



Memo

To: Honorable Mayor Pinkham
Board of Trustees

From: Gregory A. White, Town Attorney

Date: November 16, 2012

RE: Ordinance No. 08-12 – Approving Exclusive Option to Purchase Real Estate for Estes Performance Incorporated – Performing Arts Center Project

Background:

Estes Performance Incorporated (“EPIC”) has determined to design, permit, construct and operate a Performing Arts Center Project and related facilities (the “Project”) on the “Park Theater Mall” property. In order to design and construct the Project, EPIC has requested that the Town sell a portion of the Town’s Riverside parking lot contiguous to the Park Theater Mall property. The Exclusive Option to Purchase Real Estate (“Option”) grants to EPIC the Option to purchase a portion of the Town’s property as described in the Option. The Option must be exercised on or before January 31, 2014. If the Option is exercised by EPIC, the Town and EPIC will then execute the Real Estate Sales Contract which is included as Exhibit B to the Option Agreement. The significant provision of the Real Estate Sales Contract are as follows:

1. Purchase price of \$1.00.
2. Closing within thirty (30) days after the exercise of the Option and execution of the Real Estate Sales Contract.
3. Costs – EPIC is responsible for all costs of closing of the Real Estate Sales Contract.
4. Riverwalk – At closing, EPIC shall deliver to the Town a public access easement across the Park Theater Mall property. EPIC is also obligated to design, construct and maintain the Riverwalk across the Park Theater Mall property. EPIC shall also deliver a public access easement from the western side of the Park Theater Mall property to Moraine Avenue.
5. Contingencies – The closing of the Real Estate Sales Contract is specifically contingent upon the following:
 - a. EPIC receiving all necessary approvals including, but not limited to, special review approval and variances for its Performing Arts Center Project.

- b. EPIC delivering to the Town the public access easement for the Riverwalk across the Park Theater Mall property.
- c. Delivery of a public access easement from the western side of the Park Theater mall property to Moraine Avenue for further extension of the Riverwalk.
- d. Negotiation of a Development Agreement between EPIC and the Town addressing construction of EPIC's Performing Arts Project as more fully outlined on Exhibit C of the Real Estate Sales Contract.
- e. EPIC shall apply for and receive approval of an Amended Plat of a portion of Lot 33 of the Riverside Subdivision of the Town of Estes Park, which will enable the Town to transfer the property to Purchaser.
- f. Prior to closing, EPIC acquiring title to the Park Theater Mall property in order to allow its construction of the Project.
- g. The Town and EPIC negotiating an agreement which provides for reversion of the Town's property to the Town in the event that construction of the Project is not commenced within three (3) years of the date of closing.

Ordinance No. 08-12 approves the Exclusive Option to Purchase Real Estate which, if exercised by EPIC, approves the Real Estate Sales Contract attached as Exhibit B to the Option Agreement.

Budget:

The Town will incur administrative and legal expenses in negotiating the necessary agreements which are contingencies to the Real Estate Sales Contract. EPIC agrees in the Real Estate Sales Contract to pay all other costs associated with the exercise of its option to acquire the Town's property.

Staff Recommendation:

Staff recommends approval of Ordinance No. 08-12.

Sample Motion:

I move to approve/deny Ordinance No. 08-12.

ORDINANCE NO. 08-12

**AN ORDINANCE APPROVING AN EXCLUSIVE OPTION
TO PURCHASE REAL ESTATE FOR ESTES PERFORMANCE
INCORPORATED – PERFORMING ARTS CENTER PROJECT**

WHEREAS, the Board of Trustees of the Town of Estes Park has the authority pursuant to Section 31-15-713 (b) C.R.S. to sell Town property; and

WHEREAS, Estes Performance Incorporated (“EPIC”) has requested that the Town sell a portion of its property located on the western portion of the Town’s Riverside parking lot which abuts the location of EPIC’s proposed Performing Arts Center Project; and

WHEREAS, as part of the purchase of the Town’s property, EPIC has agreed to grant a public access easement and construct an extension of the Riverwalk across the Park Theater Mall property which will be acquired by EPIC; and

WHEREAS, the Board of Trustees of the Town of Estes Park has determined it is in the best interest of the Town to enter into an Exclusive Option to Purchase Real Estate with EPIC which grants to EPIC the exclusive option to purchase Town property subject to the terms and conditions as more fully set forth in the Exclusive Option to Purchase Real Estate Agreement.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF
THE TOWN OF ESTES PARK, COLORADO:**

Section 1. The Exclusive Option to Purchase Real Estate Agreement attached hereto as Exhibit A and incorporated herein by this reference is hereby approved. The officials of the Town of Estes Park are hereby authorized to execute the Option to Purchase Real Estate Agreement and perform all other necessary acts and duties as provided in the Option Agreement.

Section 2. This Ordinance shall take effect and be enforced thirty (30) days after its adoption and publication.

**INTRODUCED, READ, AND PASSED BY THE BOARD OF TRUSTEES OF THE
TOWN OF ESTES PARK on this _____ day of _____, 2012.**

TOWN OF ESTES PARK

Mayor

ATTEST:

Town Clerk

I hereby certify that the above Ordinance was introduced and read at the meeting of the Board of Trustees on the _____ day of _____, 2012, and published in a newspaper of general circulation in the Town of Estes Park, Colorado, on the _____ day of _____, 2012.

Town Clerk

EXCLUSIVE OPTION TO PURCHASE REAL ESTATE

This Option Agreement entered into on the ___ day of November, 2012 (the "Effective Date") between the **Town of Estes Park**, Colorado, a municipal corporation, hereinafter called "Seller", and **Estes Performance Incorporated**, hereinafter referred to as "Purchaser," for the option to purchase two parcels of property owned by the Town of Estes Park (the "Option Property").

WITNESSETH:

1. **GRANT OF OPTION.** In consideration of **\$1.00 (ONE DOLLAR)**, cash in hand paid by Purchaser to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller hereby grants unto Purchaser, for the Option Period described below, the exclusive right and Option to purchase the Option Property, more fully described in Exhibit A attached hereto and incorporated herein by reference, and, upon the exercise of the Option, to purchase the same as hereinafter provided.

2. **Exercise of Option.** To exercise this Option, Purchaser shall, prior to the date on which this Option is due to expire, give Seller written notice of its exercise of the Option.

3. **Term of Option.** This Option shall extend from the Effective Date to January 31, 2014. In the event Purchaser fails to exercise this Option by this date, this Option shall terminate on said date and be of no further force and effect.

4. **Real Estate Sales Contract.** At the time of exercise of the Option, Purchaser shall execute and deliver to Seller and Seller shall execute and deliver to Purchaser, the Real Estate Sales Contract, attached hereto as Exhibit B and incorporated herein and by reference.

5. **Purchaser Representation.** The Purchaser represents that, as of the date of this Option, the following are true and correct statements upon which Seller may rely:

- a) Purchaser is a duly-organized corporation in good standing under the Laws of the State of Colorado;
- b) Purchaser will diligently pursue the contingencies which are set forth in Section 10.10 of the Real Estate Sales Contract;

6. **Title Commitment to be Delivered by Seller.** Title to the Option Property shall be merchantable, and free and clear of all liens, encumbrances and defects to the Purchaser's satisfaction prior to closing of the Real Estate Sales Contract. Within ten (10) days of the mutual execution of the Real Estate Sales Contract, Seller shall provide, at Purchaser's expense, a title insurance commitment from a Title Insurance Company of Seller's choosing, in favor of the Purchaser on the Option Property, in form satisfactory to the Purchaser and showing a State of Title as set forth in the Purchaser's proposed Real Estate Sales Contract. The premium for such insurance, if the Property is purchased as provided in the Contract and a policy of title insurance issued, shall be at Purchaser's expense at closing.

7. **Binding Nature of Option.** This Option is for the benefit of and binding upon the successors and assigns of the parties hereto.

8. **Memorandum of Option to Be Recorded.** For purposes of recording, a Memorandum notice of this Option shall be executed by the parties and recorded.

9. **Notices.** Any notice required or permitted to be delivered hereunder shall, except as otherwise expressly provided herein, be deemed to have been given upon the earlier to occur of (i) actual receipt by the addressee thereof; or (ii) deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be as follows:

Seller: Town of Estes Park
Attention: Town Administrator
P O Box 1200
Estes Park, CO 80517

Purchaser: Estes Performance Incorporated
Attn: President
P O Box 3077
Estes Park, CO 80517

IN WITNESS WHEREOF, Seller and Purchaser have executed this Option Agreement dated as of _____ in duplicate originals by their respective duly-authorized representatives as designated below.

SELLER:

**TOWN OF ESTES PARK,
a municipal corporation**

BY: _____
Mayor

Acknowledged by:

Town Clerk

PURCHASER:

**ESTES PERFORMANCE INCORPORATED,
a Colorado nonprofit corporation,**

By: _____

Acknowledged by:

By: _____

EXHIBIT A

Legal Description of Parcel 1:

The following legal descriptions are portions of the Southwest Quarter of the Northeast Quarter of Section 25, Township 5 North, Range 73 West of the 6th P.M.

Commencing at the (approximate) Northeast Corner of Lot 34, Second Riverside Subdivision (the Northeast corner of the slab at the southerly edge of Fall River); thence S 16'39' E 15.9' to the true point of beginning;

thence along the east line of said Lot 34, S 16'39'

E 128.4' thence S 78'28' E 24.2';

thence N 11'32' E 140.0';

thence N 78'28' W 35.4';

thence S 73'02' W 56.2' to the True Point of

Beginning. Area: 7775 square feet, more or less

Legal Description of Parcel 2:

Larimer County Parcel Number 3525122943 (as small sliver of property between the southern boundary of Lot 34 and Rockwell currently containing an extension to the sidewalk and 3 trees).

REAL ESTATE SALES CONTRACT

This **REAL ESTATE SALES CONTRACT** (hereinafter referred to as the "**Contract**") is entered into the ____ day of _____, 20__ (hereinafter referred to as the "Effective Date") by the **Town of Estes Park**, a municipal corporation (hereinafter referred to as "**Seller**"), and **Estes Performance Incorporated** (hereinafter referred to as "**Purchaser**").

P R E M I S E S:

WHEREAS, Seller is the owner of certain real property, as more particularly described herein, and which is situated in the Town of Estes Park, Larimer County, Colorado; and

WHEREAS, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller all of Seller's right, title and interest in and to the real property described herein.

A G R E E M E N T:

NOW, THEREFORE, for and in consideration of the Premises, the payment of the sums described herein, the respective covenants, agreements and obligations hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser do hereby agree as follows:

ARTICLE I **SALE AND PURCHASE**

1.1 **PROPERTY**. Upon and subject to the terms and conditions hereinafter set forth, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, the real property, as more fully described on **EXHIBIT A** attached hereto, and incorporated herein for all purposes, together with all rights, ways, privileges and appurtenances pertaining thereto (hereinafter referred to as the "**Property**"), for the consideration of and subject to the terms, provisions, and conditions hereinafter set forth.

ARTICLE II
PURCHASE PRICE

2.1 PURCHASE PRICE. The Purchase Price for the Property (hereinafter referred to as the "Purchase Price") shall be One Dollar (\$1.00).

ARTICLE III
EARNEST MONEY

3.1 EARNEST MONEY DEPOSIT. Purchaser shall deliver earnest money in the amount of Five Thousand Dollars (\$5,000) (the "Earnest Money Deposit") to Seller upon the execution of this Contract. If this Contract closes according to the terms hereof, the Earnest Money Deposit shall be returned to Purchaser at Closing.

ARTICLE IV
TITLE STATUS

4.1 TITLE COMMITMENT. Within ten (10) business days after the Effective Date, Seller shall deliver to Purchaser a Commitment for Title Insurance (hereinafter referred to as the "Commitment"), together with legible copies of all instruments and documents referred to therein as exceptions ("Exception Documents") to title covering the Property, in favor of Purchaser, pursuant to which the Title Company agrees, subject to the provisions thereof, to issue at Closing an Owner Policy of Title Insurance (hereinafter referred to as the "Owner Policy") to Purchaser.

4.2 REVIEW OF TITLE COMMITMENT. Purchaser shall have ten (10) days after receipt of the Commitment and the Exception Documents (as herein defined) to provide to Seller written objections to the status of title to the Property. If such written objections have not been received by Seller prior to the end of the above described period, Purchaser shall be deemed to have conclusively accepted and approved the status of title to the Property as shown by the Commitment. If Purchaser does timely deliver to Seller such written objections, Seller shall have until Closing to cure such objections; however, Seller is not obligated to cure such objections. Seller shall diligently pursue the curing of any objections Seller elects to cure. If Seller fails, is unable, or unwilling to cure such objections by Closing, Purchaser may either (i) waive such objections in writing and purchase the Property notwithstanding such objections; or (ii) terminate this Contract by written notice to Seller. If Purchaser elects to terminate this Contract, the Earnest Money Deposit shall be refunded to Purchaser and neither Seller nor Purchaser shall have any further obligations hereunder, except those obligations stated herein that survive termination of this Contract.

4.3 CONVEYANCE BY DEED. Seller shall deliver to Purchaser, at Closing, a Special Warranty Deed (hereinafter referred to as the "Deed"), conveying fee simple title to the Property to Purchaser, subject to the exceptions to title contained in Schedule B of the Commitment approved or waived by Purchaser pursuant to Paragraph 4.2 hereof.

ARTICLE V CLOSING

5.1 CLOSING DATE. The date of closing (the "Closing Date") shall be thirty (30) days after the Effective Date or at an earlier or later date upon mutual written agreement of the parties. If all contingencies described in Section 10.10 have been satisfied and Closing does not occur, Seller will have the right to terminate the Contract and retain the Earnest Money Deposit paid to Seller by Purchaser and the parties will have no further liabilities to the other. In the event that all contingencies described in Section 10.10 have not been satisfied by the Closing date, this Contract shall automatically terminate and the Earnest Money Deposit shall be returned to Purchaser and the parties will have no further liabilities to the other.

5.2 CLOSING COSTS. Purchaser shall pay the cost of the basic premium for an Owner Policy of Title Insurance, the cost of a tax certificate, the closing fee, and all other closing costs. Each party shall pay their own professional legal fees incurred in this transaction, and any other costs and fees set out herein.

5.3 PROPERTY TAXES. The Property is currently not subject to any ad valorem property taxes as it is owned by Seller, which is a municipal corporation. Purchaser shall be responsible for all ad valorem property taxes assessed and payable on the Property following the Closing, if any.

5.4 SELLER'S OBLIGATIONS AT CLOSING. At Closing, Seller shall deliver to Purchaser the following documents which shall be duly executed and, where appropriate, acknowledged, together with any and all items or instruments necessary or appropriate thereto:

(a) DEED. The Deed;

(b) OWNER POLICY. Evidence of issuance of the Owner Policy, containing no exceptions to title other than: (i) the standard printed exceptions in Schedule B to the Commitment; and (ii) those exceptions to title contained in Schedule B to the Commitment which are approved by Purchaser or waived by Purchaser as described above;

(c) AUTHORITY. Any and all documents reasonably requested by the

Title Company or required by this Agreement to confirm that this transaction and the parties executing such documents are fully authorized and empowered to so act.

(d) FUNDS. Funds necessary to return the Earnest Money Deposit to Purchaser and to pay any other obligations of Seller.

5.5 PURCHASER'S OBLIGATIONS AT CLOSING. At Closing, Purchaser shall deliver to the Title Company:

(a) FUNDS. Funds necessary to pay the Closing costs; and

(b) EVIDENCE OF AUTHORITY. Any documents reasonably requested by the Title Company or required by this Agreement to confirm that this transaction and the parties executing such documents are fully authorized and empowered to so act; and

(c) EASEMENT AND DEVELOPMENT AGREEMENT. Purchaser shall deliver to Seller a fully executed Easement and Development Agreement as more fully provided in Section 10.10 of this Contract.

5.6 DELIVERY OF POSSESSION. Possession of the Property shall be delivered to Purchaser at Closing.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. Seller represents, and warrants and covenants to Purchaser the following:

(a) TITLE TO PROPERTY. Seller will deliver at Closing good, indefeasible, and fee simple title to the Property, free and clear of all mortgages, liens, encumbrances, leases, tenancies, security interest, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title other than those shown on Schedule B of the Commitment and otherwise permitted in this Contract.

(b) AUTHORITY. Seller has full power and authority to execute this Contract and perform all of its obligations hereunder.

6.2 PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. Purchaser represents, warrants and covenants to Seller that Purchaser has full power and

authority to execute this Contract and perform all of its obligations hereunder.

ARTICLE VII CASUALTY LOSS

7.1 RISK OF LOSS. Risk of loss due to casualty up to and including the Closing Date shall be borne by Seller, except to the extent of any loss or damage caused solely by the acts of Purchaser or its agents, employees, contractors, or invitees. Seller shall repair and restore all damage to the Property for which Seller has the risk of loss prior to the Closing.

ARTICLE VIII DEFAULT

8.1 PURCHASER'S DEFAULT. If Closing fails to occur due solely to a default or breach by Purchaser hereunder, Seller shall be entitled to terminate this Contract, and retain the Earnest Money Deposit as liquidated damages as Seller's sole and exclusive remedy for default or breach by Purchaser. The foregoing sum has been agreed upon as the amount payable by Purchaser to Seller in consideration of Purchaser having the option to refuse to purchase the Property without any liability on account of its refusal other than payment of the Earnest Money Deposit. It is also agreed between Purchaser and Seller that such sum shall be liquidated damages for Purchaser's default and because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default, the amount of damages shall be liquidated as the amount of the consideration. Seller hereby waives any and all other of its rights or remedies at law or in equity, for breach of this Contract by Purchaser, including, but not limited to, a suit for damages or a suit to enforce specific performance.

8.2 SELLER'S DEFAULT. In the event that Seller shall default in the performance of Seller's obligations hereunder, for any reason whatsoever other than Purchaser's default or as otherwise permitted hereunder, as Purchaser's sole and exclusive remedies hereunder, Purchaser may, at Purchaser's option, (i) purchase the Property notwithstanding such default pursuant to the remaining terms and provisions of this Contract, in which event such default shall be deemed waived; (ii) terminate this Contract and receive a return of the Earnest Money Deposit and neither Seller nor Purchaser shall have any further obligation hereunder, except those obligations stated herein that survive termination of this Contract; or (iii) file a suit to enforce specific performance and/or damages.

8.3 NOTICE OF DEFAULT. In the event of default by either party, the non-defaulting party shall give the defaulting party a written notice specifying said default. The

defaulting party shall have fifteen (15) days in which to cure the default. In the event the default is not cured within said fifteen (15) day period, the defaulting party shall be deemed to be in default and the non-defaulting party may pursue the remedies set forth in Paragraphs 8.1 or 8.2 above.

ARTICLE IX NOTICE

9.1 NOTICE DESIGNATION. Any notice required or permitted to be delivered hereunder shall, except as otherwise expressly provided herein, be deemed to have been given upon the earlier to occur of (i) actual receipt by the addressee thereof; or (ii) deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchasers, as the case may be as follows:

Seller: Town of Estes Park
Attention: Town Administrator
P O Box 1200
Estes Park, CO 80517

Purchaser: Estes Performance Incorporated
Attn: President
P O Box 3077
Estes Park, CO 80517

ARTICLE X MISCELLANEOUS

10.1 BINDING AGREEMENT. This Contract and all of the terms, provisions and covenants contained herein shall apply to, be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

10.2 CAPTIONS. The captions employed in this Contract are for convenience only and are not intended in any way to limit or amplify the terms and provisions of this Contract.

10.3 TIME OF ESSENCE. TIME IS OF THE ESSENCE of this Contract.

10.4 CHOICE OF LAW. This Contract shall be construed in accordance with the laws of the State of Colorado, and the obligations hereunder are performable in the county where the Property is located.

10.5 ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties with respect to the subject matter hereof, and shall not be varied, amended, or superseded except by written agreement between the parties hereto.

10.6 COUNTERPART EXECUTION. This Contract may be executed in counterparts, each of which shall constitute an original, and all which taken together shall constitute an original and all which taken together shall constitute a single agreement.

10.7 DATE COMPUTATION. If any date of significance hereunder falls upon a Saturday, Sunday or recognized Federal holiday, such date will be deemed moved forward to the next day which is not a Saturday, Sunday or recognized Federal holiday. The terms "working day" or "business day" shall mean days elapsed exclusive of Saturday, Sunday or recognized Federal holidays.

10.8 ASSIGNMENT. Neither party may assign any or all of the Party's right, title and interest in, to and under this Contract to any person or entity without the prior written consent of the other Party.

10.9 CONSTRUCTION. This Contract is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Seller and Purchaser hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Contract that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Contract or any earlier draft of the same.

10.10 CONTINGENCIES. The Closing of the sale of the Property is subject to the following contingencies:

(a) The Closing of this Contract is specifically contingent upon the Purchaser receiving all necessary approvals including, but not limited to, special review approval and variances for its Performing Arts Center Project. All approvals must be in full force and effect at the time of Closing.

(b) At Closing, Purchaser shall deliver to Seller a public access easement as more fully set forth on **EXHIBIT B** attached hereto, and incorporated herein by this reference.

(c) Prior to Closing, Purchaser shall obtain a public pedestrian easement from the western end of the easement property described in subparagraph (b) above along the south side of Fall River to Moraine Avenue across Lot 35 and all of Lot 42, Second Riverside Subdistrict of the Town of Estes Park,

in the form satisfactory to Seller.

(d) Prior to Closing, the Parties shall negotiate and execute a Development Agreement which addresses construction of Purchaser's Performing Arts Center Project as outlined on **EXHIBIT C** attached hereto, and incorporated herein by reference.

(e) Purchaser shall apply for and receive approval of an Amended Plat of a portion of Lot 33 of the Riverside Subdivision of the Town of Estes Park which enables Seller to transfer the Property to Purchaser. All costs and expenses for said Amended Plat, including any necessary surveying, Plat preparation, application fees, and engineering shall be the responsibility of Purchaser.

(f) Purchaser has, or at Closing will have, acquired title to all the real property upon which the Purchaser will construct its Performing Arts Center Project.

(g) Prior to Closing, the Parties shall develop an agreement which provides for the reversion of the Property to the Town in the event that construction of Purchaser's Performing Arts Center Project is not commenced within three (3) years of the date of Closing. Said Agreement shall be a covenant running with the Property and executed by the Parties at Closing.

10.11 LITIGATION. In the event that any litigation is filed by any third party, which litigation contests the ability of the Purchase and/or Seller to close the sale of the Property pursuant to the terms and conditions of the Contract, and/or seeks to enjoin the performance of either party of the terms and conditions of this Contract, either party may terminate the Contract upon written notice to the other party. In case of such termination, the Earnest Money Deposit shall be returned to the Purchaser and this Contract shall be terminated and of no further force and effect. However, both parties may mutually elect to continue to close the sale of the Property pursuant to the terms and conditions of this Contract.

IN WITNESS WHEREOF, the parties hereby execute this Contract effective as stated herein.

**PURCHASER:
ESTES PERFORMANCE INCORPORATED**

By: _____

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__
by _____, _____ of Estes Performance
InCorporated.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT A

Legal Description of Parcel 1:

The following legal descriptions are portions of the Southwest Quarter of the Northeast Quarter of Section 25, Township 5 North, Range 73 West of the 6th P.M.

Commencing at the (approximate) Northeast Corner of Lot 34, Second Riverside Subdivision (the Northeast corner of the slab at the southerly edge of Fall River); thence S 16'39' E 15.9' to the true point of beginning;

thence along the east line of said Lot 34, S 16'39'

E 128.4' thence S 78'28' E 24.2';

thence N 11'32' E 140.0';

thence N 78'28' W 35.4';

thence S 73'02' W 56.2' to the True Point of

Beginning. Area: 7775 square feet, more or less

Legal Description of Parcel 2:

Larimer County Parcel Number 3525122943 (as small sliver of property between the southern boundary of Lot 34 and Rockwell currently containing an extension to the sidewalk and 3 trees).

EXHIBIT B

EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is made as of the _____ day of _____, 2012 by and between **Estes Performance Incorporated** ("Owner"), and the **Town of Estes Park** (the "Town"), whose address is PO Box 1200, Estes Park, Colorado 80517, a body corporate and politic, duly organized and acting under the laws of the State of Colorado.

1. Consideration. For and in consideration of One dollar (\$1.00) and other good and valuable consideration paid by the Town to the Owner, the receipt of which is hereby acknowledged, Owner hereby sells, conveys and grants unto the Town an exclusive and permanent public easement and right-of-way over, upon, across, through, and under the property described in Exhibit A, attached and made part hereof (the "Property"), situate in Larimer County, Colorado, for the uses and purposes and upon the terms hereinafter set forth.
2. Purpose. This easement and right-of-way is for the purpose of granting the Town the right to construct, inspect, maintain, make available to the public, operate and use a pedestrian way, known as the Riverwalk, including utilities such as water, gas, electric, telephone, cable tv, and the like (the "Improvements"), upon, across, over, under, through, and within the Property. No motor-operated vehicles, except Town of Estes Park maintenance and Light & Power Department vehicles, will be allowed on the Property.
3. Representation of Owner.
 - A. The Owner, for itself, its successors and assigns, does hereby covenant and agree not to construct improvements of any kind or nature whatsoever on, over, across or under the Property described on **Exhibit A** or to take or fail to take any action of any kind or nature whatsoever which would interfere with the Town's use of the Property for the purposes herein granted.
 - B. Owner hereby represents and covenants with the Town that there are no other parties with interest in the Property and that Owner has sole and exclusive authority to enter into this Agreement.
4. Binding Effect. This grant of easement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

The parties hereto have executed this Easement Agreement as of the date first above written.

ESTES PARK INCORPORATED:

By: President

TOWN OF ESTES PARK:

By: _____
Bill Pinkham, Mayor

ATTEST:

Town Clerk

EXHIBIT A
To Easement Agreement

The following legal descriptions are portions of the Southwest Quarter of the Northeast Quarter of Section 25, Township 5 North, Range 73 West of the 6th P.M.

Legal Description of Area of Riverwalk Easement to be granted by EPIC to the Town of Estes Park:

Beginning at the (approximate) Northeast Corner of Lot 34, Second Riverside Subdivision (the Northeast corner of the slab at the southerly edge of Fall River);
thence along an Arc with a Length of 75.86', a Radius of 107.0',
and a Chord with a distance of 74.3' bearing S 71'11' W;
thence S 16'57' E 11.8';
thence along an Arc with a Length of 37.5', a Radius of 60.0'
and a Chord with a distance of 36.9' bearing N 87'20' E; thence
N 72'32' E 7.4';
thence S 16'30' E 8.9';
thence N 73'12' E 31.0' to the east line of said Lot 34;
thence along said east line N 16'39' W 32.2' to the True Point
of
Beginning.

Area: 2015 square feet

EXHIBIT C

Development Agreement

The Development Agreement shall include, but is not limited to, the following matters:

1. The construction of the Riverwalk along the southern bank of Fall River through the Project including the following:
 - Construction, maintenance, and operation of public restroom facilities within the easement area (open during normal business hours).
 - Design and construction of the Riverwalk (including restroom facilities) at EPIC's sole expense.
 - Maintenance and repair of the Riverwalk within the easement at EPIC's sole expense.
 - Payment of all utility charges associated with these improvements at EPIC's sole expense.
 - Waiver of water tap fees for the restroom facilities.
2. Terms and conditions of construction of the Project including hours of construction, use of Town property for staging of construction, and impacts to neighboring businesses.
3. Any terms and conditions of the special review approval for the Project.

Town of Estes Park, Larimer County, Colorado, November 27, 2012

Minutes of a Regular meeting of the Board of Trustees of the Town of Estes Park, Larimer County, Colorado. Meeting held in the Town Hall in said Town of Estes Park on the 27th day of November, 2012. Meeting called to order by Mayor Pinkham.

Present: William C. Pinkham, Mayor
Eric Blackhurst, Mayor Pro Tem
Trustees Mark Elrod
John Ericson
Wendy Koenig
Ron Norris
John Phipps

Also Present: Frank Lancaster, Town Administrator
Lowell Richardson, Assistant Town Administrator
Greg White, Town Attorney
Jackie Williamson, Town Clerk

Absent: None

Mayor Pinkham called the meeting to order at 7:00 p.m. and all desiring to do so, recited the Pledge of Allegiance.

PUBLIC COMMENTS.

Jim Cope/League of Women Voters stated the deadline for utilizing the grant funds for recycling containers is June 30, 2013 including full installation. The LWV would need the support of the Town in order to take advantage of the grant.

Curt Gleaves/ Estes Performance Incorporated (EPIC) member stated EPIC was incorporated as a non-profit in 2011 and secured the Park Theater Mall property in March of 2012. Supporters of the Performing Arts (SOPA), a 501(c) 3, formed in December 2006 and EPIC merged in 2012 with SOPA as the surviving entity. SOPA then changed its name to EPIC. The MOU between SOPA and the Town was dissolved because SOPA determined a theater at the fairgrounds was not feasible and at the time requested the FOSH funds.

Bruce Brown/Representative of Salud requested the Town consider a path along Dry Gulch from Hwy 34 to Stonegate Road for the safety of their clients.

Greg Carner/County citizen spoke in opposition of a sidewalk along Dry Gulch stating there are not enough people that would use the sidewalk to warrant the cost.

Blake Robertson/Town citizen spoke to the distribution of the FOSH funds and cautioned the Board there could be other valid interruptions of the FOSH agreement other than the one provided by Attorney White.

TOWN BOARD COMMENTS / LIAISON REPORTS.

Trustee Norris reported the Visit Estes Park Board met to finalize their 2013 budget and held the first meeting of the new Association Forum. The Economic Development Task Force has completed draft recommendations and would be discussing them with the Town and other community organizations. The Bear Education Task Force has established the key messages and target audience, and would meet Friday, November 30, 2012 to develop plans, timeline and responsibilities for information dissemination.

Trustee Koenig stated Sister Cities held their annual meeting and those interested in the program should contact Jim Thompson with any questions.

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Mayor Pro Tem Blackhurst informed the public the Citizen Information Academy (CIA) would be held February 6 through March 20, 2013 and encouraged those interested to complete an application.

Trustee Ericson also encouraged the public to attend the CIA. He thanked the Town staff for a wonderful tree lighting ceremony.

Mayor Pinkham thanked staff for the efforts in producing the past two weekend's events including the tree lighting, parade and fireworks.

TOWN ADMINISTRATOR REPORT

Update on the past weekend events: an estimated 30,000 attended the parade; the fireworks were cut short due to the dry conditions; and 740 skaters used the ice rink.

Police Commander Rose reviewed a task list developed after the Woodland Heights fire including a number of communication issues: applied for and received priority for governmental emergency telephone (GET) to allow numbers on the list priority during emergencies; AT&T has agreed to place a temporary tower to increase capacity during the peak season; coordinate and partner with the RMNP to formalize interagency crisis communication plan; identified grant opportunity for an AM radio station to broadcast recorded messages during an emergency; formation of joint communication center at the Visitor Center; planning Emergency Management training for the staff, local businesses, and lodges; establish information lines for the local media and social media and develop talking points during an emergency; and hold a tabletop exercise for staff to review operations during an emergency.

1. CONSENT AGENDA:

1. Town Board Study Session Minutes dated November 13, 2012, Town Board Minutes dated November 13, 2012.
2. Bills.
3. Committee Minutes:
 - a. Community Development/Community Services, November 15, 2012.
4. Estes Valley Planning Commission Minutes dated October 16, 2012 (acknowledgement only).
5. Resolution #13-12 – Schedule public hearing date of December 11, 2012, for a new Hotel and Restaurant Liquor License Application filed by Cables Estes, LLC dba Cables Pub & Grill, 451 S. St. Vrain Avenue.

It was **moved and seconded** (Blackhurst/Koenig) **to approve the Consent Agenda Items** and it passed unanimously.

2. PLANNING COMMISSION ITEMS. Items reviewed by Planning Commission or staff for Town Board Final Action.

1. CONSENT ITEMS:

- A. AMENDED PLAT**, Lots 1A and 1C of the Replat of a Portion of Lot 4 and All of Lot 1, Stanley Meadows Addition, Estes Park Sanitation, Applicant. **Item continued to the January 22, 2013 meeting.**
- B. AMENDED PLAT**, Tract B, Booth Resubdivision of Lots 2, 3, 4, 5, 7, and a portion of Lots 1, 6, 8, & 9, Elkhorn Estates, Van Horn Engineering/Applicant.

C. **LOCATION AND EXTENT REVIEW**, Stanley Park Multi-Use Stall Barns & Multi-Purpose Event Center (MPEC), Lot 1, Little Prospect Addition (portion of Stanley Park, Norris Design/Applicant.

D. **SUPPLEMENTAL CONDOMINIUM MAP #1**, Stone Bridge Estates Condominiums, Phase II, Unit 1147; 1147 Fish Creek Road; Van Horn Engineering/Applicant.

E. **SPECIAL REVIEW 2012-05**, A.R.T. Used Vehicle Sales; Lots 16 & 17, Quasebarth Resubdivision; Blake Hornsby/Applicant.

It was **moved and seconded** (Blackhurst/Ericson) **to approve the Consent Agenda subject to the findings and conditions recommended by the Estes Valley Planning Commission**, and it passed unanimously.

3. **ACTION ITEMS:**

1. **MUSEUM SENIOR CENTER MASTER PLAN CONTRACT.**

In April staff receive direction to develop a Request for Proposal (RFP) for the Museum and Senior Center Master Plan. An RFP was released and three proposals were received:

- Anderson Hallas Architects, Golden, CO \$80,383
- OZ Architecture, Boulder, CO \$83,120 plus survey costs
- T.W. Beck Architects, Estes Park, CO \$14,570 plus consultants at cost plus 15%

The scope of work includes a program development phase and a site master plan study. The program phase would study the programming and demographic needs as it relates to the Museum and the Senior Center for the next 20 years. The site master plan would determine if the current footprints would accommodate the anticipated growth in usage and visitation of the Senior Center and Museum. The plan would result in a final recommendation for site locations and building uses of the next 20 years. Based on evaluation of the proposals, reference checks, level of prior experience with museums and senior centers, public sector experience and degree of on-site involvement, a stakeholders committee unanimously agreed Anderson Hallas Architects, PC would provide the best product.

Trustee Ericson questioned the need for a 10% contingency with a consulting contract. Assistant Town Administrator Richardson stated the contingency would cover additional action items, desirable products or processes not covered by the RFP while producing alternative sites.

It was **moved and seconded** (Norris/Koenig) **to approve the consulting services contract with Hallas Architects for the Museum and Senior Center Site Master Plan for a not to exceed amount of \$89,000**, and it passed unanimously.

2. **EMPLOYEE PERFORMANCE REVIEW TIMEFRAME.**

The current Town policy requires all employees to be evaluated at the first of the year and merit increases to be applied at that time; however, the policy has not been practiced for several years. In 2006 an administrative directive required the evaluation of staff on their anniversary date and to award merit increases at that time. The Town's Leadership team considers the evaluation of employees on their anniversary date a more equitable model and a more practical method. The anniversary method is a common practice with local governments, including the County, Loveland and Fort Collins. Staff would recommend the proposed changes to the Town's Personal Policy Manual sections F, G, H, H.1 to allow performance reviews to be completed on the employee's anniversary date. It was **moved and seconded** (Norris/Phipps) **to approve modification to the Town's Personnel Policy Manual sections F, G, H and H.1**, and it passed unanimously.

3. **PUBLIC HEARING – 2013 BUDGET.**

Mayor Pinkham opened the public hearing and Finance Officer McFarland reviewed the budget adoption process and recapped changes to the budget that were requested by the Board at the November 13, 2012, Town Board meeting which are as follows:

- a. The \$81,000 Museum and Senior Center Master Plan was moved to the 2012 budget in the Community Reinvestment Fund.
- b. The Stanley Park Sewer and Civil site work was increased to \$350,000 in the Community Reinvestment fund and affects the fund balance for 2013.

Finance Officer McFarland discussed the Highway User's Trust Fund. He said the Fund consists of shared revenue, primarily derived from fuel tax and vehicle registrations, and estimated that in 2013 the Town will receive approximately \$252,886. Funds will be utilized as part of the STIP overlay on projects such as street improvements, snow removal and plow blade work, vehicle and equipment usage, and traffic control items.

Kay Norton Haughey/Town citizen requested the budget contain funds to address the Reclamation Subdivision issue raised at the last meeting and funds appropriated to move the water filling station on Fourth Street to eliminate traffic and increase safety. Steve Nagl/Town citizen would also support the relocation of the water station to the other side of the fairgrounds. Lew Larek/Town citizen also requested the Board consider fixing the issues addressed by Mrs. Norton Haughey in the Reclamation District.

Finance Officer McFarland continued by presenting Resolution #14-12 to set the mill levy which is required in order to allow the Town to levy and collect property taxes. For 2013 the mill levy will be set at 1.822 mills, which will yield approximately \$339,960 in property taxes. He said approval of Resolution #15-12 will adopt the 2013 budget, and Resolution #16-12 appropriates sums of money to execute the budget and states that revenues within each fund are sufficient to support expenditures.

Trustee Ericson requested the Community Reinvestment Fund be removed from the approval of the budget to allow further discussion of the items. Finance Officer McFarland stated the budget can be adopted as presented with re-appropriations approved by the Board during 2013.

Trustee Norris requested funds be appropriated for the Dry Gulch Road rebuild in 2014. Mayor Pro Tem Blackhurst stated it would be premature to add this commitment until the Board reviews all funding requests and capital projects. Trustee Norris stated an expectation the Board would discuss in full the capital needs of the Town early in 2013 in order to set priorities.

It was **moved and seconded** (Ericson/Phipps) **to approve Resolution #14-12 to set the mill levy, Resolution #15-12 to adopt the 2012 budget, and Resolution #16-12 to appropriate sums of money**, and it passed unanimously.

4. **ORDINANCE #08-12 OPTION FOR EPIC TO PURCHASE TOWN-OWNED REAL ESTATE FOR PERFORMING ARTS CENTER.**

Town Attorney White stated the Estes Performance Incorporated (EPIC) has secured the Park Theater Mall property to build and operate a performing arts center and related facilities. In order to design and construct the project, EPIC has requested the Town sell a portion of the Town's Riverside parking lot contiguous to the Park Theater Mall property. The Exclusive Option to Purchase Real Estate would grant EPIC the option to purchase the property on or before January 31, 2014. If the Option is exercised, the Town and EPIC would execute the Real Estate Sales Contract with a purchase price of \$1 with EPIC responsible for all closing costs. The Town would receive a public access easement across the Park

Theater Mall property; EPIC would design construct and maintain the Riverwalk across the Park Theater Mall property; and EPIC shall deliver a public access easement from the western side of the Mall property to Moraine Avenue. EPIC must complete a number of contingencies in order to close the Real Estate Sales Contract including: receiving all necessary approvals related to land use; delivery of the public access easement to the Town for the Riverwalk; delivery of the public access easement from the western side of the Park Theater Mall property to Moraine Avenue; negotiation of a Development Agreement between EPIC and the Town addressing construction of the project; receive approval of an Amended Plat for the Riverside Subdivision; prior to closing, EPIC shall acquire title to the Park Theater Mall property; and the Town and EPIC negotiate an agreement for the reversion of the Town's property in the event construction of the Project is not commenced within three years of the date of closing. The Ordinance would approve the Exclusive Option to Purchase Real Estate.

Administrator Lancaster stated the item was brought forward at the request of EPIC. It is staff's role to make sure items brought forward to the Board contain complete and accurate information and that staff is not a barrier in the public accessing the Board. The staff simply developed the information for the Board's consideration at the request of EPIC.

Trustee comments: The Board has not discussed the proposed theater since EPIC submitted application for the height variance due to the quasi-judicial decision the Board may have to consider in the future, and therefore, does not have information on the project. The Board requested Town staff provide additional information on the proposed theater to allow the Board to make an informed decision. Trustee Elrod stated concern the Town does not have a policy on the purchase or sale of Town owned property; concerned with the value of the property to be sold and the value of the access easement; and the need for additional information before a decision on the sale of land to EPIC.

Curt Gleaves/EPIC Board President stated EPIC requires the Town's approval to sell the parking lot in order to move forward with the design review process and development plan process, which is estimated at a cost of \$1 million and establishes a footprint for the building. He stated alternative layouts have been reviewed; however, they would not provide a building large enough to meet the required pro forma. The building requires the proposed width to accommodate the orchestra pit and loading dock area. He stated a formal appraisal may not be possible due to a lack of comparables for either the parking lot or the public access easement. The cost of the public improvements for the Riverwalk and the public restrooms are estimated at a cost of \$500,000 to \$750,000 with EPIC continuing to bear the cost of ongoing maintenance of the facilities.

Those opposing the Option included Tony Paglia/business owner, Hank Glover/business owner, Heather Stone/Town citizen, Steve Nagl/Town citizen and business owner, Paula Steige/business owner, Ty Nagl/Town citizen and business owner, Dave Callahan/Town citizen and business owner, Elaine Downing/Town citizen, and Marsha Hobert/Town citizen and business owner. Comments against the Ordinance have been summarized: The Town has a survey outlining the need for additional parking spaces; parking spaces are worth a lot to downtown businesses; the proposed theater would occupy all but 41 spaces if the theater was sold out, therefore, leaving very few spaces for customer parking for all other downtown businesses; the proposed theater complex would be too large, too tall and look out of place downtown; EPIC has not made contact with the local businesses and citizens about the development; Orlandos Steak House above the Wheel would lose the current views and look at the back of the theater building; as a shuttle bus driver downtown during the summer it is obvious there would not be adequate parking for theater goers during the peak season; the creation of the post office parking lot and dark horse parking lot increased sales tax collection downtown; with 200 parking spaces occupied for 3 hours during a performance there will be little

turnover of parking space for patron of other businesses; the impact to the area of the proposed development is unknown; the 20 parking spots lost to the development would cost the local businesses \$500,000 during the 120 days of the peak season; other businesses such as the Wheel Bar have provided easements to the Riverwalk at no cost and provided public bathrooms; the minimum 18 months to construct the proposed theater would affect the downtown businesses negatively; performing arts should be a park of Estes Park but not at the expense of the other businesses; the theater at roughly 700 seats is too large for Estes Park and would negatively affect downtown businesses; the loss of parking spaces with the construction of the Riverwalk along Wiest caused the businesses to loss income; customers do not want to walk or park offsite to patronized downtown businesses; the downtown does not have the infrastructure to accommodate a large theater; additional study sessions should be held to discuss the issue further before decisions on the project are considered; concerned the size of the theater may not contain a stage large enough for the types of performances to be held; and stated concern the commercial ventures may not be able to support the theater.

Those speaking in favor of the proposed theater development included Charley Dickey/Town citizen and business owner, Dave Bowers/Town citizen, Stan Black/EPIC member, Greg Rosener/Town citizen, and Ellie Williams/County citizen. Comments have been summarized: the project would enhance the downtown; parking for the project would only be an issue for 90 to 120 days; the Transportation Visioning Committee identified the need for business owners and employees to park offsite to help alleviate parking congestion; parking permits for residential use in the downtown corridor also affects the number of available parking spaces; there are a number of no cost parking solutions that would improve parking downtown; the benefit to the town is three fold including the local businesses, local performers and a broader audience drawn to Estes Park; the proposed development would create the largest economic development the town has seen and be the launching pad for addressing the parking issue; and supports the theater, however, questions if the size is appropriate.

Stan Black/EPIC member stated the proposed theater complex would make a performing arts theater possible in Estes Park with the commercial venture within the building offsetting the cost of the theater operations; replace the largest anchor building in town at 48 feet high; the building would only be fully occupied 6 times a year for 3 hours based on the business plan; he stated EPIC spoke with over 500 people prior to the variance request and was in the paper 8 times including the Denver Post; the request only allows the project to move forward and does not approve the project; other building alternatives were reviewed and determined too expensive or fraught with pitfalls; EPIC approached the Town to determine the possibility of acquiring the land for the theater that would include a Riverwalk crossing and public restrooms built and maintained by EPIC with access 24/7; and this could be the last chance the town has to acquiring a performing arts theater at no cost to the Town.

Lew Larek/Town citizen stated a performing art theater could be built at the old elementary location.

Kay Norton Haughey/Town citizen stated the MPEC and Performing Arts Theater could be placed on the same corner at the fairgrounds if the stall barns were relocated.

It was **moved and seconded** (Norris/Phipps) **to extend the meeting to 11:00 p.m.**, and it passed unanimously. The Mayor called for a 10 minute break at 9:50 p.m. and resumed the meeting at 10:00 p.m.

Further Board discussion was heard: Mayor Pro Tem Blackhurst estimates the value of the parking lot spaces at a value of \$450,000 to \$925,000. He stated the Town does not need the easement through the Park Theater Mall. He also

suggested the Town could entertain discussion of a theater on Lot 4 with its own parking lot. Trustee Norris stated concern with the lack of facts, the traffic and the need to consider other locations to make the theater a success. Trustee Ericson commented the proposed theater complex could be a true economic driver for Estes Park for the next 20 to 30 years, and would be in favor of proceeding with the project. Trustee Koenig stated concern with the parking issue and the lack of information on the project. A vote in favor of moving forward would lead to \$1 million spent by EPIC and set the Board up for further favorable votes on the project. Trustee Elrod stated he could not come to a conclusion on the adequacy of the contract with the information provided.

After further discussion, it was **moved and seconded** (Phipps/Norris) **to table the item to the January 22, 2013 meeting to provide additional public input and to provide further information**, and it passed with Trustees Elrod and Ericson voting “No”. Staff would present a review of the project to the Board at an upcoming meeting in order to help the Board understand the scope of the project before the January meeting. Trustee Elrod requested staff quantify the value of the parking lot and easement.

5. **REAPPOINTMENT OF SCOTT WEBERMEIER TO LOCAL MARKETING DISTRICT BOARD.**

The appointments of Scott Webermeier, Town appointment and Lee Lasson, County appointment, on the LMD Board expire on December 31, 2012. The positions were advertised jointly through the Town’s Administrative Services department and interviews were held on October 17, 2012. An interview panel including Town, County and LMD representatives interviewed seven qualified candidates. The interview team recommends the reappointment of Scott Webermeier for an additional 4-year term. It was **moved and seconded** (Norris/Phipps) **to reappoint Scott Webermeier to the Local Marketing District Board for a 4-year term effective January 1, 2013 through December 31, 2016**, and it passed with Trustee Ericson voting “No” and Trustee Koenig abstaining.

6. **LOCAL MARKETING DISTRICT INTERGOVERNMENTAL AGREEMENT.**

Assistant Town Administrator Richardson presented the proposed IGA for 2013 between the Town of Estes Park and the Local Marketing District (LMD). The 2013 IGA contains the following components: LMD shall pay for all costs associated with Town of Estes Park benefits offered to LMD employees; coordination of regularly scheduled meeting between both entities; the Town’s Visitor Center would deliver guest services and provide recommendations regarding operations and service delivery; sale of items at the Town’s Visitor Center and advertising sales by the Town; allow the LMD to use photos owned by the Town and collected for marketing and promotion purposes; and an audit of the LMD if required shall be paid for by the LMD. The IGA has been reviewed and approved by the LMD Board. It was **moved and seconded** (Koenig/Elrod) **to approve the 2013 Intergovernmental Agreement with the Estes Park Local Marketing District**, and it passed unanimously.

7. **WATER CONSERVATION PLAN.**

Director Bergsten stated the water conservation plan was reviewed by the Public Safety, Utilities and Public Works Committee and presented to and adopted by the Town Board in April 2012. The Colorado Water Conservation Board requested the document be open for public review and comment for 60 days prior to final Board approval. The posted 60 day period ended November 19th and no public comment was received.

Kay Norton Haughey/Town citizen questioned if the plan contains provisions for the recapture of grey water for other uses such as landscaping. Attorney White commented the Town does not have a rainwater catchment right and the water augmentation would have to be reviewed because at this time the Town has the right to use water once and then release it.

After further discussion, it was **moved and seconded** (Koenig/Norris) to **approve the Water Conversation Plan**, and it passed unanimously.

8. **TEMPORARY POLICY TO EXTEND TIMEFRAMES FOR BUILDING PERMITS AND APPLICATIONS.** Director Chilcott stated in 2010 and 2011 the Board approved a temporary policy extending application and building permit dates due to the economic downturn. Without the extension, building permits are valid for 18 month from the date of issuance. The current extension expires on December 31, 2012. Staff has identified 500 open permits and has begun to contact homeowners and contractors to close permits. During the past 30 days 150 permits have been closed. Staff recommends extending the permits through March 31, 2013 with staff continuing to proactively reach out to property owners and contractors to close permits. In cases where permits were applied for, but not paid for, applicants have incurred and are responsible for fees. Staff recommends waiving the plan review fees, if the applicant chooses not to proceed with the permitted work. If approved by the Board, staff would provide monthly updates on the status of open permits at the Community Development/Community Services Committee meeting. It was **moved and seconded** (Koenig/Ericson) to **approve the extension of open building permits from December 31, 2012 to March 31, 2013**, and it passed unanimously.

Mayor Pinkham whereupon he adjourned the meeting at 10:55 p.m.

William C. Pinkham, Mayor

Jackie Williamson, Town Clerk