer is found to be in conformity with the City of Colton General Plan, based on the following findings:

A. Assemblage of the small lots as proposed will create a more attractive and cohesive development to the site, per General Plan Land Use Element Policy LU-1.5.

B. Development of the site as a location for a sought-after retail store will strengthen the economic base of the City, and help build fiscal stability, per General Plan Land Use Element Goal LU-3.

C. The proposed disposition of the property will bring needed shopping opportunities, tax revenue and employment opportunities to the area, as stated in General Plan Land Use Element Goal LU-9.

D. Bringing small lots together for development of an attractive retail center will help to revitalize the Mount Vernon corridor at a key intersection, per General Plan Land Use Goal LU-17 and General Plan Land Use Policy LU-17.10.

BE IT FURTHER RESOLVED, that the Planning Commission has determined that the above referenced findings, in conjunction with all written and oral evidence presented to the Planning Commission, including staff reports and Commission deliberation, provides substantial evidence for the Planning Commission's finding of General Plan conformity with respect to the proposed disposition of the Public Properties.

PASSED, APPROVED, AND ADOPTED this 23rd day of June, 2015.

Richard Prieto

Planning Commission Chairperson
Richard Prieto

ATTEST:

Planning Commission Secretary
Mark R. Tomich, AICP

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Commission of the City of Colton at a meeting held on June 23, 2015, by the following vote of the Planning Commission:

AYES: Arrieta, Larson, Grossich, Granado-Dominguez, Delgado, Archuleta, Prieto
NOES:
ABSENT:
ABSTAIN:

Planning Commission Secretary
Mark R. Tomich, AICP

EXHIBIT "D"

Disposition and Development Agreement

By and between

The City of Colton, the Colton Housing Authority and Evergreen Devco, Inc.

(Attached behind this cover page)

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF COLTON)

CERTIFICATION

I, CAROLINA R. PADILLA, City Clerk of the City of Colton, California, do hereby certify that the foregoing is a full, true and correct copy of **RESOLUTION NO. R-83-15**, duly adopted by the City Council of said City, and approved by the Mayor of said City, at its Regular Meeting of said City Council held on the **7th day of July, 2015**, and that it was adopted by the following vote, to wit:

AYES:	COUNCILMEMBER	Toro, Jorrin, Navarro, González, Bennett, Suchil and Mayor DeLaRosa
NOES:	COUNCILMEMBER	None
ABSTAIN:	COUNCILMEMBER	None
ABSENT:	COUNCILMEMBER	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Colton, California, this _____ day of _____, 20___.

_____
CAROLINA R. PADILLA
City Clerk
City of Colton

(SEAL)