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**RESOLUTION NO. R-14-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING COOPERATION LOAN AGREEMENT WITH THE COLTON HOUSING AUTHORITY**

**WHEREAS**, the Colton Housing Authority (“Authority”) owns certain real property generally located in the block bordered on the north by East E Street, on the east by North 9th Street, on the south by East F Street and on the west by North La Cadena Drive, in the City of Colton, California (“Property”); and

**WHEREAS**, on July 17, 2012, Authority entered into a Disposition and Development Agreement (“DDA”), with Eagle Colton 55, L.P., a California limited partnership (“Developer”) providing for, among other things, the transfer of the Property by Authority to Developer and Developer’s construction on the Property of one hundred twenty (120) units, of affordable senior citizen rental housing (“Project”); and

**WHEREAS**, pursuant to the DDA, the Authority agreed to loan Developer up to \$4,924,000 to be used to purchase the Property from Authority and construct the Project on the Property (“Authority Loan”); and

**WHEREAS**, Authority desires to enter into an Affordable Housing Cooperation Loan Agreement (“Agreement”) with City to borrow up to \$4.45 million (“City Loan”) to fund a portion of the Authority Loan to Developer; and

**WHEREAS**, City desires to make the City Loan to Authority up to \$4.45 million to fund a portion of the Authority Loan in furtherance of the affordable housing goals of City; and

**WHEREAS**, Authority agrees to repay the City Loan, with interest at the annual rate of 2%, on a residual receipts basis from money received from Developer in repayment of the Authority Loan, until the City Loan is repaid in full; and

**WHEREAS**, the Project addresses certain affordable housing needs of the City and will assist the Authority in the provision of housing for persons of low income; and

**WHEREAS**, the City Council of the City of Colton has duly considered all of the terms and conditions of the proposed Agreement and has determined that the development of the Project pursuant to the Agreement is in the best interests of the City of Colton and the health, safety, and welfare of its residents.

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

**SECTION 1.** The City previously adopted a mitigated negative declaration in compliance with the California Environmental Quality Act (“CEQA”) regarding development of the Property with the Project and, since the adoption of the mitigated negative declaration, there are no changes proposed in the Project, no new circumstances related to the Project and

1 no new information regarding the Project that would require or allow any subsequent or  
2 supplemental environmental review of the Project, in accordance with Title 14 California  
Code of Regulations Section 15162.

3 **SECTION 2.** The facts set forth in the recitals of this Resolution are true and correct  
4 and incorporated herein.

5 **SECTION 3.** The City hereby finds and determines, based upon substantial  
6 information in the record before it, that the City Loan and development of the Project on the  
7 Property is of benefit to the City by providing affordable housing for senior citizens who  
currently live within the City.

8 **SECTION 4.** The City hereby approves the Agreement with Authority in  
9 substantially the form attached to this Resolution as Exhibit "A" and ratifies all actions of  
10 City staff previously taken consistent with the Agreement. The City Council acknowledges  
11 that the City disbursed \$2.5 million in City Loan proceeds to Authority on the date of the  
12 Agreement, and has applied or will apply up to \$1.7 million in City Loan proceeds to pay  
13 permit and development fees related to the Project and will be receiving repayment of these  
amounts pursuant to the provisions of the Agreement on a residual receipts basis from certain  
net operating income from the Project. The remaining \$250,000 of City Loan principal is  
repayment for pre-development work related to the Project done by City.

14 **SECTION 5.** The City Manager or his designee is hereby authorized to sign and  
15 enter into the Agreement on behalf of City and to take all actions and sign, make, enter into  
16 and deliver all documents by or on behalf of City necessary to carry out the purposes of the  
Agreement.

17 **SECTION 6.** If any provision of this Resolution or the application of any such  
18 provision to any person or circumstance is held invalid, such invalidity shall not affect other  
19 provisions or applications of this Resolution that can be given effect without the invalid  
20 provision or application, and to this end the provisions of this Resolution are severable. The  
City Council declares that the City Council would have adopted this Resolution irrespective  
of the invalidity of any particular portion of this Resolution.

21 **SECTION 7.** The City Council hereby directs staff to prepare, sign and file a Notice  
22 of Exemption with the San Bernardino County Clerk within five days after the adoption of  
this Resolution.

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**EXHIBIT "A"**

**Affordable Housing Cooperation Loan Agreement**

**[Attached behind this cover page]**

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EXHIBIT "A"  
TO RESOLUTION  
NO. R-14-13

**AFFORDABLE HOUSING COOPERATION LOAN AGREEMENT**

**(Colton Senior Complex)**

**by and between the**

**COLTON HOUSING AUTHORITY,  
a California public corporation**

**and the**

**CITY OF COLTON,  
a California municipal corporation**

**[Dated as of March 12, 2013, for reference purposes only]**

## AFFORDABLE HOUSING COOPERATION LOAN AGREEMENT

(Colton Senior Complex)

THIS AFFORDABLE HOUSING COOPERATION LOAN AGREEMENT (Colton Senior Complex) (this "Agreement") is entered into as of March 12, 2013 ("Effective Date"), by and between the COLTON HOUSING AUTHORITY, a California public corporation ("Authority"), and the CITY OF COLTON, a California municipal corporation ("City"). Authority and City are sometimes referred to in this Agreement, individually, as a "Party" or, collectively, as the "Parties." The Parties enter into this Agreement, with reference to the following recited facts:

### RECITALS

A. Authority has entered into that certain Disposition and Development Agreement (Colton Senior Complex) ("DDA") with Eagle Colton 55, L.P., a California limited partnership ("Developer"), pursuant to which Developer is to purchase from Authority that certain real property owned by Authority and generally located in the block bordered on the north by East E Street, on the east by North 9th Street, on the south by East F Street and on the west by North La Cadena Drive, in City of Colton, California ("Property"), and construct a 120 unit multi-family affordable senior citizen rental housing project ("Project") on the Property;

B. Developer is also required by the terms of the DDA to provide 51 one bedroom units affordable to households earning no more than 50% of area median income, 29 one bedroom units affordable to households earning no more than 80% of area median income and 21 two bedroom units affordable to households earning no more than 80% of area median income;

C. Pursuant to the DDA, Authority agreed to loan Developer up to \$4,924,000 to be used to purchase the Property from Authority and construct the Project on the Property ("Authority Loan");

D. Authority desires to borrow up to \$4,450,000 from City to fund a portion of the Authority Loan to Developer;

E. City desires to loan Authority up to \$4,450,000 to fund a portion of the Authority Loan in furtherance of the affordable housing goals of City;

NOW, THEREFORE, IN CONSIDERATION OF THE FACTS RECITED ABOVE, THE PROMISES SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, AUTHORITY AND CITY AGREE, AS FOLLOWS:

### 1. LOAN AGREEMENT

1.1 **City Loan to Authority for Affordable Housing.** City agrees to loan to Authority, on a non-revolving credit basis, an amount not to exceed \$4,450,000 ("Maximum Loan Amount"), to partially fund the Authority Loan for construction of affordable housing in

the City, pursuant to and on the terms and conditions set forth in Section 1.2 (“Loan”). The Loan shall be evidenced by this Agreement, without a separate promissory note.

## 1.2 Terms and Conditions of Loan.

1.2.1 **Disbursement.** City agrees to disburse the Loan proceeds to or on behalf of Authority or on behalf of Developer, as Authority may request from time to time, not to exceed the Maximum Loan Amount, during the fiscal year in which the Effective Date occurs. Specifically, City will disburse \$2,500,000 in cash to Authority on the Effective Date and pay an amount not to exceed \$1,700,000 towards permit and development fees related to the Project that are collectable by City, as and when such fees become due. The remaining \$250,000 Loan principal is repayment for pre-development work related to the Project done by City.

1.2.2 **Repayment.** Authority agrees to repay to City all Loan funds disbursed to Authority, with interest at the annual rate of 2% (“Interest Rate”), from funds repaid to Authority pursuant to the Authority Loan. The Authority Loan is repayable to the Authority from Developer on a residual receipts basis, with interest at the annual rate of 2%. The Authority shall pay all amounts repaid to Authority from Developer pursuant to the Authority Loan to City, until the Loan is repaid in full, with accrued interest.

1.2.3 **Maturity Date.** The maturity date of the Loan shall be the same as the “Maturity Date” of the Authority Loan and shall be subject to extension at the election of Authority to coincide with any extension of the “Maturity Date” of the Authority Loan, pursuant to the terms of that certain “Promissory Note Secured by Deed of Trust” made by Developer to the order of Authority and evidencing the Authority Loan. If the principal amount advanced under the Loan and all accrued interest on such amount have not been repaid in full before the maturity date, then such amounts shall become immediately due and payable to City on the maturity date of the Loan.

1.2.4 **Application of Payments.** Each payment under the Loan shall be credited in the following order: (a) accrued and unpaid interest, then (b) outstanding principal.

1.2.5 **Interest.** Any outstanding principal balance of the Loan shall accrue interest at the Interest Rate.

1.2.6 **Affordable Housing.** City requires that, at least, 40% of the rental housing units developed in the Project be affordable to households earning not more than 80% of area median income, as determined by the State of California Department of Housing and Community Development or, if not so determined, then as determined by the United States Department of Housing and Urban Development. City acknowledges and agrees that the DDA requires this level of affordability for the Project and satisfies the City requirement set forth in this Section 1.2.6.

1.2.7 **Usury.** This Agreement is expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of the Loan or otherwise, shall the amount paid or agreed to be paid to City for the use, forbearance, or retention of the money to be advanced under the Loan exceed the highest lawful rate permissible under applicable law. If, under any circumstances, fulfillment of any provision of the Loan, after timely performance

of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the maximum limit of such validity. If, under any circumstances, City shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under the Loan and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under the Loan, such excess shall be refunded to Authority.

## 2. DEFAULTS AND REMEDIES

### 2.1 Default.

2.1.1 **Cure Period.** Failure or delay by either Party in performing any material term or provision of this Agreement shall constitute a default under this Agreement. If the Party in default cures, corrects or remedies the default within thirty (30) calendar days after receipt of written notice specifying such default, such Party shall not be in default under this Agreement.

2.1.2 **Notice.** The Party claiming that a default has occurred shall give written notice of default to the Party claimed to be in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. However, the injured Party shall have no right to exercise any remedy for a default under this Agreement, without first delivering written notice of the default.

2.2 **Remedies.** The Parties shall have all remedies available at law or in equity regarding any default by the other Party under this Agreement. Any failure or delay by a Party in asserting any of its rights or remedies as to any default under this Agreement shall not operate as a waiver of any default or of any rights or remedies associated with a default under this Agreement.

## 3. GENERAL PROVISIONS

3.1 **Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

3.2 **Notices, Demands and Communications Between the Parties.** Any and all notices, demands or communications submitted by either Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and transmitted to the principal office of City or Authority, as applicable, as designated below in this Section 3.2. Such written notices, demands or communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice in accordance with this Section 3.2. The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

To Authority:

Colton Housing Authority  
650 North La Cadena Drive  
Colton, CA 92324  
Attn: Executive Director

To City:

City of Colton  
650 North La Cadena Drive  
Colton, CA 92324  
Attn: City Manager

3.3 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean and refer to business days of City.

3.4 Amendment. No amendment or modification of this Agreement shall be effective, unless made in writing and signed by the Party against whom the amendment or modification is sought to be enforced. The Party benefited by any condition or obligation may waive such condition or obligation, but such waiver shall not be enforceable by the other Party, unless the waiver is made in writing and signed by the waiving Party. No waiver of any default or breach of any term or condition contained in this Agreement shall be deemed a waiver of any preceding or succeeding default or breach of such term or condition, or of any other term or condition contained in this Agreement.

3.5 Severability. If any provision of this Agreement as applied to any Person (meaning any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind) or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision regarding another Person or under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

3.6 Construction. Unless otherwise indicated, all section references are to the sections of this Agreement. The headings used in this Agreement are provided for convenience of reference only and this Agreement shall be interpreted without reference to any headings. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties prepared this Agreement. If the date on which a Party is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. The use of the word "or" in this Agreement shall also include the word "and." The use of the word "including" in this Agreement shall be interpreted as though followed by the phrase "without limitation."

3.7 Governing Law. The Parties acknowledge and agree that this Agreement was negotiated entered into and is to be fully performed in the County of San Bernardino, State of California. The Parties also agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California, without application of conflicts of laws principles or statutes.

3.8 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns. Nothing in this Agreement is intended to relieve or discharge any obligation of any third Person to any Party or give any third Person any right of subrogation or action over or against any Party.

3.9 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

3.10 Entire Agreement. This Agreement includes 6 pages that constitute the entire understanding and Agreement of the Parties regarding the Loan and the other subjects addressed in this Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Loan and the other subjects addressed in this Agreement.

3.11 Counterparts. This Agreement may be signed in two (2) or more counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

3.12 No Assignment. Neither Authority nor City shall assign this Agreement nor any of their respective rights or obligations under this Agreement, without the prior written consent of the other Party.

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
AFFORDABLE HOUSING COOPERATION LOAN AGREEMENT  
(Colton Senior Complex)**

**AUTHORITY:**

COLTON HOUSING AUTHORITY, a  
California public corporation

By:   
Name: Stephen P. Compton  
Executive Director

**CITY:**

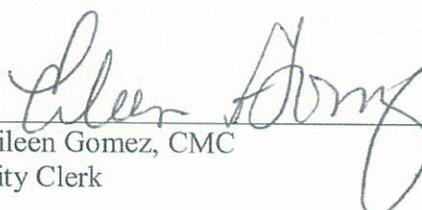
CITY OF COLTON, a California municipal  
corporation

By:   
Name: Stephen P. Compton  
City Manager

**ATTEST:**

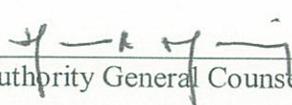
By:   
Eileen Gomez, CMC  
Authority Assistant Secretary

**ATTEST:**

By:   
Eileen Gomez, CMC  
City Clerk

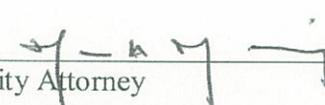
**APPROVED AS TO FORM:**

Best Best & Krieger LLP

By:   
Authority General Counsel

**APPROVED AS TO FORM:**

Best Best & Krieger LLP

By:   
City Attorney

1 STATE OF CALIFORNIA )  
2 COUNTY OF SAN BERNARDINO ) ss  
3 CITY OF COLTON )

4 **CERTIFICATION**

5 I, **EILEEN C. GOMEZ**, City Clerk of the City of Colton, California, do hereby  
6 certify that the foregoing is a full, true and correct copy of **RESOLUTION NO. R-14-13**,  
7 duly adopted by the City Council of said City, and approved by the Mayor of said City, at  
8 its Regular Meeting of said City Council held on the **19<sup>th</sup> day of March, 2013**, and that it  
9 was adopted by the following vote, to wit:

10	AYES:	COUNCILMEMBER	Toro, Gonzales, Navarro, Oliva,
11			Bennett, Suchil, and Mayor Zamora
12	NOES:	COUNCILMEMBER	None
13	ABSTAIN:	COUNCILMEMBER	None
14	ABSENT:	COUNCILMEMBER	None
15			

16 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official  
17 seal of the City of Colton, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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21 \_\_\_\_\_  
22 EILEEN C. GOMEZ, CMC  
23 City Clerk  
24 City of Colton

25 (SEAL)  
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**CERTIFICATION**

I, EILEEN C. GOMEZ, City Clerk to the City of Colton, do hereby certify that the foregoing Resolution No. R-14-13 was duly and regularly adopted by the City Council of the City of Colton at a regular meeting thereof held on the 19<sup>th</sup> day of March, 2013, and that the same was passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Eileen Gomez, CMC, City Clerk