Town of Frederick
Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, June 13, 2023

7:00 PM

Livestreaming of the Board of Trustees meetings have been transitioned to the Town of Frederick website. The livestream can be accessed at www.frederickco.gov/civicmedia

Public Comment will only be taken in person unless an accommodation is requested through the Town Clerk's Office. If you require an accommodation or have questions about making public comment please contact the Town Clerk's Office:

Meghan Martinez, Town Clerk
mmartinez@frederickco.gov
720-382-5500

Or

Kelly Green, Deputy Town Clerk
kgreen@frederickco.gov
720-382-5500

Town of Frederick
Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, June 13, 2023

6:00 P.M.

Water Conservation Code Updates

7:00 P.M.

Regular Meeting

Call to Order – Roll Call:

Pledge of Allegiance:

Approval of Agenda:

Special Presentations:

Public Comment: This portion of the agenda is provided to allow members of the audience to provide comments to the Town Board. Please sign in and the Mayor will call you. If your comments or concerns require an action, that item(s) will need to be placed on a later Agenda. Please limit the time of your comments to three (3) minutes.

Staff Reports:

A. Administrative Report – Bryan Ostler, Town Manager

B. Town Clerk's Report – Meghan Martinez, Town Clerk

Consent Agenda: Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Consent Agenda.

C. April 18, 2023 Minutes – Meghan Martinez, Town Clerk

D. April 25, 2023 Minutes – Meghan Martinez, Town Clerk

E. May 9, 2023 Minutes – Meghan Martinez, Town Clerk

Action Agenda:

F. Consideration of Appointments to the Frederick Youth Commission – Meghan Martinez, Town Clerk

G. Resolution 23-R-25 Approving Support for Accepting Grant Funds from the Colorado Water Conservation Board – Kylie Couch, Engineer and Traci Garcia-Castells, Grant Administrator

H. Ordinance 1386 Updating the Frederick Municipal Code for Water Dedication – Jason Meyers, Town Attorney

I. Public Hearing Consideration of the Prosperity Subdivision Landscape Waiver – Ali vanDeutekom, Planning Manager

Mayor and Trustee Reports:

Adjournment:

TOWN OF FREDERICK
Board of Trustees
Information Memorandum

Water Conservation Code Updates

Agenda Date: Town Board Pre-Meeting Work Session – June 13, 2023

Attachments: Attachment A - Growing Water Smart Workshop Action Plan

Submitted by: Kylie Couch
Civil Engineer II

Approved for Presentation: Bryan Ostler
Town Manager

Strategic Plan Alignment:

Strategic, Reliable & Sustainable Infrastructure – Incorporating water conservation into land use and municipal code is discussed in the Town's 2022 Water Efficiency Plan. The Water Efficiency Plan aligns with the Town's dedication to investing in strategic, reliable, and sustainable infrastructure in supporting water conservation programs that will help create a sustainable future for the Town of Frederick.

Summary Statement:

Town staff plus two Planning Commissioners attended the Growing Water Smart Workshop on May 8th-10th. This workshop was centered around integrating water conservation into land use policy. At the workshop, staff created an action plan to implement in the coming months. This action plan is largely centered on the Comprehensive Plan, Land Use Code, and Municipal Code updates that are already in motion. To move forward with this action plan, the Board's feedback is needed on two items. First, staff would like the Board to consider adopting a Water Allocation Policy. Second, staff would like to know to what extent the Board would like to integrate a water conservation focused landscape code into the Town's Land Use Code.

Detail of Issue/Request:

Section 4.3.3 and 4.3.5 of the Town's Water Efficiency Plan identify updating Municipal and Land Use Codes as water efficiency activities that will ensure a waterwise future for the Town of Frederick. As staff moves forward with implementing the Water Efficiency Plan and the Action Plan developed at the Growing Water Smart Workshop, direction from the Board is required to determine next steps.

Staff is seeking direction from the board on two items:

1. Is the Board supportive of developing a Water Allocation Policy for the Town of Frederick?
2. To what extent does the Board want to incorporate water conservation measures into the Town's landscape code?

Additional information about these two items can be found below.

What is a Water Allocation Policy?

A water allocation policy offers water providers and local governments a decision-making structure to dedicate their water resources in accordance with their community's needs and vision. An allocation policy is tailored to suit the strategic goals and priorities of a community by allocating its water supply to categories of development such as specific land use types, economic development, affordable housing, water efficiency, and community infill or revitalization.

Best practices for developing a Water Allocation Policy:

- Evaluate your water supply in terms of achieving your community plans, priorities, and build out.
- Establish a base water allowance per development based on an assessment of your water data to determine water demand averages for different development types and uses.
- Determine what type of water allocation policy will best suit your water resource management needs. There are many ways to structure a water allocation policy. Some communities choose a tiered-allocation approach where they only evaluate a development application that crosses a higher water demand threshold while most other development projects remain unaffected by the policy. Other communities opt for a points-based system with points awarded for achieving community goals with a minimum score required to receive a water allocation. Finally, some choose to distribute the community's remaining water supply in acre feet available for certain types of development consistent with the community's goals.
- Communicate allocation policy as a tool for protecting the rights of your current water users and stewarding your community's natural resources for the greatest benefit to the community.

Example: Buena Vista, CO

"The desired outcomes of this policy are:

- To create a reasonable assurance that remaining water rights will be tapped for purposes that will help strengthen the community, its workforce, families, institutions, and businesses.
- To create a framework for future Board and staff to follow in updating this policy."

Categories Identified:

- Emergency Use
- Infill
- Carbonate Street Development (specific development that Buena Vista would like to see come to fruition)
- Economic Development
- Public, Nonprofit, or Institutional Facilities

- Multi-Family Rental Housing
- Affordable, Attainable, & Workforce Housing
- General Development

Landscape Code

Listed below are examples of landscape code that show code that reflects more traditional landscaping, landscaping that would yield moderate water savings, and landscaping that would yield the greatest water savings. Where does the Board want the updates to the Town's Land Use Code to fall?

Traditional – *Town of Frederick* - Front yard no less than 50% drought tolerant turf grass
Moderate Water Savings – *City of Aurora* - Water-wise option: 0% turf. Turf option: Min. = 400 sq. ft. Max. = 40% or 1,000 sq. ft., whichever is less; must be contiguous.
Prioritize Water Savings – *Town of Castle Rock* - No turf in front yards, 500 sq. ft. turf maximum in back yards.

Legal Comments:

Based on feedback and guidance from the Board, staff will work with the Town Attorney and Land Use Attorneys to draft the proposed Land Use Code updates and Water Allocation Policy.

Alternatives/Options:

The Board could choose to not pursue a water allocation policy, this alternative is not recommended because a water allocation policy supports other strategic long term plans the Town has adopted and allows the Town to continue to be strategic in its growth and use of water resources.

Financial Considerations:

Staff do not recommend hiring additional consultants at this time. Staff will work with existing Town consultants to draft Code and Policy documents and will bring back those proposed amendments in a study session.

Staff Recommendation:

Staff in Engineering, Planning, and Economic Development are supportive of the Action Plan items developed at the Growing Water Smart Workshop.

Growing Water Smart Workshop Action Plan

Goal	Outcome	Sub-tasks
Comprehensive Plan Update/Municipal and Land Use Code Updates	Adoption of Comprehensive Plan and Municipal and Land Use Code by Early 2024	• Set up monthly meetings with Growing Water Smart team. • Debrief RICK (consultant) and Land Use attorney about Growing Water Smart Action Plan • Board feedback on water conservation code updates • Debrief Planning Commission on Growing Water Smart Workshop
Water Conservation Programs and Activities in Water Efficiency Plan	Get all programs and activities outlined in the Water Efficiency Plan up and running	• Set up and market water conservation programs offered through Resource Central (Early 2023) • Set up appliance and irrigation controller rebate programs (mid-2023) • Develop water conservation community outreach plan (mid-2023) • Develop plan for raw water system expansion (mid-2023) • Complete 1051 reporting and water loss audit for 2022 (due June 30)
Diversify Town's Water Portfolio	Close the water supply gap	• Meet with Board to discuss water supply options in mid-2023 • Develop a water reuse feasibility plan • Complete Water rate study (late 2023)

TOWN OF FREDERICK
MEMORANDUM

TO: Honorable Mayor and Board of Trustees

FROM: Bryan Ostler, Town Manager

DATE: June 2, 2023

CC: Town Staff
Local Media

SUBJECT: Departmental Report

Upcoming Board of Trustees Work Sessions – If there are topics that the Board would like staff to schedule for discussion, please let me know. The following topics are scheduled for upcoming meetings. These topics may be changed or rescheduled from time to time.

- June 6, 2023 – Work Session: Town App Demo, Q1 Update, New Staff Introductions
- June 13, 2023 – Regular Meeting
- June 20, 2023 – No Meeting
- June 27, 2023 – No Meeting Due to CML Conference
- June 4, 2023 – No Meeting Due to Holiday
- June 11, 2023 – Regular Meeting

Communications and Engagement Department:

Dynamic, Inclusive & Connected Community

- Town Event Preparation
    - Recruitment and Sponsors as of 5/31/2023
        - Sponsor commitments totaling $47,100
        - 15 chainsaw carver applications - 10 approved carvers from across the country – one international carver from the UK
        - 45 food truck applications
        - 61 market vendor applications
    - Second Annual Carbon Valley Memorial Day Ceremony was held on May 26: Appreciation to American Legion Post 32 for the Presentation of Colors, Gun Salute, and Taps. Appreciation to Trustee Mahan for presenting a speech
    - Prep for 12th Annual Frederick in Flight scheduled June 23, 24, 25
    - Prep for Chainsaws & Chuckwagons July 19, 20, 21, 22
- Community Partnerships
    - Met with iHeartMedia for opportunities to share Frederick happenings
    - Attended FHS graduation with FHS Educational Foundation

    - C&E Intern started. Welcome Sidney!
- Website Updates
    - Launch new Town APP June 1 (Update SMS Ticketing Matrix, Finalize Privacy Disclosure, web page)
- Interdepartmental Collaboration
    - Continue Strategic Plan build-out and training on new Envisio software to create public facing dashboard
    - FREDway Steering Committee public engagement
    - Policy review/creation
    - FRED Friends Communications support
- Board Meeting
    - Attendance at Board meetings to ensure Town communications align with Board's vision and work in progress
        - Create process to provide BOT meeting recordings on YouTube
- Training
    - Digital Market and Ecommerce Google Certification (Zach)

Safe and Secure

- Help with FPD Torch Run
- Fireworks Mitigation Presentation and educational campaign presentation to Board.

Public Works Department:

Strategic, Reliable and Sustainable Infrastructure

- Streets and Stormwater:
    - Continuous mowing of roadsides and right of ways for the summer season
    - Sweeping operations continue through Savannah, Angel View, Clark Ranch, Carriage Hills, Raspberry Hills, Eagle Valley, Summit View and Silverstone areas.
    - Digging out and repairing of potholes along CR 5. Silver Birch, and Bella Rosa Parkway
    - Grading of CR. 5 CR. 20.5 and CR. 16.5 and prepping for mag chloride treatment on the 31st of May
    - Cleaned up several ditches from excessive rain storms from backups occurring
    - Set out American flags along Colorado Blvd. trail for Memorial Day
    - Set out barricades and cones for Memorial Day and graduation parties
    - Call out for downed stop sign that was hit at Morningside Dr. and Godding Hollow Parkway
    - Tree limb drop of on 5/27/23, 12 residents participated in dropping off
    - Bailey Arvizu, Meagan Tell, Cody Popsil, Public Works GIS interns started on 5/22/23 to assist with mapping streets, storm water and water assets.
- Water:
    - 25 locates completed
    - 4 final reads
    - 89 rereads completed
    - Hydrant flushing operations continued through Raspberry Dr. Eagle Valley on Falcon Dr., Osprey Way, Crane Ct. Egret Dr. Thrush Ct. Wren Ct. Barn Owl Dr. Quail Ct. Kingbird Dr. Osprey Cir. Summit View subdivision
    - Fire Hydrant repaired at 4855 Eagle Blvd.
    - 31 Walnut Dr. hydrant repair replaced stem.

Effective, Efficient & Strategic Government Operations

- Facilities
  - Completed (6) work orders; (0) immediate need/ emergency, (1) calls for repair/ maintenance (2) tasks, (3) scheduled/Preventative
- Fleet
  - 19 total service requests
    - 8 Unscheduled (Public Works: 3 Police Dept. 4 Parks and Open Space: 1)
    - 11 scheduled (Public Works: 3 Police Dept. 5 Parks and Open Space: 3)
  - No significant items to note
- Training
  - Heat stroke prevention safety training by all Public Works team.

Frederick Police Department:

Dynamic, Inclusive & Connected Community

- Special Olympics Law Enforcement Torch Run – The annual Weld County Torch Run was held on May 31, 2023. This is a cooperative fundraising event between Law Enforcement and Special Olympics Colorado with other events held throughout the country. This year, we utilized a new format for our event that turned out to be very successful. Concerns had been raised in the last year with the safety aspect of the previous run and the increase of traffic on the route from Frederick to Johnstown. This year, the event was held at Centennial Park and participants were able to run, walk or bike a loop around the park. Our event was very successful, with 35 participants registered from the Towns of Frederick, Firestone and Mead. We were able to raise over $1000 for Special Olympics and all involved had a good workout as well. Participants were rewarded for their hard work with a hardy breakfast prepared by our own Commander Glantz. With the new format, we were still able to send a small contingent of runners to Johnstown to pass the torch for the trek to Greeley and the BBQ at the finish line. This is a great event that supports an outstanding organization and we are proud to have continued participation in this event.

Safe and Secure

- CVSA Certification – The department has two newly certified operators for our Computerized Voice Stress Analysis system. Sgt James and Det VonFeldt recently completed the difficult course and are now certified to operate the system. The CVSA is a lie detection tool that detects changes in the human voice in response to questions asked by a certified examiner. The changes are captured and imaged in a voice graph used by investigators to determine truthfulness. This tool is used in investigative procedures and hiring practices.

Parks and Open Space Department:

Effective, Efficient & Strategic Government Operations

- Parks administration is assisting the Transportation Initiative as well as beginning to gather background information relating to an Open Space Initiative, in the event that becomes a possible option.

Community and Economic Vitality

- The Community Parks Master Plan is ongoing –site surveys and utility locates are complete, water quality testing is ongoing and the first round of community engagement is scheduled to begin by the time you read this.
- Park staff is hosting the Development Policy Committee at Crist Park to discuss strategic opportunities and challenges on June 15th, in order to draft a well-reasoned Request for Proposals, to secure a consultant in early fall.
- Bella Rosa staff hosted Learn to Golf group sessions, focused on reactivating golfers who have not played in a long time as well as recruitment of new golfers. The program also hosts sessions that specifically focus on the reactivation and recruitment of women to the sport.
- Bella Rosa staff hosted Family Golf Day on May 20th, with over 60 participants. The event focuses on fun, family-based programming (with free hot dogs and lemonade!) to provide a unique recreational opportunity for golfers and non-golfers alike. The event also serves as a recruitment opportunity for all other family golf events available throughout the summer.
- Bella Rosa staff also hosted their first ever Driving Range Outing with GTC Construction. This new type of event offers groups the opportunity to utilize the practice facility and outdoor patio area for beverages.

Strategic, Reliable and Sustainable Infrastructure

- The Parks Division has been working tirelessly to keep up with spring rains and vegetative growth. Open spaces were mowed the first two weeks in June. Some open space areas are not being mowed wall-to-wall on a regular basis, to allow native ecosystems to return to these areas. Mowing will continue on an as-needed basis for vegetative management and defensible spaces for fire management. Parks is working to start an open space management plan, to take public input on long-term management of the dozens of smaller parcels throughout Town.
- The Golf maintenance team has been working to re-seed areas lost due to winter desiccation, aerating course-wide, including greens the week of May 22nd and completing a litany of day-to-day tasks. Aeration allows for increased water and air movement into the soil profile, which encourages deep and healthy roots, which reduces the quantity of irrigation needed.
- Parks and a local contractor replaced approximately 100 feet of the paved FRA Trail, between the tunnel and park entrance. The existing trail was in considerable disrepair and was replaced before the trail became a safety issue.

Fiscally Responsible Governance

- The transition from full-service restaurant operations to “grab and go” occurred on May 21st. New grab and go options will roll-out over the next few weeks. Bartending service may be temporarily unavailable during some business hours, due to staff transitions and training, but we don’t expect those disruptions to occur frequently.

Town of Frederick
Memorandum

TO: Honorable Mayor Tracie Crites and Board of Trustees

FROM: Meghan Martinez, Town Clerk

DATE: June 2, 2023

SUBJECT: Town Clerk's Report

Effective, Efficient & Strategic Government Operations

- *Boards, Commissions, Committees Recruitment*
  - Youth Commission interviews have been scheduled for June 29th.
- *Business Licensing*
  - The Clerk's Office has issued 13 Peddler/Solicitor licenses since May 1st. The team coordinated with dozens more who chose not to move forward with the licensing process.
- *Records Requests*
  - The Clerk's Office has responded to 13 Requests for Public Records since the May 9, 2023 Board Meeting. Requests were for residential permit information, bills payable for 2023, drainage reports etc.
- *Recruitment*
  - A new team member will be joining the Clerk's Office team on June 19, 2023 filling the vacant Assistant Town Clerk – Municipal Court position. The Clerk's Office will be fully staffed at that time.
- *Frederick Municipal Court*
  - Tyler Software Transition
    - Initial Meetings have been held and a schedule approved for transition and conversion to the Tyler Court Software. Members of the Clerk's Office will be focused on this software launch through the summer.
    - Implementation of the software will transition the court to a paperless court and provide a more transparent and accessible municipal court.

- *Liquor Licensing:*

Current Liquor Licenses

Licensee	*Expiration Date*	*Status*
Back 9 at Bella Rosa	9/3/2023	Renewal Received – In process
Glacier Liquors	9/4/2023	Approved
Rock Solid	10/18/2023	Approved
Peel Pizzeria	11/2/2023	Approved
Mirror Image Brewing Company	11/4/2023	Approved
Mountain Cowboy Brewing Company	11/5/2023	Approved
Circle K Store 2706787	11/12/2023	Approved
7-Eleven Store 38638A	12/25/2023	Approved
Georgia Boys Smokehouse	1/24/2024	Approved
Frederick Liquor and Store	2/21/2024	Approved
Pete's Place	3/9/2024	Approved
7-Eleven Store 35269B	3/21/2024	Approved
WTF!	6/5/2023	Approved
Frederick Travel Center	6/30/2023	Approved
Gabe's Cafe	9/27/2023	Approved

Rumbo 52: The Clerk's Office has received an application for transfer of the license currently held by WTF! The license will be located at 3768 Highway 52. The applicant has requested a temporary permit to operate while the application is processing. Judge Cahn will consider the Temporary Permit on June 8, 2023. The hearing for consideration of the transfer has not been scheduled at this time.

Enforcement Issues

No current enforcement issues.

TOWN OF FREDERICK BOARD OF TRUSTEES
SPECIAL BOARD MEETING MINUTES
FREDERICK TOWN HALL, 401 LOCUST STREET
APRIL 18, 2023

Call to Order: At 5:33 p.m. Mayor Crites called the meeting to order and requested roll call.

Roll Call: Present were Mayor Crites, Mayor Pro Tem March, Trustee Lamach, Trustee teVelde, Trustee Brown, Trustee Padia, and Trustee Mahan. Also Present were Town Manager Bryan Ostler, Town Attorney Jason Meyers, and Town Clerk Meghan Martinez

Pledge of Allegiance:

Approval of Agenda:

There were no changes to the agenda.

Action Agenda:

Resolution 23-R-19 Opposition of the State Wide Land Use and Zoning Preemptions in Senate Bill 23-213:

Trustee Padia recused herself from the item.

Town Attorney Jason Meyers presented the proposed resolution.

Motion by Trustee Brown and seconded Trustee Lamach to approve Resolution 23-R-19. Upon roll call vote, motion passed unanimously.

Mayor and Trustee Reports:

Trustee Brown: He asked a question about when Dr. Haddad will be coming to give the Board an update on the St. Vrain Valley School District.

Trustee teVelde: He gave an update on the Northern Water Spring Meeting.

Mayor Crites: She would like to see more community involvement related to the infrastructure task force. In addition she asked for updates on the mortuary, golf course, and the barrier issues.

Executive Session: Motion by Mayor Pro Tem March and seconded by Trustee Mahan to go into executive session for discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; regarding the Town Clerk Annual Evaluation. Upon roll call vote, motion passed unanimously.

At 6:15 p.m. Mayor Crites recessed the meeting to go into executive session.

At 8:25 p.m. Mayor Crites reconvened the meeting.

Adjournment:

There being no further business of the Board. Mayor Crites adjourned the meeting at 8:29 p.m.

Approved by the Board of Trustees:

ATTEST:

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Tracie Crites, Mayor

____

Meghan Martinez, Town Clerk

TOWN OF FREDERICK BOARD OF TRUSTEES
REGULAR BOARD MEETING MINUTES
FREDERICK TOWN HALL, 401 LOCUST STREET
APRIL 25, 2023

Call to Order: At 7:00 p.m. Mayor Crites called the meeting to order and requested roll call.

Roll Call: Present were Mayor Crites, Mayor Pro Tem March, Trustee Lamach, Trustee teVelde, Trustee Brown, Trustee Padia, and Trustee Mahan. Also present were Town Manager Bryan Ostler, Town Attorney Jason Meyers, and Town Clerk Meghan Martinez

Pledge of Allegiance:

Approval of Agenda:

Item H was tabled to the June 13, 2023 Board Meeting.

Public Comment:

Lori Hill, 245 6th Street addressed the closing of the restaurant at Bella Rosa. She expressed concerns that this will change things.

Staff Reports:

Administrative Report: Deputy Town Manager Jason Leslie provided a written report.

Clerk's Report: Town Clerk Meghan Martinez provided a written report.

Consent Agenda:

Motion by Mayor Pro Tem March and seconded by Trustee Lamach to approve the consent agenda which contained the following items:

- March 14, 2023 Minutes
- List of Bills

Upon roll call vote, motion passed unanimously.

Action Agenda:

Resolution 23-R-20 Awarding a Contract for the 2023 Water Rate Study and Authorizing the Town Manager to Execute the Contract: Engineer Sarah Watson presented the proposed resolution. Motion by Mayor Pro Tem March and seconded by Trustee Padia to approve Resolution 23-R-20. Upon roll call vote, motion passed unanimously.

Resolution 23-R-21 Awarding a Contract for the Creation of a Non-Potable Water Infrastructure Master Plan and Authorizing the Town Manager to Execute the Contract: Engineer Sarah Watson presented the proposed resolution. Motion by Mayor Pro Tem March and seconded by Trustee Lamach to approve Resolution 23-R-21. Upon roll call vote, motion passed unanimously.

Resolution 23-R-22 Award a Contract for the Design Contract of the Silver Birch and Bella Rosa Intersection Improvement Project and Authorizing the Town Manager to Execute the Contract: Engineer Jason Berg presented the proposed resolution. Motion by Mayor Pro Tem March and seconded by Trustee Mahan to approve resolution 23-R-22. Upon roll call vote, motion passed unanimously.

Consideration of Building Permit Fee Waiver for Frederick Firestone Fire Protection District: Town Manager Bryan Ostler and Town Attorney Jason Meyers presented the proposed waiver. Motion by Trustee teVelde and seconded by Trustee March to approve a waiver for FFFPD of 90%. Upon roll call vote, motion passed unanimously.

Mayor and Trustee Reports:

Mayor Pro Tem March: He asked a question about the Pete's Place liquor license.

Trustee teVelde: The lake looks great! He has seen more people fishing than in previous years.

Executive Session: Motion by Trustee Padia and seconded by Trustee teVelde to go into executive session **f**or discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; regarding the Town Clerk Annual Evaluation.

At 8:05 p.m. Mayor Crites recessed the meeting to go into executive session.

At 9:35 p.m. Mayor Crites reconvened the meeting.

Adjournment:

There being no further business of the Board. Mayor Crites adjourned the meeting at 9:37 p.m.

Approved by the Board of Trustees:

ATTEST:

____
Tracie Crites, Mayor

____
Meghan Martinez, Town Clerk

TOWN OF FREDERICK BOARD OF TRUSTEES
REGULAR BOARD MEETING MINUTES
FREDERICK TOWN HALL, 401 LOCUST STREET
MAY 9, 2023

Call to Order: At 6:52 p.m. Mayor Crites called the meeting to order and requested roll call.

Roll Call: Present were Mayor Crites, Mayor Pro Tem March, Trustee Lamach, Trustee teVelde, Trustee Brown, Trustee Padia, and Trustee Mahan. Also Present were Town Manager Bryan Ostler, Town Attorney Jason Meyers, and Town Clerk Meghan Martinez

Pledge of Allegiance:

Approval of Agenda:

There were no changes to the agenda.

Action Agenda:

Resolution 23-R-23 Granting the 2023 High School Scholarship Program Awards Based on the Recommendations of the Scholarship Committee: Town Clerk Meghan Martinez presented the Town of Frederick Scholarship program.

Scholarship Recipients Frances Hudson, Cullen Aasmundstad-Williams, and Haley Howell addressed the Board.

Motion by Mayor Pro Tem March and seconded by Trustee Brown to approve Resolution 23-R-23. Upon roll call vote, motion passed unanimously.

At 7:01 Mayor Crites called for a short recess for the scholarship reception.

At 7:28 Mayor Crites reconvened the meeting.

Special Presentations:

Coal Ridge Middle School Community Funding Request: Sue and Sara Pilon presented the Coal Ridge Middle School 8th grade dance funding request. Motion by Trustee Lamach and seconded by Mayor Pro March to approve $500 for the Coal Ridge Middle School Formal. Upon roll call vote, motion passed unanimously.

Public Comment:

Mayor Crites announced that no one had signed up for public comment.

Staff Reports:

Administrative Report: Town Manager Bryan Ostler provided a written report. Assistant Town Manager Ryan Johnson gave an update on Senate Bill related to Land Use.

Clerk's Report: Town Clerk Meghan Martinez provided a written report.

Consent Agenda:

Motion by Mayor Pro Tem March and seconded by Trustee Lamach to approve the consent agenda which contained the following items:

- March 28, 2023 Minutes

Upon roll call vote, motion passed unanimously.

Action Agenda:

Consideration of Various Appointments to the Town of Frederick Boards, Commissions, and Committees: Town Clerk Meghan Martinez presented the recommendations from the interview panel for the Town Boards, Commissions, and Committees.

Luke Bolinger, Matt Hickman, Tamara Bowman, Judy Church and Renate Stemp addressed the Board.

Motion by Trustee Lamach and seconded by Trustee Padia to appoint Luke Bolinger and Matt Hickman to the Parks, Open Space and Trails Commission.

Motion by Trustee Padia and seconded by Trustee Mahan to appoint Matt Hickman and Tamara Bowman to the Building Appeals Board. Upon roll call vote, motion passed unanimously.

Motion by Trustee Brown and seconded by Trustee Padia to appoint Renata Stemp to the Frederick Urban Renewal Authority. Upon roll call vote, motion passed unanimously.

Motion by Trustee Mahan and seconded by Trustee Lamach to appoint Judy Church to the Frederick Arts Committee. Upon roll call vote, motion passed unanimously.

Mayor and Trustee Reports:

Mayor Pro Tem March: He asked for an update on our K9.

Executive Session: Motion by Trustee Padia and seconded by Trustee teVelde to go into executive session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) regarding oil and gas.

At 8:01 p.m. Mayor Crites recessed the meeting to go into executive session.

At 9:25 p.m. Mayor Crites reconvened the meeting.

Motion by Mayor Pro Tem March and seconded by Trustee Padia to authorize staff to move forward with seeking party status. Upon roll call vote, motion passed unanimously.

Adjournment:

There being no further business of the Board. Mayor Critesadjourned the meeting at 9:27 p.m.

Approved by the Board of Trustees:

ATTEST:

____
Tracie Crites, Mayor

____
Meghan Martinez, Town Clerk

TOWN OF FREDERICK
BOARD OF TRUSTEES
ACTION MEMORANDUM

Consideration of Appointments to the Frederick Youth Commission

Agenda Date: Town Board Meeting – June 13, 2023

Attachments:

Finance Review: ______________________
Finance Director

Submitted by: Meghan C. Martin
Town Clerk

Approved for Presentation:
Town Manager

☐ Quasi-Judicial ☐ Legislative ☒ Administrative

Summary Statement:

Staff is submitting candidates for appointment to the Town of Frederick Youth Commission.

Detail of Issue/Request:

On June 9, 2023 Trustee Padia, Trustee Brown and various members of staff participated on an interview panel for vacancies on the newly created Frederick Youth Commission.

Following the interviews, it is the recommendation of the panel to make appointments to the Frederick Youth Commission.

There are currently 20 vacancies on the commission, and the panel is recommending appointment of Peyton Siders and Brianna Wolf to the Frederick Youth Commission.

Legal/Political Considerations:

None

Alternatives/Options:

The Board may choose to appoint the candidates or request staff continue to advertise the vacancies.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff takes no position on this item.

TOWN OF FREDERICK
Board of Trustees
Action Memorandum

Lawn Replacement Program Grant Acceptance

Agenda Date:	Town Board Meeting – June 13, 2023
Attachments:	Attachment A - Turf Replacement Program Scope of Work Attachment B – Resolution
Finance Review:	____________________________ Administrative Services
Submitted by:	Kylie Couch, Water Conservation Specialist Traci Garcia-Castells, Grant Administrator
Approved for Presentation:	____________________________ Town Manager

☐ Quasi-Judicial ☐ Legislative ☒ Administrative

Strategic Plan Alignment:

Strategic, Reliable & Sustainable Infrastructure – Providing Town of Frederick water customers with access to outdoor water conservation incentives, including the Lawn Replacement and Garden In A Box programs, is identified in the Town's 2022 Water Efficiency Plan. The Water Efficiency Plan aligns with the Town's dedication to investing in strategic, reliable, and sustainable infrastructure in supporting water conservation programs that will help create a sustainable future for the Town of Frederick.

Summary Statement:

In 2022, the Town of Frederick adopted a Water Efficiency Plan. The Town of Frederick's 2022 Municipal Water Efficiency Plan (WEP) encompasses several initiatives aimed at promoting water conservation and efficiency. One ongoing effort discussed in the WEP is the Town's Garden In A Box program, which has been offered to customers since 2016 through a partnership with Resource Central, a non-profit organization dedicated to resource conservation. This program provides Town of Frederick water customers with a $25 discount on Garden In A Box kits that customers can plant in their yards. These kits include starter plants, plant by number maps, and a comprehensive plant and care guide. The WEP includes the introduction of a new Lawn Replacement Program, which is being offered to residential customers for the first time this year. This program is also facilitated through the Town's partnership with Resource Central and offers up to $500 of discounted lawn removal services and Garden In A Box kits to residential water customers. To be eligible for the Lawn Replacement Program, customers must show that they are replacing existing watered and maintained lawn.

The Town of Frederick has been approved for a $25,000 grant through the Colorado Water Conservation Board's Turf Replacement Program (CWCB TRP). With this funding, in 2024 the Lawn Replacement Program can be expanded to include discounts for commercial/industrial customers and can provide up to 200 sq. ft. of fully covered lawn removal and garden kits to vulnerable populations. Additionally, the Garden In A Box program will be partially funded through this grant. The Scope of Work (see Attachment A) for the grant also identifies the establishment of 1,200 sq. ft. of demonstration gardens on municipal property in 2024 to encourage customer participation in the Lawn Replacement and Garden In A Box programs. Ultimately, funding from CWCB TRP will be allocated across residential, commercial/industrial, and municipal sectors, supporting lawn replacement, public education through demonstration gardens, and irrigation updates. These efforts align with the Town's broader planning initiatives, prioritizing water efficiency and sustainable resource management.

Detail of Issue/Request:

Staff requests that the Board approve funding from the Colorado Water Conservation Board in the amount of $25,000 for the expansion of the Town's Lawn Replacement Program. The expansion will include commercial/industrial discounts and additional lawn replacement for vulnerable populations in Frederick.

Legal Comments:

The Town Attorney's Office has reviewed and approved the attached Resolution 23-R-

Alternatives/Options:

Alternatives to accepting CWCB funding include using money from the Town's water fund to expand the Lawn Replacement and Garden In A Box programs or not expanding these programs in 2024.

Financial Considerations:

The Colorado Water Conservation Board has approved the Town of Frederick for funding in the amount of $25,000 with a matching fund requirement of $25,000 that will be proposed in the 2024 Budget. The total budget for the Town's 2024 Lawn Replacement and Garden In A Box programs will be $49,192.00 subject to future appropriations. The budget includes $4,092.00 for the installation of demonstration gardens and $45,100 for the partnership with Resource Central to facilitate the Lawn Replacement and Garden In A Box programs. The Town's matching funds would come from the Water Fund.

Staff Recommendation:

The Frederick Engineering Department and the Grant Administrator's office seek board approval of the resolution and receiving funding from the Colorado Water Conservation Program grant program in the amount of $25,000 with a start date of January 1, 2024, for the 2024 Lawn Replacement and Garden In A Box programs.

Last Update: May 9, 2023

https://cwcb.colorado.gov/

Colorado Water Conservation Board	
Turf Replacement Program (TRP) - (May 2023)	
Exhibit A - Statement of Work	
Date:	**5/12/2023**
Anticipated Project Start Date:	**1/1/2024**
Contract Recipient:	**Town of Frederick**
Funding Match Source:	**Cash**
Funding Match Amount:	**$25,000**

Turf Replacement Overview: After all the required documents (Scope of Work; W-9; Itemized budget; Certificate of Good Standing for non-governmental entities; and Certificate of Insurance for non-governmental entities) have been approved by CWCB, a purchase order will be issued. Funds awarded must begin invoicing (i.e., the project must start) within 12 months of the award, and all funds must be fully expended on or before June 30, 2025.

Please provide a brief description of the proposed turf replacement project(s). Include a description of the overall turf replacement scope, specifically what the TRP funding will be used for (turf replacement, irrigation updates, metering updates, education, etc.), which sector (single-family residential, multi-family, HOAs, municipal/community spaces, commercial/institutional/industrial, etc.) you intend to focus your funding on, and anticipated replacement material. Indicate if you are contracting with a third party to execute your proposal and include any plans for educational materials, irrigation updates, or relevant components compliant with the Turf Replacement Program. (PLEASE DEFINE ALL ACRONYMS and WRITE IN THIRD PERSON).

The Town of Frederick's 2022 Municipal Water Efficiency Plan aligns with various ongoing planning efforts undertaken by the Town. As part of this plan, a new Lawn Replacement Program will be implemented for the first time in 2023. Resource Central, a non-profit organization dedicated to resource conservation, is partnering with us to facilitate the program. Through this initiative, residential water customers will have access to discounted lawn removal services and complimentary native plant kits.

In 2024, the Town plans to use this funding to expand its Lawn Replacement Program to include commercial/industrial customers and provide vulnerable populations with up 200 sq ft of fully covered turf removal and garden kits. In addition to expanding out Lawn Replacement Program, the Town will use this funding to expand its Garden In A Box program from 50 discounts to 55 discounts. This program is also provided in partnership with Resource Central. Another task outlined in the Water Efficiency Plan is the installation of demonstration gardens throughout town. In 2024, staff plans to install 1200 sq ft of demonstration gardens on municipal property to encourage participation in the Lawn Replacement and Garden In A Box programs. Installation of demonstration gardens will be completed independent of any third-party partnership. Overall, TRP funding will be used for turf replacement, public education via demonstration gardens, and irrigation updates in areas where demonstration gardens will be installed. Funding will be spread across sectors, including residential, commercial/industrial, and municipal. TRP funding will also allow the Town of Frederick to offer equity-focused lawn replacement discounts to the community for the first time.

Last Update: May 9, 2023

https://cwcb.colorado.gov/

Colorado Water Conservation Board	
Turf Replacement Program (TRP) - (May 2023)	
Exhibit A - Statement of Work	
Date:	**5/12/2023**
Anticipated Project Start Date:	**1/1/2024**
Objectives: List the objectives of the project. To the best of your ability, include details in the below fields. (PLEASE DEFINE ACRONYMS and WRITE IN THIRD PERSON).	

Colorado Water Conservation Board	
Turf Replacement Program (TRP) - (May 2023)	
Exhibit A - Statement of Work	
Date:	**5/12/2023**
Anticipated Project Start Date:	**1/1/2024**

Estimated total square feet of turf removal and replacement: 13,500 square feet

Estimated cost per square foot of turf removal and replacement: $4.30

Estimated total water savings associated with this project: 0.42 AFY

Planned irrigation updates: Staff will be performing irrigation audits at parks to evaluate condition of irrigation systems.

Planned water metering improvements: The Town is in the process of converting all meters to AMI.

Additional information:

Objective: Reduce water consumption and promote water conservation through turf removal and replacement.

Objective: Quantify the environmental impact of the project by estimating the total water savings associated with the turf removal and replacement, aiming to achieve a reduction of 0.42 acre-feet per year (AFY).

Objective: Enhance project planning and implementation by coordinating and aligning the turf removal and replacement activities with the irrigation audits and water metering improvements.

Tasks
Provide a detailed description of each Task indicated on Exhibit B (Budget and Schedule). The recommended Task breakdown is included below, but Task categories may be altered depending on the needs of the proposed project(s). “Other” may include irrigation updates, water metering updates, educational materials, marketing, etc., so long as a detailed description is included. If you are contracting with a third party, you may include the contract under one Task and provide additional details from the contractor when submitting invoices. If your project(s) requires extra Tasks than what is listed, duplicate the tables as needed. (PLEASE DEFINE ACRONYMS and WRITE IN THIRD PERSON)
Task 1 - Install Garden In A Box Demonstration Gardens
Description of Task (what it includes):

Last Update: May 9, 2023

https://cwcb.colorado.gov/

Colorado Water Conservation Board	
Turf Replacement Program (TRP) - (May 2023)	
Exhibit A - Statement of Work	
Date:	**5/12/2023**
Anticipated Project Start Date:	**1/1/2024**

This task includes the installation of xeriscape demonstration gardens totaling 1200 square feet on municipal property throughout the Town of Frederick to promote our Garden In A Box and Lawn Replacement Programs.

Anticipated Method/Procedure:

Or use this: The initial step involves staff identifying suitable areas within the municipality for conversion to xeriscape gardens. Once these areas are identified, any turf present will be removed, and orders will be placed for the installation of the gardens. Following the garden installations, informative signage will be placed to guide Town of Frederick water customers on how they can participate in our Lawn Removal and Garden In A Box programs.

Task 2 – Partnership with Resource Central

Description of Task (what it includes):

The Town of Frederick's Lawn Replacement Program will provide $500 discounts to up to 40 residential customers. This portion of the program is not being expanded in 2024. The Town will be making this program available to commercial/industrial customers for the first time in 2024, with discounts of up to $1,000 for up to 5 commercial or industrial customers. Lastly, the Town will provide persons in poverty, persons over the age of 65, and people with a disability under the age of 65 with full coverage of turf removal services and garden kits for up to 200 sq ft areas. Lastly, the Town will be expanding its Garden In A Box program, providing 55 discounts in 2024.

Anticipated Method/Procedure:

The Town will be partnering with Resource Central to provide these services, the contract total will be $45,100. This total includes $20,000 in residential discounts, $5,000 in commercial/industrial discounts, $11,250 in equity-focused discounts, Resource Central's Lawn Replacement Program fee of $4,725, and the cost of the Garden In A Box Program, $4,125 with a funding request of $25,000.

Report Planning

Below is a detailed description of the required Initial Baseline Report, Project Completion Report, and Annual Progress Report (five years). CWCB understands that requested information may not be accessible to the Contractee but expects as much feasible information as possible. If the Contractee is using a third party to execute the proposed project(s), it is permissible for reporting to be submitted through the designated third party.

Reports will be submitted to jenna.battson@state.co.us until further notice. Contractees will be notified by CWCB if and when Reporting will be submitted elsewhere.

Last Update: May 9, 2023

https://cwcb.colorado.gov/

Report Planning
Initial Baseline Report - Reporting due six months from the date of issuance of a purchase order or the execution of a contract. Contractees will be required to produce the Initial Baseline Report (See Reporting Requirements section for details) six (6) months after the execution of their contract. If the Contractee is executing multiple projects with TRP funding, all projects should be consolidated into one Initial Baseline Report. Contractees can submit the Initial Baseline Report prior to the 6 month period if in compliance with all listed requirements.
Completion Report - Once funded project(s) are completed and all invoices have been submitted, the Contractee is required to provide CWCB with a Completion Report (see Reporting Requirements section for details).
Annual Progress Report - Additional reporting should be submitted annually for five (5) years beginning from the date of issuance of a purchase order or the execution of a contract. If the Contractee is executing multiple projects with TRP funding, all requested project requirements should be consolidated into one Annual Progress Report. All reporting criteria should still be included for each site-specific project. Annual Progress Reports will be submitted through a CWCB portal; further information will be provided by CWCB. (See Reporting Requirements section for details).
CWCB Deliverable: Deliverables include: ● CWCB-Approved Initial Baseline Report (6 months) ● CWCB-Approved Completion Report (at project completion) ● Annual Progress Reports (years 1-5)

Budget and Schedule
Exhibit B - Budget and Schedule: This Statement of Work shall be accompanied by a detailed budget and schedule that reflects the Turf Replacement Overview, Tasks, and Report planning identified in the Statement of Work and shall be submitted to CWCB in Excel format.

Reporting Requirements
1. Initial Baseline Report: The grantee shall provide the CWCB an Initial Baseline Report within six months, beginning from the date of issuance of a purchase order or the execution of a contract. **The Initial Baseline Report shall include all accessible information as follows:** ● Preliminary photos of any and all project sites; ● Location of the project site(s) with map (if possible); ● Sector/customer class of the project site(s) (e.g. single-family residential, multi-family, HOAs, municipal/community spaces, commercial/institutional/industrial, etc.); ● Demographic data surrounding the project site(s) (if in a public space); and/or Demographic data of residential area (if retrofitting residential single-family homes or HOAs) ● Anticipated square footage of turf removal/replacement funded by CWCB's TRP; ● Anticipated cost projections (total and by square foot) for removal of turf and replacement; ● Estimate of what is included in the cost per square foot of turf removal and replacement (labor, volunteer time, replacement material; consulting, third-party, etc.); ● Estimated water savings per site after year one, year two, *and* year three; ● Metering capabilities for site-specific areas (master or individual metering); ● Current use or anticipated installation of a control clock (also known as an irrigation controller; a device that uses programmed information to turn the irrigation on and off); ● Capability and system to track water savings per project location; ● Current irrigation system details and anticipated upgrades; ● Anticipated replacement material (vegetation type and mulch); ● Anticipated percentage of vegetation replacement (converted areas must contain at least 50 percent living plant cover at maturity; concrete and other nonpermeable replacement material,

Reporting Requirements
artificial turf, water features, invasive plant species, and additional turf are *not* permitted for TRP funding); ● Anticipated additional funding needed to complete the proposed project(s); ● Anticipated funding for educational materials; ● Any anticipated barriers to completing the project; ● Expected implementation start date; and ● Expected completion date (can be an estimate). **2. Additional reporting to be submitted annually for five years beginning from the date of issuance of a purchase order or the execution of a contract. Annual Progress Reports shall include all accessible information as follows:** ● Current photos of any and all project sites; ● Location of the project sites with map (if possible); ● Sector of the project site(s); ● Total square footage of turf replacement funded by CWCB's TRP funding; ● Total square footage of turf replacement related to the project site(s) not funded by CWCB's TRP; ● Cost per square footage of turf removal and replacement; ● Components included in the cost per square foot of turf removal and replacement (labor, volunteer time, replacement material, consulting, third-party, etc.); ● Change in water use from the Initial Baseline Report (include water use for each month from May - September and the overall annual usage); ● Metering capabilities for site-specific areas (master or individual metering); ● Change in use of control clocks on-site; ● Updated capability and system to track water savings; ● Current irrigation system details and upgrades from the Initial Baseline Report; ● Replacement material (vegetation type, specific species, and mulch); ● The percentage of vegetation replacement per site (converted areas must contain at least 50 percent living plant cover at maturity; concrete and other nonpermeable replacement material, artificial turf, water features, invasive plant species, and additional turf are *not* permitted for TRP funding); ● Anticipated additional funding needed to complete the proposed project(s); ● Any relevant educational materials produced with TRP funding, the educational reach in terms of individual impact and geographic scope; ● Any major issues that have occurred and any corrective action taken to address these issues; ● Any major successes; and ● Update to primary contact information as needed.
Completion Report: At the completion of the turf removal and replacement process, the grantee shall provide the CWCB a Final Report on the Contractee's letterhead that: ● Summarizes the project(s) and how the project(s) was completed; ● Describes any obstacles encountered, and how these obstacles were overcome; ● Confirms that all matching commitments have been fulfilled; ● Confirms that ongoing reporting commitments can be fulfilled to the best of the Contractees' ability in the identified time periods; and ● Includes photographs of before and after the completion of the project.
Payments

Reporting Requirements

Costs incurred prior to the effective date of the Purchase Order or Contract are not reimbursable. Payment will be made based on actual expenditures. All work completed must be on an invoice with the Contractee's letterhead. The request for payment must include a description of the work accomplished by the task, an estimate of the percent completion for individual tasks and the entire Project in relation to the percentage of budget spent, identification of any major issues, and proposed or implemented corrective actions.

Invoices and explanations will be submitted to jenna.battson@state.co.us until further notice. Contractees will be notified by CWCB if and when invoicing will be submitted elsewhere

The CWCB will pay the last 10% of the entire turf replacement budget when the Completion Report (described above) is completed to the satisfaction of CWCB staff. Once the Completion Report has been accepted and final payment has been issued, the turf replacement purchase order or contract will be closed without any further payment. Any entity that fails to complete a satisfactory Completion Report and submit it to CWCB within 60 days of the expiration of a purchase order or contract may be denied consideration for future funding of any type from CWCB. All funds awarded must begin invoicing (i.e., the project must start) within 12 months of the award, and all funds must be fully expended on or before June 30, 2025.

Performance Requirements

Performance measures for this contract shall include the following:
(a) Performance standards and evaluation: Contractee will produce detailed deliverables for each component as specified above. Contractee shall maintain receipts for all project expenses and documentation of the minimum in-kind contributions (if applicable) per the budget in Exhibit B. Per Reporting Requirements, CWCB will pay out the last 10% of the budget when the final deliverable is completed to the satisfaction of CWCB staff. Once the final deliverable has been accepted and the final payment has been issued, the purchase order will be closed without any further payment. The requirements described above for annual reporting are expected beyond the closing of the purchase order.
(b) Accountability: Per the Contract Guidelines, full documentation of project progress must be submitted with each invoice for reimbursement. Contractee must confirm that all contract conditions have been complied with on each invoice. In addition, per the Contract Guidelines, an Initial Baseline Report must be submitted immediately following (or before) the first six months of the Contract, and Annual Progress Reports should be submitted annually for the subsequent five years. A Completion Report must be submitted and approved before the final project payment.
(c) Monitoring Requirements: Contractee is responsible for ongoing monitoring of project progress per Exhibit A (Scope of Work). Progress shall be detailed in each invoice and in each subsequent report, as detailed above. **All TRP projects are subject to additional inspections by CWCB staff to ensure compliance with material replacement requirements.** Field consultations can and will be arranged as per the request of the Contractee.
(d) Noncompliance Resolution: Payment will be withheld if the Contractee is not current on all contract conditions. Flagrant disregard for contract conditions will result in a stop work order and cancellation of the Contract Agreement.

TOWN OF FREDERICK, COLORADO

RESOLUTION NO. 23-R-25

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, APPROVING SUPPORT FOR ACCEPTING GRANT FUNDS FROM THE COLORADO WATER CONSERVATION BOARD

WHEREAS, the Town of Frederick is eligible to participate in grant funding opportunities from the Colorado Water Conservation Board; and

WHEREAS, the Town of Frederick's Engineering Office is continuously pursuing ways to further enhance Strategic, Reliable, & Sustainable Infrastructure as it is outlined in the Town Strategic Plan; and

WHEREAS, Colorado Water Conservation Board has granted funding with matching funds requirement that will be proposed in the 2024 Budget. This funding will be utilized for conducting an extension of Frederick's Turf Replacement and Garden In A Box Programs in 2024.

WHEREAS, the award requires a resolution of support from the Board of Trustees for the acceptance of funds and agreements to be executed; and

WHEREAS, the Town Board is supportive of acceptance of funds.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:

1. The Town Board is supportive of the Colorado Water Conservation Board's Notice of the Grant Award in the amount of $25,000 for the purpose of conducting an extension of Frederick's Turf Replacement and Garden In A Box programs.

2. The Mayor is hereby authorized to execute necessary documents and agreements to effectuate the grant award and negotiation by the Town Attorney as applicable.

RESOLVED THIS 13th DAY OF June, 2023.

TOWN OF FREDERICK, COLORADO

____

Mayor Tracie Crites

ATTEST:

BY: ______________________________

Meghan Martinez, Town Clerk

TOWN OF FREDERICK
Board of Trustees
Action Memorandum

Municipal Code Chapter 13 Division 2 Water Dedication and Capital Improvement Fees Update

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Agenda Date: Town Board Meeting – June 13, 2023

Attachments: a. Ordinance with staff suggested changes

Finance Review: ______________________________

Submitted by: Jason Meyers
Town Attorney

Approved for Presentation: Bryan Ostler
Town Manager

☐ Quasi-Judicial ☒ Legislative ☐ Administrative

Strategic Plan Alignment:

This item aligns with the Community and Economic Vitality and Strategic, Reliable & Sustainable Infrastructure goals.

- Frederick is a community that fosters economic, recreational, cultural, and environmental vitality and builds upon and enhances a variety of economic opportunities.
- Frederick is dedicated to investing in existing and future transportation, water, storm water, and technology while planning for sustainable growth and development.

Summary Statement:

This proposed Municipal Code update is the first of many changes that staff will bring before the Board which will provide a mechanism for water conservation. The Division 2 changes will allow the Town to make the best use of the water it has and the water that it will have in the future. The changes will also allow the Board discretion over what projects are eligible for fee-in-lieu Water Incentives.

Detail of Issue/Request:

The Town has completed and Adopted Short- and Long-Term Water Resource Plans and a Water Efficiency Plan in 2021-2022. Section 3.2 of the Short-Term plan identified implementing water conservation and efficiency measures as one of the mechanisms for the Town to decrease the demand on the Town's current and future water supplies. The Long-Term Resource plan identified a potential water demand reduction of 1,000 acre feet (AF) per year in 50-years if the Town is able to implement water conservation requirements and implementing the activities identified in the Water Efficiency Plan. The Water Efficiency Plan goes into greater detail on what activities the Town has implemented or plans to implement. In addition to the existing Garden In A Box and Slow the Flow Programs that the Town has had annually since 2016 the Town has started a Turf Removal program in 2023 which supports residents removing turf from their lots and replacing the high-water usage turf with low water usage Garden in a Box kits or other low water using plants.

Section 4.3.5 of the Water Efficiency identified the opportunity that the Town has to address water conservation and efficiency through coordination between all Town departments, Engineering, Planning, Public Works, Parks Open Space and Golf, and Economic Development. With that coordination comes the ability to integrate water use and land use planning. Staff is able to coordinate on Code updates and implementation strategies include the review and revision of the Town's landscape and irrigation standards, water dedication requirements, water allocation policy options, etc.

The first step that is proposed at this time while staff works through the Comprehensive Plan, Land Use Code, and Municipal Code updates as a whole is changes to a specific Division of the Water Utility Article. Staff presented initial opportunities to update Division 2 Water Rights Dedication on April 4th, 2023. These recommendations were identified based on opportunities to promote water conservation and a mechanism to ensure owners do not exceed water allotments without dedicating additional water to the Town to meet any increase in water demands. These are just the first of many changes that staff will propose to the Board of the Land Use Code, Municipal Code, and Design Standards and Construction Specifications.

The proposed change to the Water Dedication Requirement is to update the method of determining the amount of water needed to meet the demands of a property. In the past, the Town has use a standard value of 0.6 AF of water, or one Colorado Big Thompson (CBT) unit, per Single Family Equivalent for most projects. Some projects that were able to use raw water for irrigation were eligible for a demand analysis to determine the amount of water needed for the project as a portion of the CBT water was being replaced by the raw water source. The measurement of water use by a residential equivalent has been typical way to define a water using unit that can be scaled for non-residential projects but staff recommends moving toward a demand analysis-based approach for all projects regardless of the source of the water supply. This will promote water conservation measures to be incorporated into all projects that want to reduce their water demands. Staff will bring Land Use and Municipal Code updates before the Board which will directly address the Landscape Design requirements that will be updated to incorporate water conservation and efficiency into the Land Use requirements. A Demand Analysis approach will be more accurate to require the amount of water used inside and outside of a property based on values that will be set by the Municipal Code as shown in the proposed ordinance. This will promote conservation and making the best use of the high-quality CBT water.

Staff also proposed to change the section in Division 2 that addresses water dedications for non-residential and infill residential development. The Code currently allows for an annual maximum of 30 units that can be paid as fee-in-lieu of dedication for those particular project types. Staff proposed changing that language to incorporate the recommendation of the Water Resource plans to set the amount of water that will be made available at the Board's discretion annually. Information will be brought to the Board each year about the Town's water portfolio so that the Board will be able to set an amount of water that will be available for the next year. This change will allow the Board greater discretion for which projects will be eligible for a fee-in-lieu option. Staff will be bringing additional information to the Board about a potential Water Allocation Policy that can provide a structure for the fee-in-lieu option so the Board can use the water resources to promote the communities needs and vision.

A new section named Enforcement for overages has been added to outline the Town's policy for addressing properties that use water in excess of their water allotment. This section outlines the requirement for owners to transfer or dedicate water to the Town if their native water or CBT water usage is in excess of their water allotment for a given year. It allows for 45 days after the notice of exceedance to make the Town whole. It also provides the Town Board discretion to allow the owner to pay cash-in-lieu of dedication. This option will make it much easier for homeowners to provide additional water if they exceed their allotment. The Code will also require information about a water allotment restriction be recorded with the property.

In addition to the proposed changes explained above, the structure of the Division was changed to categorize the requirements further into categories for ease of reading and referencing sections of the Code. This includes a numbering system that will be used in the future Municipal Code updates. Redundant information throughout the Division was removed to simplify administration of the as well as refining the items within each section. A new section, Administration was added to house the Code requirements that fall within general administration of the Water Utility. This section describes how water rights can be proposed for dedication to the Town and how the Town will determine if the water will be accepted or rejected. The update will allow staff to work with the Town Clerks Office to submit any routine paperwork required for Temporary Use Permits for water dedicated to the Town by a property owner or Section 131 Annually Renewable Water Contracts for CBT water without further action by the Board. This will allow staff to more quicky process water dedications and annual contracts which allow the continual use of CBT units purchased or dedicated to the Town in the previous water year.

Legal Comments:

The Ordinance was drafted by the Town Attorney, and input from the discussion session was incorporated.

Alternatives/Options:

The Town may choose to not make any changes to the Municipal Code at this time. The Board may also choose to revise the proposed language. If the Code is not updated staff will continue under the current regulations that cause issues with administration of the Water Dedication Requirements.

Financial Considerations:

If the Town is successful in meeting the water conservation goals identified in the Water Efficiency Plan the Town will not need as much water for future use. If water use is reduced this can also affect the size of future infrastructure or delay the need to expand system capacity in the future.

Staff Recommendation:

Staff recommends approval and publication of the Ordinance.

ORDINANCE NO. 1386

AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO, UPDATING THE FREDRICK MUNICIPAL CODE FOR WATER DEDICATION.

WHEREAS, the Town of Frederick, as a statutory municipality, has the ability to regulate the affairs of the community for the health, safety, and welfare of the residents; and,

WHEREAS, the Town of Frederick has researched and studied the current water resources and anticipated future needs of the community, which resulted in the adoption of several master plans; and,

WHEREAS, as a result of this work, the Town of Frederick needs to adjust the dedication requirements for water through the development process to encourage water conservation and appropriate water dedication; and,

WHEREAS, the changes require an adjustment to the Frederick Municipal Code that relates to water dedications.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, AS FOLLOWS:

Section 1. Chapter 13 Article II, Division 2, Frederick Municipal Code, entitled "Water Rights Dedication and Capital Improvement Fees" (Sections 13-55.1 through 13-55.8) is hereby repealed in its entirety and replaced with the following:

Division 2 Water Dedication and Capital Improvement Fees

Sec. 13-2-200 Title.

The ordinance codified in this Division shall be known and may be cited as the "Town Water Dedication Ordinance."

Sec. 13-2-201 Intent and purpose.

It is the intent and purpose of this Division to require the dedication of water rights or shares to the Town sufficient to satisfy any new or additional demand for Town water service resulting from the extension of water service, subdivision of land, annexation of land to the Town or any change in land use within or outside of the limits of the Town which will require new or additional Town water service, and thereby to assure an adequate and stable supply of water to all Town water users, to ensure the financial stability of the Town water utility and to promote the general welfare of the public.

Sec. 13-2-205 Water dedication requirements.

(a) From and after the effective date of the ordinance codified herein, any person who seeks approval of any of the following: an extension of water service; subdivision of land; annexation of land to the Town; or any change in land use within or outside the limits of the Town (if such change in land use will increase the demand for Town water service) shall be subject to the water dedication requirements in this Section.

1. Water right and share dedication requirements for properties within the Town's potable water service area shall be determined through a water dedication analysis prepared by Town staff. The water dedication analysis shall be prepared according to the water dedication schedule below:

Residential

Residential Project Type	Indoor Water Use		
	AF/Unit	CBT/Unit	Gallons/Unit
Single Family Detached, > 4 bedrooms	0.22	0.367	71,687
Single Family Attached	0.2	0.333	65,170
Single Family Detached	0.2	0.333	65,170
Multi-Family	0.17	0.283	55,395

Non-Residential

Business Categories Estimated Indoor Water Use table	Units	Use (Gal/unit/yr.)
Auto Service & Repair	Square feet (sf)	27.13
Car Wash with Recycling	bay	81,375.00
Childcare	sf	75.00
Church	sf	39.38
Clubhouse/Pool	unit	175,000.00
Fast Food Restaurant	sf	125.00
Grocery Store	sf	48.13
Gas Station w/ Car Wash	sf	1,808.75
Gas Station w/o Car Wash	sf	302.50
Hospital	sf	74.96
Hotel	room	29,457.50
Medical Office	sf	44.63
Office	sf	10.00
Restaurant	sf	250.00
Retail	sf	36.25
School	sf	15.50
Assisted Living	unit	78,750.00
Warehouse (Storage Facility)	sf	8.75

Industrial	sf	27.50
Other (determined by staff)		

Outdoor

Hydrozone*	GPSF	Outdoor Water Use		
		AF per Acre	CBT per Acre	Gallons per Acre
Low	6.00	0.80	1.337	261,360
Medium	12.00	1.60	2.674	522,720
High	18.70	2.50	4.166	814,572

*As determined by Town staff analysis, generally consistent with the following:

i. Low: some shrubs and perennials, buffalograss, blue grama turf
ii. Medium: some shrubs and perennials, turf type tall fescue
iii. High: Kentucky Bluegrass or similar

2. All persons and developments are subject to applicable fees and shall be required to record an instrument providing notice that water usage for the property is limited based upon the amount of water dedicated for the property. Limitations of water usage per year shall be maintained by the Town and made available upon request to the property owner or tenant.

3. The use of non-potable native water requires the construction of a dual water system that is functional and reliable as determined and approved by the Town. The native water rights or shares must be used to irrigate all open space, parks, and landscaping within a development through the use of an onsite irrigation pond.

4. Colorado-Big Thompson (CBT) water dedicated to the Town after the effective date of the ordinance codified herein will be credited at a yield rate of six-tenths (0.6) acre-foot per CBT acre-foot unit.

5. The water dedicated to the Town shall be available for diversion at such point or points of diversion as the Town may designate for use and consumption by the Town for municipal purposes.

Sec. 13-2-210 Administration

(a) The Town reserves the right, in its sole discretion, to accept, reject or accept in part any water rights or shares offered to the Town for dedication. The Town shall determine whether said water rights or shares are to be accepted based on the following criteria: priority date; historical point of diversion; location of historical use; historical yield; historical consumptive use; the contribution to historical consumptive use of other water rights or shares or sources of water supply; future use of the land historically irrigated, including future irrigation; considerations with respect to title; anticipated difficulties with transferring the water rights or shares to appropriate points of diversion, places of storage and municipal uses; the Town's contractual obligations and arrangements; and expected needs of the Town and of the Town's water rights portfolio at the time of the proposed annexation, subdivision or extension of water service. All costs and expenses related to dedicate water rights or shares to the Town to satisfy the requirements of this Division shall be paid by the person required to dedicate water rights or shares to the Town pursuant to this Division.

(b) All dedications of water rights or shares to the Town hereunder shall be effectuated by delivering to the Town sufficient warranty deeds or stock certificates with appropriate stock assignments or by written approval by the Northern Colorado Water Conservancy District of the transfer of any allotment contracts, as is appropriate to the particular transaction. All title documents shall be subject to approval by the Town Attorney. No water rights or shares dedication shall be considered completed until the Town has accepted sufficient documents transferring title to the Town.

(c) Any recommendation made by any Town agent or designee under any delegation of authority or responsibility contained in this Division or otherwise relating to water right dedication shall be submitted to the Board of Trustees for determination or ratification, as the case may be. No such decision or recommendation shall be of any force or effect until finally determined or ratified by the Board of Trustees by ordinance, resolution or approval of a written agreement.

(d) The dedication requirement shall be satisfied by the person seeking approval of the extension of water service, subdivision, annexation or a change in land use, whether or not that person will be the ultimate user of the Town water service.

(e) The Mayor and Town Clerk are authorized to apply for Temporary Use Permits and Section 131 Annually Renewable Water Contract with Northern Colorado Water Conservancy District without further action by the Board of Trustees.

Sec. 13-2-215 Fees and costs

(a) All costs and expenses related to dedicate water rights or shares to the Town to satisfy the requirements of this Division shall be paid by the person required to dedicate water rights or shares to the Town pursuant to this Division.

(b) The requirements and the fees described in the tables as set by the fee schedule adopted by resolution may be adjusted by resolution by the Board of Trustees. These fees must be paid prior to issuance of a building permit.

(c) The Frederick Capital Improvement Fee, as set by the fee schedule adopted by resolution, shall be charged at a rate equal to seventy-five percent (75%) of the value listed for a five-eighths (5/8) inch tap per each multi-family dwelling unit.

Sec. 13-2-220 Annexation requirements.

(a) At the time of annexation, the Applicant for annexation shall do one (1) or more of the following:

> (1) Offer for dedication to the Town water rights or shares which are appurtenant to the property to be annexed, including groundwater and groundwater wells. The Applicant shall provide a historical use affidavit to the Town for any shares or water rights with an accompanying engineering report prepared at said Applicant's expense by an engineer experienced in water rights matters, which report is determined by the Town to sufficiently analyze the historical use of the water rights proposed for dedication to the Town.; and/or
>
> (2) Offer for dedication to the Town water rights or shares which are not appurtenant to the property to be annexed. The Town may, in its discretion and using the criteria set forth in this Division, consider and accept for dedication water rights or shares offered by the Applicant which are not appurtenant to the property to be annexed.

(b) In the event that the water dedication requirements were not satisfied at the time of annexation, no building permit shall be issued by the Town for the phase or filing in which the building permit is requested until water rights or shares dedication has been accepted by the Town to satisfy the water dedication requirement.

Sec. 13-2-225 Excess water

In the event that the water rights or shares offered to the Town for dedication provide water credits in excess of those required by this policy, the annexor, developer or owner shall offer any excess water rights or shares to the Town at current fair market value. The Town may enter into a written agreement to purchase all or part of any such excess water rights or shares and, in that event, the Town may require the annexor, developer or owner to grant to the Town a right of first refusal to purchase such excess water rights or shares in the future, pursuant to the provisions of Section 13-2-245 of this Code.

Sec. 13-2-230 Dedications for infill or special circumstances

An annual cash-in-lieu allowance may be set by resolution by the Board of Trustees. The Board of Trustees by resolution may delegate the authority to accept cash-in-lieu water rights or shares for the following limited purposes:

(1) Water dedication requirement per one (1) single-family residential infill lot;

(2) Water dedication requirement per one (1) commercial/industrial lot, not to exceed 1.8 AF.

(3) Or as a project aligns with the goals of the Strategic Plan adopted by the Board of Trustees.

Such authority may be limited to a total number of dedications per year, total number of acre feet per year, or other restrictions as determined by the Board of Trustees to ensure an adequate and stable supply of water to all Town water users, to ensure the financial stability of the Town water utility and to promote the general welfare of the public.

Sec. 13-2-235 Enforcement for overages

(a) In addition to any high use water charges that may be imposed pursuant to the then adopted water rate schedule of the Town; if the annual usage for any water tap within the Town exceeds the water allotment as determined in this Division, The Town will notify the user of the actual additional CBT units or native water shares that the user will be required to transfer and/or dedicate to the Town.

(b) The Town may notify users if their rate of usage is projected to be greater than their annual allotment based on actual usage when compared with the remaining time left in the calendar year.

(c) Upon notice from the Town of a continued overage of water usage, the user or property owner is required to transfer and/or dedicate to the Town the additional water units or shares or, at the Town's discretion, a payment in lieu thereof within forty-five (45) days of notice by the Town. The Town shall then have the additional water dedication for the property served accounted for in the allotment of water usage allowed for the property. Failure by a user or property owner to satisfy the additional water units, shares requirement, or payment in-lieu within the allotted time shall be cause for termination or suspension of water service by the Town until the requirement is satisfied.

Sec. 13-2-240 Agricultural and open space property.
If the owner of the property proposed to be annexed, subdivided or on which the land use is proposed to be changed desires to retain the land or any portion thereof, in agricultural production or as open space prior to development, he or she may, pursuant to written agreement with the Town, be permitted to lease back, on an annual basis and for irrigation, aesthetic and recreational purposes only, all or part of the water rights dedicated to the Town pursuant to this Division. The terms of any such leases shall be at a rate such that the Town's expenses are paid for by the lease as determined by the Town and on such other terms and conditions as are determined by the Town. Said leases shall provide that, in the event any portion of the land for which the water is leased is platted during the term of the lease, the Town may cancel the lease, in whole or in part, to the extent any portion of the leased water is determined by the Town to be necessary for water service to the property so platted.

Sec. 13-2-245 Option of right of first refusal to purchase.
(a) *Time.* Any person required to comply with the provisions of this Division shall also grant to the Town the option for one (1) year to purchase any and all water rights or shares which are appurtenant to the land to be annexed or on which the land use is proposed to be changed, but which are in excess of the dedication requirements of this Division. The option may be exercised by the Town at any time for a period of one (1) year following the date of the grant to the Town with regard to any or all of the water rights or shares subject to the grant.

(b) *Price.*

(1) The option price shall be that price agreed upon by the parties. If the parties cannot agree upon an option price within thirty (30) days after notice of the Town's intent to exercise its option is received by the owner, appraisal at the Town's expense will establish the price that reflects the fair market value of the water rights or shares.

(2) The appraisal shall be conducted by one (1) appraiser appointed by the Town, one (1) appraiser appointed by the owner of the water rights or shares and a third appraiser who shall be appointed by both parties. The average of the three (3) shall be the option price. All three (3) appraisers must have at least ten (10) years' experience in appraising water rights or shares in the State.

(c) *Right of first refusal.*

(1) *Grant of right.* In addition to the grant to the Town of the option to purchase water rights or shares as provided in Subsection (a) of this Section, any person required to comply with the dedication requirements shall also grant to the Town a right of first refusal regarding any water rights or shares subject to said option to purchase. If the Town for any reason should choose not to exercise its option to purchase water rights or shares as provided in Subsection (a) of this Section, the Town shall have the right of first refusal in the event the water rights or shares are to be sold separately from the land, for a period of ten (10) years following the date of the grant to the Town.

(2) *Notice period.* If the owner of the water rights or shares subject to the right of first refusal wishes to sell the water rights or shares to a third party, he or she shall give the Town at least one hundred twenty (120) days' prior written notice of their intention to effect a sale of the water rights or shares by delivering to the Town an acceptable, bona fide written offer to purchase made by a third party.

(3) *Exercise of right.* During the one hundred twenty (120) day notice period provided for in Subsection (c)(2) of this Section, the Town shall enjoy its right of first refusal entitling it to purchase the water rights or shares offered for sale on the same terms and conditions as contained in the acceptable, bona fide written offer. If, within one hundred twenty (120) days following notice by the owner of their intention to sell their water rights or shares, the Town chooses to exercise its right to purchase, then the Town shall so notify the owner in writing and shall proceed to closing on the terms and conditions contained in the acceptable, bona fide written offer by the third party. In the event that the Town determines not to exercise its right to purchase the water rights or shares offered for sale, the owner shall be free to sell the water rights or shares to the third party; provided, however, that any such sale to the third party shall be for a price which is at least equal to that price which was tendered and refused by the Town and on terms and conditions which are no more favorable to the third party than those refused by the Town.

Sec. 13-2-250 Return flows and augmentation, exchange or reuse plans.

The Town shall have dominion and control of all water supplied through its water system, subject to reasonable use thereof by its customers in compliance with applicable water service agreements, leases or licenses or the Town's ordinances. Such dominion and control shall continue without interruption as to all wastewater, return flows, runoff, sewage or tail water attributable to or originating in water supplied through Town-owned or Town-controlled water rights, water shares, or facilities. The Town shall have the exclusive right to recapture such return flows or claim credit therefrom for reuse, successive use, exchange, replacement, augmentation, substitute supply or any other lawful purposes, and the Town's dominion and control over water shall continue to attach to all such return flows, regardless of form, even after they return to the groundwater aquifers or the surface stream systems. All return flows from water supplied through Town-owned or Town-controlled water rights, water shares, or facilities remain the property of the Town.

Sec. 13-2-255 Exceptions.

(a) The Board of Trustees may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this Division.

(b) The Board of Trustees may from time to time determine that certain provisions of the water dedication ordinance, as amended, may be inapplicable to certain developments or portions of certain developments, or that the application of said ordinance should be deferred in time or on certain conditions. Any such determinations shall be set out expressly in the annexation, development and other similar agreements.

Section 2. Severance Clause. If an article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees of the Town of Frederick, Colorado hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 3. Repeal. All other ordinances, or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 4. Effective Date. This ordinance shall take effect on ________ ___, 2023.

INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK THIS 13TH DAY OF JUNE, 2023

TOWN OF FREDERICK, a Colorado municipal corporation

By: _________________________

Tracie Crites, Mayor

ATTEST:

By: ______________________________

Meghan Martinez, Town Clerk

TOWN OF FREDERICK
Board of Trustees
Action Memorandum

Consideration of the Prosperity Subdivision Landscape Wavier

Agenda Date: Town Board Meeting – June 13th, 2023

Attachments:
a. Letter of Intent
b. Landscape typical layouts
c. Water demand analysis
d. Prosperity covenants, conditions, and restrictions

Finance Review: ______________________

Submitted by: Ali van Deutekom
Planning Manager

Approved for Presentation: Bryan Ostler
Town Manager

☒ Quasi-Judicial ☐ Legislative ☐ Administrative

Summary Statement:

The applicant is requesting a waiver from Land Use Code Section 2.14(7)(b) which is the single-family residential landscaping development standards.

Strategic Plan Alignment:

This request aligns with the Town's Strategic, Reliable & Sustainable Infrastructure– Frederick is dedicated to investing in existing and future transportation, water, storm water, and technology while planning for sustainable growth and development.

Detail of Issue/Request:

Applicant: Richard Jablonski

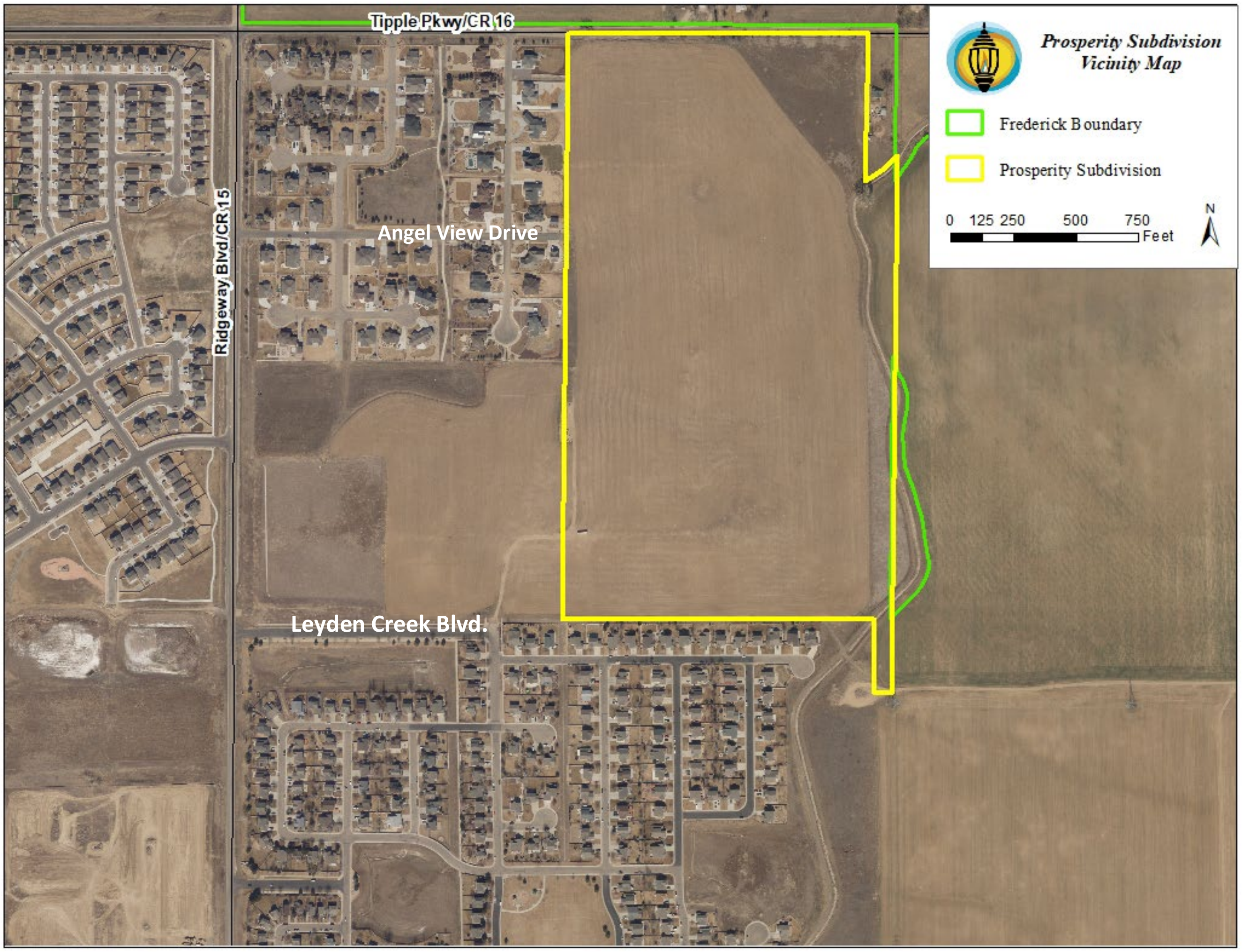
Owner: Jablonski Family LLLP

Location and Zoning: The property is generally located south of Tipple Parkway, a quarter mile east of Ridgeway Blvd, a half mile north of Highway 52 and a half mile west of Wheatland Blvd. The Zoning is R-1 (residential low density).

Surrounding Land Uses and Zoning:

North	Land use: single family dwelling Zoning: Weld County Ag (Agricultural)
South	Land use: single family dwellings (Savannah Subdivision) Zoning: R-1 (residential low density)
West	Land use: single family dwellings (Angel View Estates Subdivision) Zoning: R-1 (residential low density)
East	Land use: vacant land/ single family dwelling Zoning: R-1 (residential low density) with a PUD overlay and Weld County Ag (Agricultural)

Vicinity Map:



Background Information:

On September 14th, 2021, the Board of Trustees approved the Prosperity final plat for 206 single family detached lots, and a 4-acre neighborhood park, on 69.78 acres. The average lot size in the subdivision is 7,000-8,000 square feet. A final landscape plan was reviewed and approved with the final plat, which meets our current Land Use standards. Our Land Use Code section 2.14(7)(b) lays out single-family residential landscaping development standards which require no less than 50% coverage in drought tolerant turf grass within the front and side yard of a lot. Section 2.14(7)(b) also limits the amount of decorative rock or gravel mulch to no more than 15% of the landscaped area.

Request:

The applicant is requesting a 3-part waiver with their letter of intent. They are requesting the Town accept the proposed typical lot landscape plans, a water demand analysis and the declaration of covenants, conditions, and restrictions. Those components are listed below:

1. The applicant is proposing a maximum turf area of 200 square feet and no minimum requirement. With the possibility of no turf and to avoid large expansions of organic mulch, the 15% maximum placed on rock mulch should also be waived. Staff is able to support this request based on the 2022 adopted Water Efficiency Plan. The water efficiency plan collected historic use data and showed some striking numbers. 75.3% of the Town's potable water is directed to single family homes. Of the 75% used by single family homes, it is estimated that 57% is used outdoors. It is likely the outdoor use is on large expansions of turf. Staff is working to update the Land Use Code landscape requirements to better align with the water efficiency plan. In the meantime, staff offered to support a waiver request to reduce turf usage. How this waiver would be applied across common areas has not been addressed and would require an amendment to their approved landscape plan.

2. A request to accept a water demand analysis is not supported by staff because it does not meet the requirements of Chapter 13 of the Municipal Code. The code requires that the analysis be prepared by Town Staff. The Developer has not used the standard values that Town staff would use to prepare the analysis and the values used are not supported by staff. Regardless, this request would be more appropriately made as part of an amendment to the MOAPI, which is not part of this request.

3. The third piece of the request is the acceptance of the covenants, conditions, and restrictions for the subdivision. While staff believe this is the appropriate tool to ensure the individual lot owners comply with the lot typical, the Town does not review, approve, or enforce these documents. Staff wants to be clear; the subdivision HOA will be enforcing these restrictions through plan review, final inspection, and ongoing inspections. No Town resources shall be used to ensure the plans are carried out for the duration of the subdivision.

Review Criteria:

Section 4.7.8 of the Town of Frederick Land Use Code sets forth the following review criteria for the proposed planning action.

1. The waiver, if granted, will not be detrimental to the public good.

2. Due to exceptional conditions peculiar to the site, practical difficulties or an unnecessary hardship is placed on the landowner, and such practical difficulties or unnecessary hardship has not been created by the applicant.

3. The waiver, if granted, does not create a conflict with a Comprehensive Plan that has been the subject of a Comprehensive Plan update within the five (5) years preceding the application.

4. The waiver, if granted, does not impair the intent and purpose of this Code.

(5) The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.
(6) The waiver, if granted, is the minimum variance that will afford relief and is the least modification possible of the subdivision ordinance provisions which are in question.

<u>Staff Comment:</u> To provide clarity on the public record, Staff proposes breaking the waiver request into three motions in order to consider each component separately. Below includes the Staff comment on each component of the waiver request.

1. Staff is supportive of a conditional approval of a waiver request regarding landscaping requirements and believes the request conceptually is in line with the policy direction within the Town's adopted water efficiency plan. If approved, the landscape plan for the whole development including the common areas would need to be amended and brought forward for Board consideration. The proposed changes may increase the value of the homes as more consumers search for housing options which cost less to maintain and require less water. The character of the neighborhood should remain intact.
2. Staff is not supportive of this request to accept a water demand analysis for reasons enumerated above.
3. Staff is not supportive of this request as the Town as a matter of practice (as with most municipalities) do not review or enforce and HOA's covenants, conditions and restrictions.

<u>Legal Comments:</u>

The application has been reviewed by the Town Attorney.

<u>Alternatives/Options:</u>

Staff proposes a separate motion for each portion of the waiver request to provide clarity to the public record. Each component is listed below with potential motion language provided for consideration by the Board.

<u>Item 1 Regarding a Request to Reduce Irrigated Turf Area:</u>

Approval:
I move that the Prosperity Waiver, case no. 2022-021 regarding a reduction in irrigated turf on residential lots be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, with no conditions; and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

Approval with Conditions:
I move that Prosperity Waiver, case no. 2022-021 regarding a reduction in irrigated turf on residential lots be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, and based on the following conditions;

1. The applicant shall be required to submit a request to amend their approved landscape plan inclusive of all residential lots and common areas with such a decision being contemplated by the Board of Trustees.

2. A deed restriction shall be included on any final plat amendment requiring compliance with said water efficient measures.
3…(list any other conditions the Board feels appropriate)
4…
and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

Denial:
I move that Prosperity Waiver, case no. 2022-021 regarding a reduction in irrigated turf on residential lots be denied based on the following findings of fact (list specific facts); and to direct the Town Attorney to reduce this denial, along with the findings of fact, to writing for prompt execution by Mayor Crites without further action of the Board.

Financial Considerations:

Not Applicable.

Staff Recommendation:

Staff recommends conditional approval of this portion of the waiver request as outlined above as an interim measure until such time that the landscape regulations can be sufficiently updated to contemplate compliance with the Board adopted Water Efficiency Plan.

Item 2 Regarding a Request to Accept a Water Demand Analysis:

Approval:
I move that the Prosperity Waiver, case no. 2022-021 regarding accepting a water demand analysis be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, with no conditions; and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

Approval with Conditions:
I move that Prosperity Waiver, case no. 2022-021 regarding accepting a water demand analysis be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, and based on the following conditions;

1. …(list any conditions the Board feels appropriate)
2. …

and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

Denial:
I move that Prosperity Waiver, case no. 2022-021 regarding accepting a water demand analysis be denied based on the following findings of fact (list specific facts); and to direct the Town Attorney to reduce this denial, along with the findings of fact, to writing for prompt execution by Mayor Crites without further action of the Board.

Financial Considerations:

Not Applicable.

Staff Recommendation:

Staff recommends denial of this portion of the waiver request as this would be a departure from previous policy direction provided by the Board. In addition, the Municipal Code specifically addresses this type of request and requires that any demand analysis be completed and prepared by Staff. Further, the more appropriate avenue to address this component would be to seek to amend the existing approved MOAPI and work with Staff through that process.

Item 3 Regarding a Request to Accept the Proposed HOA Covenants, Conditions and Restrictions:

Approval:
I move that the Prosperity Waiver, case no. 2022-021 regarding accepting proposed covenants, conditions and restrictions be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, with no conditions; and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

Approval with Conditions:
I move that Prosperity Waiver, case no. 2022-021 regarding accepting proposed covenants, conditions and restriction be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, and based on the following conditions;
1. …(list any conditions the Board feels appropriate)
2. …

and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

Denial:
I move that Prosperity Waiver, case no. 2022-021 regarding accepting proposed covenants, conditions and restrictions be denied based on the following findings of fact (list specific facts); and to direct the Town Attorney to reduce this denial, along with the findings of fact, to writing for prompt execution by Mayor Crites without further action of the Board.

Financial Considerations:

Not Applicable.

Staff Recommendation:

Staff recommends denial of this portion of the waiver request as it is not typical in Frederick for the Board to review, approve or enforce a community's HOA documents including the covenants, conditions and restrictions.

JABLONSKI FAMILY, LLLP
1710 BEARD CREEK TRAIL
EDWARDS, COLORADO 81632

Bryan Ostler, Town Manager
Town of Frederick
401 Locust Street
Frederick, Colorado 80530-0435

RE: ***Prosperity Subdivision – Updated Landscape Plans***

Dear Mr. Ostler:

Greetings. In response to your letter dated May 20, 2022, enclosed please find the following draft materials for your review and consideration:

- Typical Lot Landscape Plans
- Water Demand Analysis
- Declaration of Covenants, Conditions and Restrictions (with Exhibits)

Pursuant to the approved Final Plat, Prosperity Subdivision has a mix of residential Lot sizes, ranging between 6,300 s.f. and 8,000 s.f. According to the updated Lot landscaping plans (enclosed), outdoor turf area shall be restricted to a maximum of 1,200 s.f. per Lot, and additional landscape requirements and irrigation restrictions will substantially reduce outdoor irrigation demand.

In addition, the updated Lot landscape plans are accompanied by corresponding covenant restrictions in the revised Declaration of Covenants (see, Articles 5, 7 and 14), and the Developer would also be willing to complete an administrative Plat amendment to clearly restate all Lot landscaping requirements and outdoor irrigation restrictions for the Subdivision.

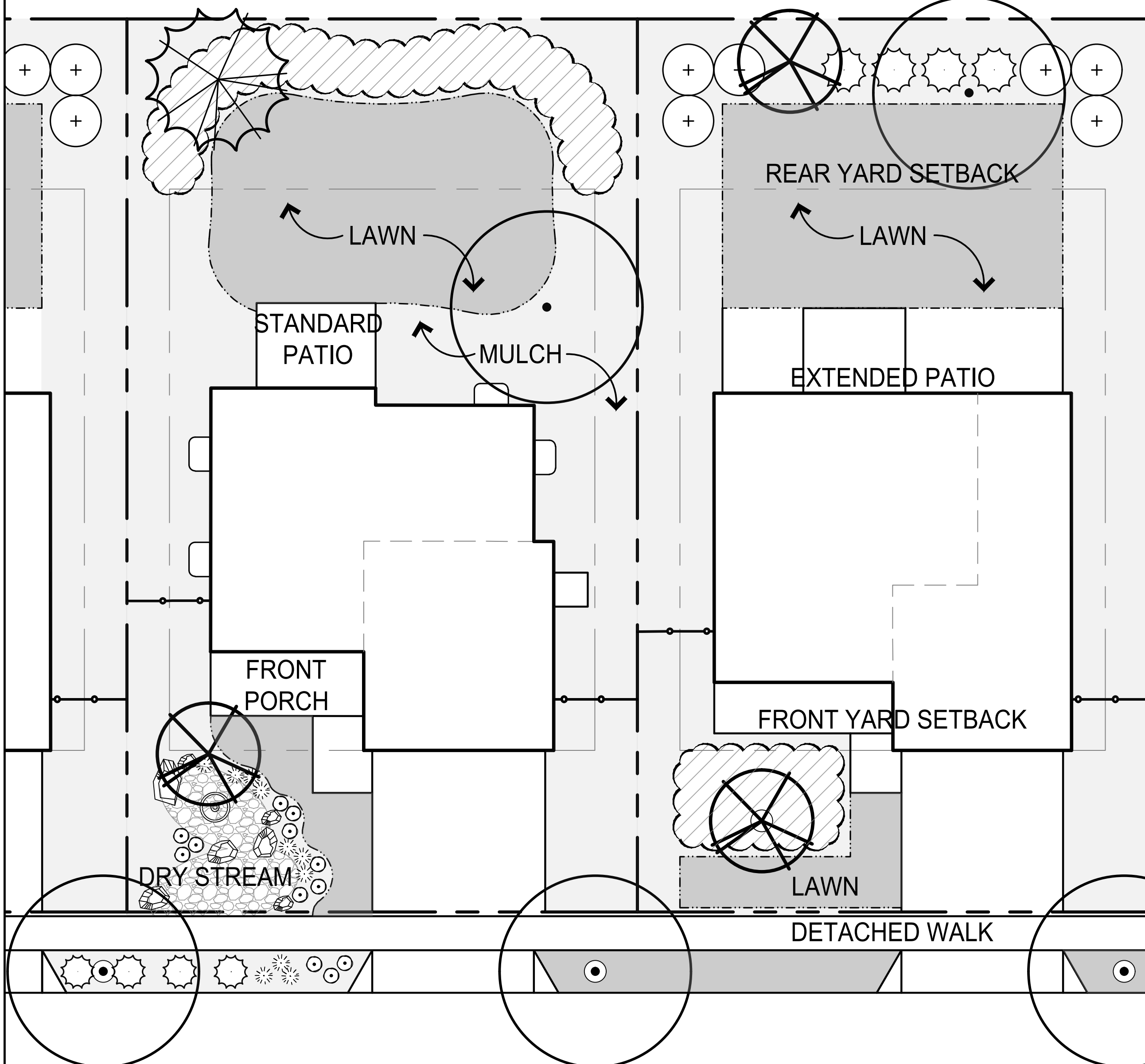
You advised that the Town Code does not currently provide a process for alternatives to the Town's established landscape requirements. Therefore, you suggested that we prepare and submit these materials and request a waiver. As justification, we also enclose our water demand analysis showing measurably reduced water consumption in the Subdivision, using the updated Lot landscape plans. As before, our goals align with the Town's to measurably reduce water consumption.

Please contact me to discuss the enclosed plans and documents, and to schedule a date for the Town Board of Trustees to consider this waiver request. We hope that the Town would look favorably on the request, and we thank you for your professional assistance.

Jablonski Family, LLLP
A Colorado limited liability limited partnership

Richard T. Jablonski, General Partner

Enclosures



SCALE: 1"=20'

0 20 40

PROSPERITY LANDSCAPE PLAN TYPICAL
60' x 105' LOT

REAR YARD LANDSCAPE REQUIREMENTS:
NONE LISTED IN FREDERICK LAND USE CODE

PROPOSED:
ALL LOW WATER USE PLANT MATERIAL INCLUDING BUFFALO GRASS OR TAHOMA TURF OR APPROVED EQUAL
- 1,000 SF MAX. TURF
- 1 SHADE TREE MIN.
- 1 EVERGREEN OR ORNAMENTAL TREE MIN.
- 6 SHRUBS MIN.

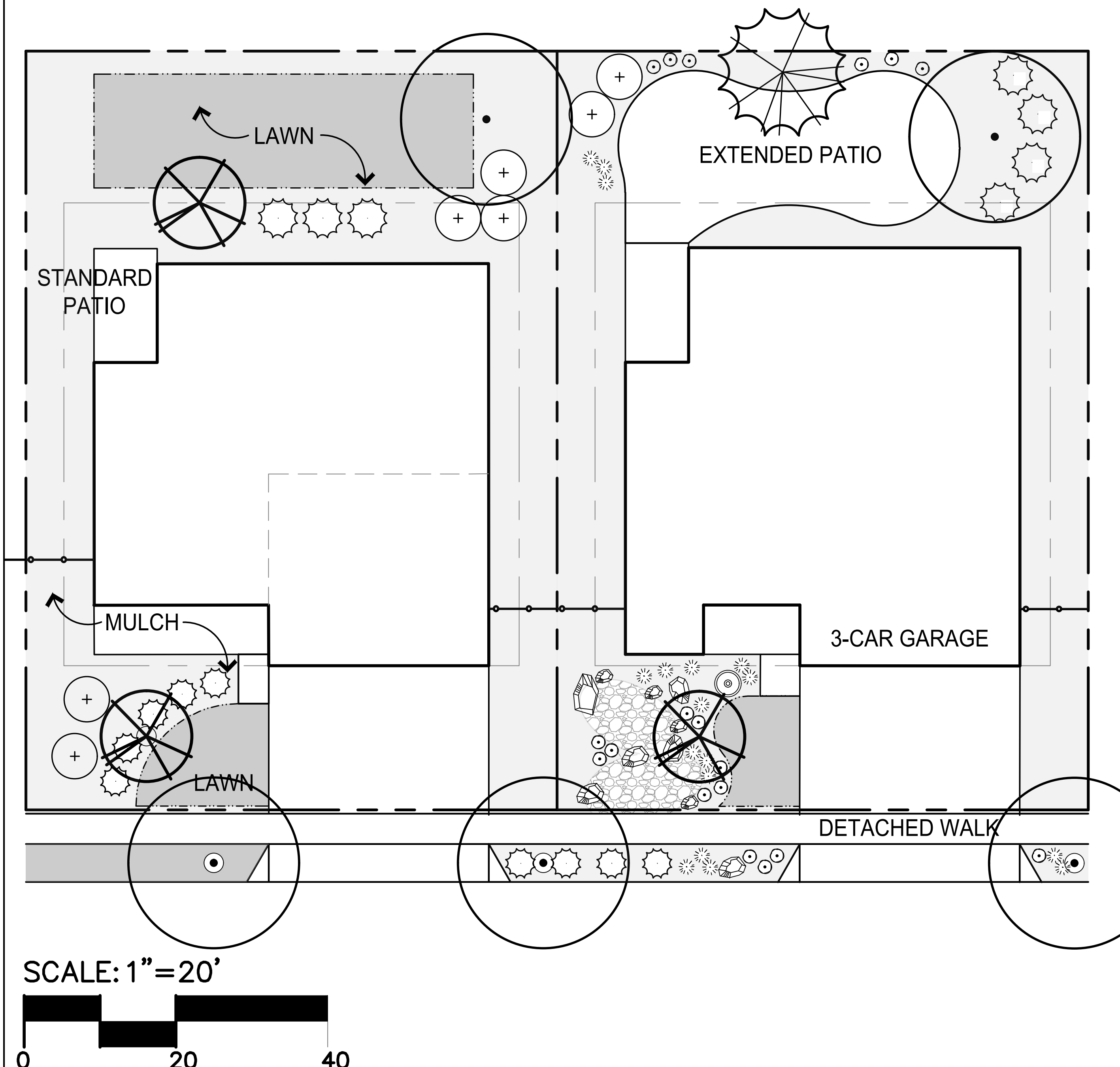
FRONT YARD LANDSCAPE REQUIREMENTS:
PER FREDERICK LAND USE CODE:
1 STREET TREE PER 40 LINEAR FEET

R-1 ZONING FRONT YARD SETBACK:
50% MIN. TURF;
25% MIN. LIVE PLANT MATERIAL;
15% MAX. GRAVEL;
5 SHRUBS MIN.
1 TREE MIN.

PROPOSED:
NO TURF REQUIREMENT--200 SF MAX.;
25% MIN. LIVE PLANT MATERIAL;
75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH

DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

LOW WATER USE TURF OR LOW SHRUBS, GROUNDCOVERS AND/OR ORNAMENTAL GRASS TREE LAWN



REAR YARD LANDSCAPE REQUIREMENTS:

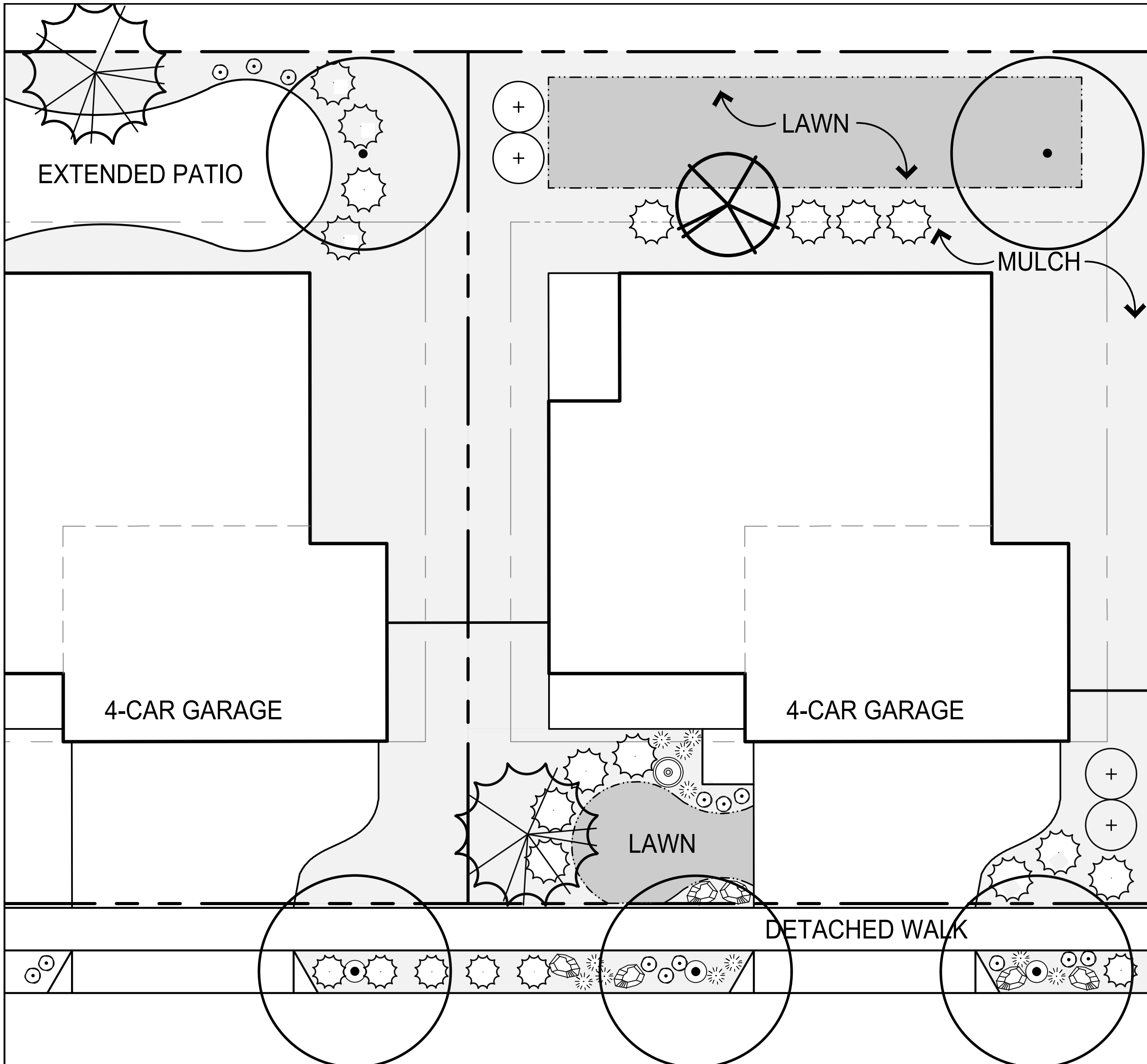
PROPOSED:
ALL LOW WATER USE PLANT MATERIAL INCLUDING BUFFALO GRASS OR TAHOMA TURF OR APPROVED EQUAL
- 1,000 SF MAX. TURF
- 1 SHADE TREE MIN.
- 1 EVERGREEN OR ORNAMENTAL TREE MIN.
- 6 SHRUBS MIN.

FRONT YARD LANDSCAPE REQUIREMENTS:

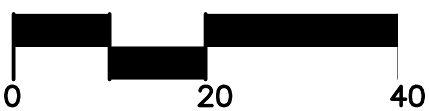
PROPOSED:
NO TURF REQUIREMENT--200 SF MAX.;
25% MIN. LIVE PLANT MATERIAL;
75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH
DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

LOW WATER USE TURF OR LOW SHRUBS, GROUNDCOVERS AND/OR ORNAMENTAL GRASS TREE LAWN

PROSPERITY LANDSCAPE PLAN TYPICAL
70' x 100' LOT



SCALE: 1”=20’



PROSPERITY LANDSCAPE PLAN TYPICAL
80' x 100' LOT

REAR YARD LANDSCAPE REQUIREMENTS:

PROPOSED:
ALL LOW WATER USE PLANT MATERIAL INCLUDING BUFFALO GRASS OR TAHOMA TURF OR APPROVED EQUAL
- 1,000 SF MAX. TURF
- 1 SHADE TREE MIN.
- 1 EVERGREEN OR ORNAMENTAL TREE MIN.
- 6 SHRUBS MIN.

FRONT YARD LANDSCAPE REQUIREMENTS:

PROPOSED:
NO TURF REQUIREMENT--200 SF MAX.;
25% MIN. LIVE PLANT MATERIAL;
75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH

DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

LOW WATER USE TURF OR LOW SHRUBS, GROUNDCOVERS AND/OR ORNAMENTAL GRASS TREE LAWN

PROSPERITY WATER REQUIREMENTS MEMORANDUM

TO: **RICHARD JABLONSKI**

ALLIANCE DEVELOPMENT

FROM: **CARL HURST, P.E.**

HURST & ASSOCIATES

SUBJECT: **PROSPERITY DEVELOPMENT WATER REQUIREMENTS**

DATE: **7/8/2022**

This memo addresses the water requirements for the 206 lot Prosperity Subdivision in the Town of Frederick.

Water usage unit values for "In-House Potable" is based on the Town's draft Water Efficiency Plan. The Town uses 30" per year water application rate for sod, ostensibly Kentucky Bluegrass (KBG). This rate is in excess of the CSU study which recommends 26" per year on average and in excess of the 15" per year (based on 50% of Town's KBG value) for Tahoma 31 Bermuda Grass (usage studies show that this grass uses 50% or less of the water required for KBG). Lot irrigation is based on the attached lot irrigation plans with a maximum of 1200 SF of grass with shrubs and trees as shown. Whether using CBT or raw water for irrigation, we recommend the use of Tahoma 31 for turf and lawn applications to significantly reduce the amount of required irrigation – reference Oklahoma State University studies which show this species to be hardy, drought tolerant, and requiring significantly less water than KBG. (see attached information)

The Prosperity HOA will control the irrigation and maintenance of all common areas, including the area between the sidewalk and curb; thus, irrigation can be strictly controlled to ensure that the benefits of using Tahoma 31 Bermuda grass are realized. Additionally, the Prosperity covenants and restrictions will require initial use of Tahoma for turf areas and review landscape plans to enforce guidelines for turf and native landscaped areas.

Water requirements are based on the following unit uses:

In-House Use – 42.4 gal per person per day (this aligns with the Town's current efficiency benchmark and is achievable through the use of water saving fixtures within the home)

Irrigation –

Tahoma 31 Bermuda Grass – 15.0" per year

Drip/Native for Trails per Town Guidelines – 14.4" per year

Low water use grass and xeriscape per attached landscape plans – 0.0458 AF per lot

Demands are based on the following uses:

Average Lot –

2.9 people per unit

Tahoma 31 Bermuda Grass

1200 SF maximum per lot

Low Water Usage Trees and Shrubs

18 Shrubs & 3 Trees per lot – see landscape plan

Parks and Trails –

5.87 Acres Tahoma 31 Bermuda Grass

8.04 Acres Drip/Native

Right of Way

3.20 Acres Tahoma 31 Bermuda Grass

Total Demands

206 Lots -

In-house – 0.138 Ac Ft per unit per year or 28.46 Ac Ft per year total

Irrigation – 9.43 Ac Ft per year total

Total Lot Demand – 37.89 Ac Ft per year

ROW, Parks and Trails –Total 20.98 Ac Ft per year

Tahoma 31 Bermuda Grass – 11.34 AF/Yr. Drip/Native – 9.64 AF/Yr.

Total Water Demand – 58.87 AF/Yr.

Potential Water Sources

In-House Uses – 28.46 Ac Ft/Year

47.4 CBT units at 0.6 Ac Ft/CBT unit

Lot Irrigation – 9.43 Ac Ft/Year

15.7 CBT units at 0.6 Ac Ft/CBT unit

Parks and Trails – 16.98 Ac Ft/Year

28.3 units CBT or 16.98 Ac Ft of raw water

Right of Way – 4.0 Ac Ft/Year

6.7 units CBT or 4.0 Ac Ft or raw water

Water Requirements Per Phase

PHASE	TOTAL LOTS	LOT IRRIGATION		POTABLE		PARKS AND TRAILS		ROW		TOTAL CBT
		Ac Ft	CBT	Ac Ft	CBT	Ac Ft	CBT	Ac Ft	CBT	
1	36	1.65	2.75	4.97	8.28	2.16	3.60	0.76	1.27	15.90
2	27	1.24	2.06	3.72	6.20	1.31	2.18	0.55	0.92	11.36
3	31	1.42	2.37	4.28	7.13	1.32	2.20	0.56	0.93	12.63
4	30	1.37	2.29	4.14	6.90	7.85	13.08	0.50	0.83	23.10
5	23	1.05	1.76	3.19	5.32	1.31	2.18	0.34	0.57	9.83
6	26	1.19	1.98	3.59	5.98	1.31	2.18	0.40	0.67	10.82
7	33	1.51	2.52	4.57	7.62	1.72	2.87	0.89	1.48	14.48
TOTAL	**206**	**9.43**	**15.72**	**28.46**	**47.43**	**16.98**	**28.30**	**4.00**	**6.67**	**98.13**

Based on the Town's goals for efficient use of water as detailed in the draft Water Efficiency Plan, Prosperity will require a total of 58.87-acre feet of water, including common space. This amounts to a total of 98.1 shares of CBT or an average of slightly less than 0.5 share of CBT per lot overall. The above chart breaks out the water requirement per phase with the largest requirement being in Phase 4 with the development of the community park.

For any additional information or questions please contact me.

HURST & ASSOCIATES, INC.

Carl Hurst

Carl Hurst, P.E.

DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS
FOR
PROSPERITY SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PROSPERITY SUBDIVISION ("Declaration"), is executed and delivered by JABLONSKI FAMILY LLLP, a Colorado limited liability limited partnership ("Declarant").

WHEREAS, Declarant owns certain residential real property located in Weld County, Colorado, more particularly described in **Exhibit A** attached and incorporated herein by reference ("Property"); and

WHEREAS, the Property will be developed for a planned residential community, to be known as "Prosperity Subdivision"; and

WHEREAS, the Property will be conveyed subject to the protective covenants, conditions and restrictions of this Declaration.

NOW THEREFORE, the Declarant hereby submits all of the Property described in **Exhibit A**, including all Lots, Outlots, Common Areas, appurtenant easements, rights and other improvements, to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 *et seq*., as the same may be amended from time to time ("Act"). In the event said Act is repealed, the Act as it exists on the date this Declaration is recorded shall apply.

Declarant hereby declares that the name of the common interest community is "Prosperity Subdivision" ("Prosperity"), and the name of the Association is the Prosperity Homeowners Association, Inc., a Colorado nonprofit corporation ("Association").

Declarant further declares that all of the real Property described in **Exhibit A** shall be owned, held, used, occupied, maintained, sold and conveyed subject to the covenants, conditions and restrictions of this Declaration, all of which are declared and agreed to be for the protection and preservation of the value of the Property, and for the benefit of Owners of Lots within the Property, and which Declaration shall run with the land of the Property and shall be a burden and benefit to any person acquiring an interest in said Property, and their grantees, legal representatives, heirs, successors and assigns, as follows:

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless otherwise defined or the context otherwise reasonably requires, the following terms have the following meanings:

1.1 Act means the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101, *et seq*., as the Act may be amended from time to time.

1.2 Architectural Control Committee or ACC means a committee of individuals appointed by the Board of Directors of the Association, having the rights and authority provided by ARTICLE FOURTEEN, including authority to adopt and enforce Design Guidelines for the Property.

1.3 Assessments means the Common Expense Assessments and any other Assessment including Costs of Enforcement levied pursuant to this Declaration.

1.4 Assessment Lien means the statutory lien provided by the Act for any Assessment levied against a Lot, together with all Costs of Enforcement to the extent they are enforceable as Assessments, to the full extent provided by §38-33.3-316 and other relevant sections of the Act. If an Assessment is payable in installments, the full amount of such Assessment is a lien from the time the first installment is due. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recording or additional claim is required to establish and perfect such Lien.

1.5 Association means PROSPERITY HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, its successors or assigns. This Declaration, the Articles of Incorporation ("Articles") and Bylaws ("Bylaws") of the Association, and any Rules adopted by the Board, shall regulate the Property and govern the administration and management of the Association.

1.6 Board of Directors or Board means the group of at least three (3) individual Directors of the Association, initially appointed by the Declarant and thereafter duly elected by Owners as provided herein. The Board is the governing body of the Association and shall act for and on behalf of the Association.

1.7 Bylaws means any written Bylaws adopted by the Board for managing and regulating meetings and other affairs of the Association, as such Bylaws may be amended from time to time.

1.8 Common Area(s) means "Common Element(s)" as defined by the Act, and includes all real property, improvements and appurtenances in which the Association owns or holds an interest (whether in fee, easement, lease, or other interest) or in which the Association has a duty to maintain or insure. The Common Areas to be owned by the Association consist of **Outlots A, B, D, E, F, G, H, I, J, K, L, M, N, P, Q and R**, as depicted in the Plat (defined below) a copy of which is attached as part of **Exhibit A**. Except as otherwise provided herein, the Association is responsible for taxes, assessments, insurance, maintenance, repair and replacement of Common Areas.

1.9 Common Expense Assessments are defined in ARTICLE SIX.

1.10 Common Expense Liability means the per-Lot liability of Owners for paying Common Expense Assessments allocated to each Lot using the formula: 1/206 or 0.485% per Lot.

1.11 Common Expenses means costs, fees, expenses and/or liabilities incurred by or on behalf of the Association, including insurance and prudent reserves.

1.12 Costs of Enforcement means expenses including reasonable attorneys' fees, collection costs, late charges, interest at the legal rate, and other collection costs incurred by the Association in connection with: (a) collecting Assessments; (b) enforcing an Assessment Lien; or (c) enforcing the Declaration, Rules, or other governing document of the Association.

1.13 Declarant means JABLONSKI FAMILY LLLP, a Colorado limited liability limited partnership or its assigns, including any successor to Declarant or transferee of Declarant Rights.

1.14 Declaration means this DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PROSPERITY SUBDIVISION, as the same may be amended from time to time.

1.15 Declarant Rights means development rights described in §§38-33.3-103(14), (29), and -210 of the Act, including any Special Declarant Rights reserved by Declarant under ARTICLE ELEVEN.

1.16 District means and refers to the Prosperity Metropolitan District, a special district organized pursuant to C.R.S. §§ 32-1-101, *et seq*. to serve the Property.

1.17 Eligible Mortgagee means an owner, holder, insurer or governmental guarantor of a First Security Interest who has delivered written notice to the Association identifying its name, address, and the legal description of any Lot in which it claims an interest, and requesting that the Association provide notice of any proposed action under this Declaration that may require the consent of any specified percentage of Eligible Mortgagees.

1.18 First Security Interest means a Security Interest having priority of record over all other recorded liens and interests except those made superior by statute (such as for general ad valorem property taxes).

1.19 Guest means any non-Owner who: (a) visits the Property; or (b) is a guest or invitee of an Owner; or (c) is a tenant or occupant of any Residence, or a member of such tenant's or occupant's household, or a guest, invitee or cohabitant of such person in Residence; and includes a contract purchaser of a Lot.

1.20 Lot means the single-family residential plots of land subject to this Declaration and designated as "Lot" on the Plat(s) of the Property recorded in the office of the Clerk and Recorder of Weld County, Colorado, together with all improvements and appurtenances located now or in the future on such Lots, including any Residence. At the time of this Declaration, two hundred six (206) Lots are platted and one (1) vote is allocated to each Lot.

1.21 Managing Agent or Property Manager means any one or more qualified individuals or entities who may be licensed as required by the Act, and employed or engaged by the Association as Property Manager or to perform any of the duties or functions of the Association.

1.22 Member means an Owner of a Lot who is entitled to membership in the Association by virtue of such Lot ownership.

1.23 Outlot means the plots and tracts of land designated "Outlot" on the Plat, together with any appurtenant improvements including trails, parks, open space, landscaping, irrigation systems, sidewalks, curbs, gutters, storm drainage, or similar Common Area improvements. The Association has a maintenance obligation for **Outlots A, B, D, E, F, G, H, I, J, K, L, M, N, P, Q and R,** as Common Areas. The Association also has a maintenance obligation for certain off-site storm drainage and non-potable irrigation improvements located in and across Outlot B of the neighboring Angel View Estates Subdivision.

1.24 Owner means the record title owner, including Declarant, of any Lot subject to this Declaration, whether one or more individuals or entities; excluding, however, those having an interest in a Lot merely as security for performance of an obligation.

1.25 Period of Declarant Control means the period of time defined in ARTICLE FOUR.

1.26 Plat means and refers to the Final Plat of Prosperity Subdivision approved by the Town of Frederick on **September 14, 2021** and recorded in the office of the Weld County Clerk and Recorder on **January 31, 2022** at **Reception No. 4798603** (the "Plat"), a copy of which is attached hereto as part of **Exhibit A**, as the same may be amended.

1.27 Property means all the real property described in **Exhibit A** to this Declaration.

1.28 Residence means any residential improvement constructed on a Lot, including single-family dwelling units and related appurtenances. At the time of this Declaration, the maximum number of dwelling units allowed to be constructed in Prosperity is two hundred six (206) Residences, one (1) per Lot.

1.29 Rules means any written Rules and Regulations lawfully adopted by the Board governing the use, occupancy, maintenance, or regulation of Lots, Common Areas, and/or the Property.

1.30 Security Interest has the meaning set forth in C.R.S. § 38-33.3-103(28).

1.31 Special Assessment is defined in ARTICLE SIX.

ARTICLE TWO: COMPLIANCE

2.1 Compliance with Declaration. Each Owner agrees that such Owner shall strictly comply with and shall cause such Owner's Guests to strictly comply with, all of the terms and provisions in this Declaration, the Articles and Bylaws of the Association, and the Rules and Regulations of the Association as adopted by the Board, as the foregoing may be adopted, established, and/or amended from time to time. Each Owner shall be responsible for compliance by all Guests of such Owner, and any failure to comply shall be grounds for action to compel compliance with this Declaration, or to recover damages or injunctive relief or both, along with Costs of Enforcement in any enforcement proceeding maintainable by the Board in the name of the Association, or, in a proper case, by an aggrieved Owner.

2.2 No Restrictions on Sale of a Lot. The right of an Owner to sell, transfer and otherwise convey such Owner's Lot shall not be subjected to any right of first refusal in favor of the Association, or any similar restriction on an Owner's right to transfer, except that all Lots are and shall remain subject to the provisions of this Declaration.

2.3 No Restrictions on Mortgaging a Lot. There are no restrictions on the right of an Owner to mortgage or otherwise encumber such Owner's Lot for financing purposes, and no requirement to use any particular lending institution or secure any particular type of loan.

ARTICLE THREE: RIGHTS AND EASEMENTS

3.1 Rights in Common Areas. Each Owner shall have the non-exclusive right and license, in common with all other Owners, to use and enjoy the Common Areas, subject to the provisions of this Declaration, subject to any Declarant Rights reserved by Declarant, and subject to the following rights of the Board:

(a) To regulate the use and maintenance of Common Areas as provided by §38-33.3-302 and this Declaration, and to promulgate and adopt Bylaws and Rules;

(b) To grant, convey or subject all or part of the Common Areas to a Security Interest, to borrow money to maintain, repair, or improve Common Areas, and to pledge said Common Areas as security for a loan of the Association for such purposes; provided that such grants may be subject to §38-33.3-312 of the Act requiring sixty-seven percent (67%) Owner approval;

(c) To grant or convey easements, licenses, permits, rights and similar interests in all or any part of the Common Areas to any public agency, government, special district, or utility for public or quasi-public purposes, subject to reasonable conditions as may be imposed by the Board to protect the Association; provided that conveyances in fee may be subject to §38-33.3-312 of the Act requiring sixty-seven percent (67%) Owner approval;

(d) To take such steps as are reasonably necessary to protect and preserve the Common Areas against damage, loss or foreclosure;

(e) To enter into, make, perform and enforce contracts, leases and agreements for the maintenance and preservation of Common Areas or for any lawful purpose that the Board may deem useful, beneficial, or appropriate to the Property or the Association;

(f) To close or limit the use of Common Areas temporarily (for up to 72 hours without notice) while maintaining, repairing or making replacements in the Common Areas, or permanently if also approved by the affirmative vote of sixty-seven percent (67%) of Owners, unless such Common Areas are required to be left open by the Town of Frederick;

(g) To make such use of the Common Areas as may be necessary or appropriate for the performance of duties and functions which the Association is obligated or permitted to perform under this Declaration, and to exercise rights and enforce remedies in the Declaration and Rules.

3.2 Delegation of Use. An Owner may delegate such Owner's right of enjoyment to the Common Areas to such Owner's Guest(s).

3.3 Easement for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, then an easement for such encroachment and its maintenance exists, to the extent provided by §38-33.3-214 of the Act and for so long as is reasonably necessary.

3.4 Emergency Access. A non-exclusive access easement is hereby granted through, in, upon and across the Property for access, ingress and egress for the benefit of all police, sheriff, fire protection, ambulance, rescue, first responder, and similar emergency response agencies now or hereafter serving the Property, to enter upon all areas of the Property in the performance of their official duties.

3.5 Utility Easements. The Board may grant interests in the Common Areas for utilities, access, and other lawful purposes as are reasonably necessary for the proper maintenance and operation of the Property.

3.6 Owner's Easement for Access. Each Owner shall have a nonexclusive easement for access between such Owner's Lot and the Common Areas including access to abutting internal streets within the Property.

3.7 Easements Deemed Appurtenant. The easements, uses and rights herein described shall be perpetual and appurtenant to the Lot(s) and Common Areas, as appropriate, and all conveyance instruments affecting title shall be deemed to impliedly grant and reserve such non-exclusive easements, uses and rights, as though fully set forth therein.

ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The name of the Association is PROSPERITY HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation. The Association shall register with the State of Colorado as provided by Colorado law.

4.2 Purposes and Powers. The Association shall own, manage, maintain, insure, repair, and replace all Common Areas and keep the same in orderly condition for the benefit of all Owners. The Association shall have all power and authority reasonably necessary or desirable to properly effectuate such purposes, and to manage the business and affairs of the Association, including all powers in §38-33.3-302 of the Act. Any purchaser of a Lot shall be deemed to have assented to, ratified, accepted, and approved such rights and powers of the Association.

4.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors consisting of at least three (3) individuals, initially appointed by Declarant. The Board may delegate certain of its authority to committees of the Board including an ACC, and may delegate certain authority to a qualified Property Manager for the Association, provided that no such delegation shall relieve the Board of final responsibility for oversight and management.

4.4 Articles and Bylaws. The purposes and powers of the Association and its rights and obligations in this Declaration may be supplemented by provisions of the Association's Articles and Bylaws. In the event the Articles conflict with the Bylaws, the Articles control, and in the event the Articles or Bylaws conflict with this Declaration, the Declaration controls.

4.5 Membership. Every record Owner of a Lot subject to this Declaration is a Member of the Association by virtue of Lot ownership. Membership in the Association is appurtenant to a Lot and may not be separated from Lot ownership, which is the sole qualification for membership. Where more than one person holds joint ownership in a Lot, each such joint owner is a Member.

4.6 Voting Rights. There is one class of voting membership in the Association which is appurtenant to Lot ownership. Owners are entitled to one (1) vote per Lot. If Lot ownership is held jointly by more than one Owner, then the vote for such Lot may be exercised by any one Owner, unless a written objection or protest by any other Owner of such Lot is delivered to the Association prior to the completion of all voting, in which case the vote for such Lot shall be exercised as its joint Owners may agree. Should joint Owners of a Lot be unable to agree prior to the completion of all voting, the joint Owners' right to vote in that particular case is deemed waived. The maximum number of votes cast in any particular matter shall not exceed the total number of Lots (206) existing within the Property.

4.7 Declarant Control of the Association. There shall be a period of Declarant control, during which time the Declarant may appoint and remove individual members of the Board and the ACC in the Declarant's sole and absolute discretion, and during which time the Declarant may exercise Development Rights, Special Declarant Rights, and other rights provided by the Act or this Declaration. The period of Declarant control begins with the recording of this Declaration and terminates no later than the earlier of:

(a) sixty (60) days after the conveyance of seventy-five percent (75%) of all Lots to Owners other than the Declarant (currently, 155 Lots); or

(b) two (2) years after the last conveyance of a Lot held by the Declarant in the ordinary course of business; or

(c) two (2) years after any right to add new Lots was last exercised.

4.8 Election of Board. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of all Lots (52 Lots) to Owners other than Declarant, at least one (1) member of the Board shall be elected by the Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of all Lots (103 Lots) to Owners other than Declarant, at least one-third of the Board membership shall be elected by the Owners other than Declarant. Upon termination of the period of Declarant control, the Owners shall elect a Board of at least three (3) members, at least a majority of whom shall be Owners other than Declarant, and the Owners so elected to the Board shall take office.

4.9 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than Declarant elect a Board of at least three (3) members, the Declarant shall deliver to the Association the items listed in §38-33.3-303(9) of the Act, including:

(a) Originals or true and correct copies of: (i) the recorded Declaration as amended (ii) the Articles and Bylaws, (iii) any adopted and published Rules and Regulations, and (iv) any written meeting minutes, resolutions, and similar books and records of the Association;

(b) An accounting for Association funds including financial statements from the date the Association first received funds, and ending on the date that the period of Declarant control ends, together with a letter issued by a licensed and certified public accountant who prepared and reviewed such financial statements, affirming accuracy and conformance with generally accepted accounting principles;

(c) Association funds or control thereof, and copies of any insurance policies then in force in which the Association or its directors or officers are named as insureds;

(d) Any tangible personal property represented by the Declarant to be the property of the Association and used exclusively in the operation of the Common Areas;

(e) Any copies of plans and specifications used to construct Common Area improvements;

(f) Any governmental permits or certificates of occupancy issued to the Association which are currently in force or were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Any written warranties of an Association vendor, contractor or supplier that are still effective;

(h) Any list of Owners and Eligible Mortgagees (including addresses and telephone numbers, if known) maintained by the Association;

(i) Any agreements in which the Association is a contracting party or has a contractual right or obligation to pay or perform.

4.10 Budget. Within ninety (90) calendar days after adoption of any proposed budget for Common Expenses (“Budget”), the Board shall mail a summary of the Budget to each Owner, by ordinary first-class mail or electronic mail or other delivery method, and set a date for the Board and Owners to meet and consider the Budget. The Budget does not require approval of the Owners and will be deemed approved unless at that meeting the Owners of at least sixty-seven percent (67%) of all votes in the Association veto and reject the Budget. In the event that the Budget is so vetoed and rejected, then the last Budget not vetoed shall continue until such time as a new Budget is adopted.

4.11 Association Agreements. Any agreement for professional management of the Property or any service contract purporting to bind the Association may not exceed one (1) year, and must provide for termination upon no more than ninety (90) days’ notice without payment of any termination fee or penalty. The Association shall not be bound to any service contract entered into during the period of Declarant control unless the Association is provided rights consistent with this Section.

4.12 Indemnification. Each Director, officer and committee member who serves the Association shall be indemnified by the Association against all expenses and liabilities including reasonable attorney fees and costs of defense incurred by or imposed upon such person, in any proceeding to which he or she may be involved by reason of having been a Director, officer or committee member, to the fullest extent permitted by Colorado law.

4.13 Certain Rights and Duties of the Association.

(a) Attorney-in-Fact. The Board is hereby irrevocably appointed as attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Areas, and to permit the Association to fulfill its duties and exercise all of its rights, and to deal with the Property upon any damage, destruction, condemnation or obsolescence. The acceptance by any person of any interest in a Lot shall constitute an appointment of the Board as attorney-in-fact for such purposes, and the Board shall be granted all powers reasonably necessary to perform the duties of the Association.

(b) Contracts, Easements, Agreements. The Board shall have the right and power to enter into, grant, perform, enforce, modify, cancel or vacate contracts, easements, licenses, leases, agreements or rights-of-way concerning the Common Areas. Any such contract or agreement shall be upon such terms and conditions as may be determined and agreed to from time to time by the Board, without the necessity of consent or vote by any Owner or Mortgagee, and the Association may undertake any lawful activity, function or service for the benefit of the Property and its Members.

(c) Implied Rights. The Board shall have and may exercise any right or privilege granted expressly or reasonably implied by this Declaration or granted or implied by Colorado law or the Act, that may be necessary to fulfill its rights and obligations.

(d) Disclosures and Governance. Within ninety (90) days after the end of the period of Declarant control, the Association and Board shall comply with all duties and obligations under the Act, including §§ 38-33.3-209.4 through -209.7.

4.14 Rights of Declarant. So long as there are Lots within the Property owned by Declarant, the Declarant shall have and enjoy the same rights and benefits as any Owner associated with Lot ownership.

ARTICLE FIVE: COMMON AREAS, LANDSCAPING, WATER EFFICIENCY MEASURES

5.1 Conveyance of Common Areas. Declarant shall convey to the Association title to Outlots A, B, D, E, F, G, H, I, J, K, L, M, N, P, Q, and R, and shall transfer appropriate rights or easements in any other areas required to be owned or maintained by the Association as Common Areas, by appropriate written instruments recorded with the Clerk and Recorder of Weld County, Colorado.

5.2 Maintenance. The Association shall have the duty to maintain, repair, insure and keep the Common Areas in good order and repair, and all costs of such ownership, maintenance, repair, replacement and insurance shall be funded by the Assessments provided in ARTICLE SIX. Maintenance includes upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, irrigation systems, and other improvements located in the Common Areas. The Declarant shall procure a water supply and the Association shall maintain an irrigation system in the Common Areas, including Common Areas along interior streets. In the event the Association fails to maintain Common Areas, Declarant shall have the right but not the obligation to maintain Common Areas at the Association's expense.

5.3 Landscape and Xeriscape Installation. Each Owner of a Lot, by acceptance of a deed to such Lot, hereby promises, covenants and agrees that such Owner shall be personally obligated to install and maintain drought-tolerant landscape and/or xeriscape improvements to such Owner's Lot (including shade trees, drought-tolerant grasses and shrubs, xeriscape and hardscape areas, drip irrigation systems and smart controllers), and to abide by the outdoor irrigation standards and restrictions established for the Property. Each Owner specifically acknowledges and accepts the Association's authority pursuant to C.R.S. §38-33.3-106.5(i)(I) and the Act, to regulate and enforce outdoor drought-tolerant landscape / xeriscape standards and irrigation requirements, including water conservation measures encouraged by the Town of Frederick and/or adopted by the ACC.

5.4 Lot Landscaping Standards; Irrigation Restrictions. All Lots are subject to the drought-tolerant landscaping standards and Lot-area irrigation restrictions identified in the attached **Exhibit B** and as otherwise adopted and published by the ACC. Owners shall have the ongoing duty to monitor, manage and reduce outdoor irrigation demand by installing rain barrels and low-water-use landscapes and xeriscapes using drought-resistant vegetation, prohibiting turf other than native "buffalo" grass and Tahoma 31 ® Bermuda grass, reducing irrigated turf-grass areas overall (not to exceed 1,200 s.f. per Lot), and by installing water efficient drip irrigation systems and smart irrigation controllers. By accepting a deed to a Lot, all Owners acknowledge and agree that "Kentucky Blue" and similar water-intensive turf-grass varieties are prohibited on Lots and Common Areas. All Lot landscape installations by or on behalf of Owners are subject to ACC review and approval to confirm compliance with this Article Five including **Exhibit B**.

5.5 Common Area Irrigation Restrictions. The Association shall carefully monitor and control all outdoor irrigation in the subdivision especially in Common Areas. The Association has full authority to implement demand-side water management best practices and the responsibility to promote water conservation and efficient water use in the subdivision, consistent with principals set forth in the *Water Efficiency Plan* adopted by the Town of Frederick on March 22, 2022. The Association is further granted the authority to adopt and enforce demand-side water management best practices, targeted water budgets, and irrigation restrictions for all Lots and Common Areas in the subdivision. The Association shall have authority to penalize water waste in the subdivision and to enforce violations of this Article Five to the fullest extent permitted by Colorado law.

ARTICLE SIX: ASSESSMENTS

6.1 Obligation. Each Owner, upon accepting the deed for such Owner's Lot, promises, covenants, and agrees that each Owner shall be personally obligated to pay to the Association: (a) the Common Expense Assessments, (b) any necessary Special Assessment, (c) any Fines properly imposed by the Association, and (d) Costs of Enforcement in appropriate cases. The obligation to pay Assessments to the Association, in full without set off or deduction, is an independent personal covenant of each and every Owner. All Owners are jointly and personally liable to the Association for the full and timely payment of all Assessments attributable to such Owner's Lot.

6.2 Purpose of Assessments. The Common Expense Assessment shall be used by the Association for the purpose of owning, maintaining, improving, insuring, repairing, and replacing Common Areas and improvements, and promoting the health, safety and welfare of the Property and Members of the Association. Such purposes shall include the improvement, maintenance, repair, reconstruction and insuring of Common Areas; maintenance of drought-tolerant landscaping and smart irrigation systems; delivery of irrigation water to landscaped Common Areas including Outlots; maintenance of certain off-site areas (including storm drainage and related easements benefitting the Property) including any off-site Outlot; and all costs attributable to owning, maintaining and insuring such Common Areas and managing and operating the affairs of the Association, including the establishment and maintenance of prudent reserves and working capital.

6.3 Commencement of the Common Expense Assessment. The Common Expense Assessment shall commence for all Lots on the effective date set forth in the first Budget of the Association, as determined by the Board. Until the Association commences collecting Common Expense Assessments, the Declarant shall pay reasonable and necessary expenses of general upkeep, not including reserves or working capital.

6.4 Special Assessments. In addition to other Assessments authorized herein, the Board, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any necessary but unexpected or unforeseen expense, to include but not be limited to the cost of any construction, improvement, repair or replacement of a capital improvement in any of the Common Areas or Outlots, including fixtures, equipment and personal property relating thereto, or for the funding of any operating deficit incurred by the Association, or to cover uninsured losses of the Association; provided that any such Special Assessment other than uninsured losses shall require approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated, voting in person or by proxy at a meeting duly called for that purpose. A Special Assessment shall be levied against each Lot according to the Common Expense Liability allocated to such Lot.

6.5 Fines. The Board shall have the right to levy fines against a defaulting Owner for each uncured violation of the Declaration and/or Rules of the Association. No such fine shall be levied until such Owner has received notice and an opportunity to cure, and/or for a hearing if required by the Act. Fines may be levied and shall be uniformly applied in reasonable amounts, determined from time to time by the Board in its discretion, and may be collected with Costs of Enforcement.

6.6 Levy of Assessments. Common Expense Assessments shall be levied on all Lots based upon the Budget reflecting the Association's reasonable and necessary cash requirements. The Common Expense Liability shall be prorated equally among all Lots according to the allocated interests. Special Assessments, if any, shall be levied according to Section 6.4. Fines may be levied at any time after a defaulting Owner fails to cure a violation. No Owner may avoid or otherwise disclaim liability for paying Assessments by non-use of Common Areas or abandonment of a Lot.

6.7 Due Date. Common Expense Assessments shall be levied annually and shall be due and payable in equal monthly or quarterly installments, as determined by the Board; provided that the first Assessment levied shall be adjusted to reflect the time remaining in the Association's first fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share. Special Assessments shall be due and payable as established by the Board but may be payable in installments if allowed by the Board. The Association shall endeavor to provide regular and reasonable notice of all Assessments to each Owner specifying the type, purpose, amount, and due date.

6.8 Remedies for Nonpayment of Assessment. If any Assessment is not fully paid within fifteen (15) days after the same was due and payable, then, subject to any limitations or additional procedures required by the Act:

(a) Interest shall accrue at the default rate of six percent (6%) on all amounts in default, accruing from the due date until the date of payment;

(b) The Board may accelerate and declare immediately due and payable all unpaid installments in default, including any Assessment balance due and payable for the year in which default occurred;

(c) In appropriate cases, the Board may commence a civil action against any Owner obligated to pay the Assessment and obtain judgment for amounts due; and may proceed to collect such judgment including foreclosing the Lien against the Lot, pursuant to the power of sale granted to the Association by this Declaration in the manner provided by Colorado foreclosure laws.

(d) The Board may pursue any lawful remedy including any or all of the foregoing without prejudice to any other right or remedy or in any way waiving the Association's Assessment Lien.

6.9 Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Association, plus Costs of Enforcement which may be enforceable as Assessments. If an Assessment is payable in installments, then the full amount of the Assessment is a Lien from the time that the first installment becomes due. The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except: (i) ad valorem property taxes and special assessments imposed by a government, political subdivision or special taxing district, or any other superior lien under Colorado law; and (ii) the lien of a First Security Interest, except to the extent the Act grants priority for Association Assessments. Any Mortgagee who acquires title to a Lot by foreclosure or deed in lieu of foreclosure takes the Lot subject to the full extent of any unpaid Association Assessments provided by the Act.

Recording this Declaration constitutes record notice and perfection of the Assessment Lien. No further recording of any additional claim of lien is required, but the Board may record a notice setting forth the amount of the unpaid indebtedness and a description of the Lot. The sale or transfer of a Lot shall not affect the Lien for Assessments except pursuant to foreclosure or any proceeding in lieu thereof, but only to the extent provided by Colorado law. No sale, transfer, conveyance, foreclosure, deed in lieu of foreclosure, cancellation or forfeiture shall relieve any Owner from continuing personal liability for any unpaid Assessment.

In any action by the Association to collect Assessments and Costs of Enforcement or to foreclose a Lien for unpaid Assessments, the court may appoint a receiver to collect all sums due from the Owner and may order the receiver to pay the Association. The Assessment Lien on the Lot is also a lien upon all of the rents and profits of such Lot. Without prejudice to any other right or remedy, the Association may exercise its right to collect rents and profits by delivering notice to the tenant or occupant, and thereafter shall be entitled to collect all such rents and profits to the extent of any Assessment delinquency.

The Association's Lien shall be superior to any homestead or other exemption now or hereafter claimed or provided by the laws of the State of Colorado or the United States. The acceptance of a deed to any Lot subject to this Declaration shall constitute express waiver of the homestead and/or any other exemption claimed as a defense against the Assessment Lien.

6.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and provision for reserves shall be retained by the Association as working capital or other prudent reserves, and need not be refunded to Owners or credited to reduce future Assessments.

6.11 Working Capital. Upon any transfer of a Lot, each new Owner as Purchaser shall pay a one-time non-refundable working capital contribution to the Association, in an amount to be established by the Board from time to time, equal to six (6) months' worth of regular monthly Assessments but not to exceed three percent (3%) of the sales price for such Lot. Such sum shall be held and used by the Association for working capital reserves and other Association expenses as the Board deems necessary or appropriate. Such contributions are separate from and in addition to the Common Expense Assessment.

6.12 Certificate of Assessment Status. The Association shall furnish to an Owner upon written request a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) business days after such request and is binding upon the Association, the Board, and every Owner. The Association may charge a reasonable fee for providing such certificates.

6.13 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction shall be permitted for any reason including, without limitation, any objection or claim that the Association or Board is not properly exercising its powers and duties under this Declaration.

ARTICLE SEVEN: RESTRICTIVE COVENANTS

7.1 Use and Occupancy of Lots; No Subdivision. Each Owner is entitled to the exclusive ownership, possession, use and control of such Owner's Lot, subject to the covenants, conditions, restrictions and limitations of this Declaration and any Rules for the Property adopted by the Board. No Lot may be subdivided, and no Lot within the Property shall be used for any purpose other than lawful single-family residential purposes. Home occupations may be allowed, provided that: such occupations are permitted by applicable Town of Frederick building, zoning and land use codes; no additional parking is required; and no outside employees, customers, commercial signage or exterior advertising are allowed.

7.2 Use of Common Areas. Owners and Guests may use Common Areas for the intended purposes of such Common Areas, without causing any unreasonable interference with the rights of other Owners or the Association, subject to any uniform, nondiscriminatory Rules governing the Common Areas as may be adopted and published by the Board. Each Owner, by accepting title to a Lot, and such Owner's Guests, agree to observe such adopted Rules. There shall be no obstruction of any Common Area, nor any storage, construction or alteration by Owners affecting any part of any Common Area.

7.3 Grading, Drainage, Utilities. Each Owner acknowledges that each Lot, as well as the Property, are subject to established engineered grading, drainage and utility plans approved by the Town of Frederick, and that no existing Lot grading, drainage or utility easement may be altered, obstructed, excavated, modified or re-graded in any respect, whether by any landscaping, improvement or other alteration. No Owner shall cause, suffer or permit any such modification, alteration, or physical obstruction (including fencing, landscaping, sheds, garden beds, or other outdoor improvement) that may affect any final Lot grading, drainage or utility easement serving a Lot, or such as may affect drainage or utility easements serving the Lots and Property.

7.4 Landscaping, Xeriscapes, Water Conservation. Each Owner specifically acknowledges that the Declarant and Town of Frederick encourage the conservation of valuable water resources, and that the Property, Common Areas, Lots and Residences are planned, designed and intended to encourage water conservation and to foster sustainable use of water resources. The Association and each Owner shall exercise diligence and care in the planning, construction, planting, maintenance and irrigation of landscaping for all Lots and Common Areas, in order to conserve water resources. The Board and/or ACC may adopt and enforce Rules including requirements applicable to the location and appearance of outdoor rain barrels and may require the installation and maintenance of xeriscapes and drought-tolerant species on Lots and Common Areas.

7.5 Pets and Other Animals. No farm animals (e.g., livestock, cattle, horses, goats, chickens or pigs) shall be raised, bred, kept or boarded in any part of the Property. Domestic dogs, cats and similar pets are allowed in Lots occupied by Owners, so long as they are not raised, bred or kept for any commercial purpose or in such number or manner as to create a nuisance or disturbance to any resident of the Property. The Board shall have authority to determine in its reasonable discretion whether dogs, cats or other animals are being kept for commercial purposes or in such numbers or manner as to be unreasonable or create a nuisance, or that such keeping of animals violates this Declaration. Pets shall not be allowed to run at large but shall be leashed and under the voice and sight control of an Owner or handler at all times, and pets shall not be allowed to litter or otherwise damage the Common Areas in any respect.

7.6 No Nuisance or Unsightly Conditions. No illegal, noxious, destructive, unreasonably loud or offensive activity shall be carried on within the Property, nor shall any activity be caused, suffered or permitted which may be or become unreasonably disruptive or constitute an annoyance, disturbance, interference or nuisance to the neighborhood, or such as may detract from the character of the Property as a family-oriented residential community. Habitually barking, yelping or aggressive dogs are deemed a nuisance. Decks, patios, yards and driveways shall be kept free of clutter and obstacles and shall not be used for any outdoor storage. No activity shall be conducted on the Property that is unlawful, unsafe, hazardous or damaging to person or property. Owners shall keep and maintain the exterior of Lots and Residences in reasonably clean and orderly condition. No Lot shall be used as a dumping ground for rubbish or storage area for junk, trash, weeds or other waste. Trash shall be kept in suitable containers appropriately screened from view.

7.7 Vehicle Parking, Storage, Maintenance. Each Residence is equipped with an enclosed garage for the proper storage of passenger vehicles and related equipment and accessories. No disabled or inoperable vehicle shall be stored or parked outdoors, and no vehicle or equipment maintenance, repair, or servicing shall be conducted except within an enclosed garage. Motor homes, boats, trailers, campers, oversized vehicles or equipment shall not be stored outdoors anywhere within the Property. No oversized vehicle may be parked on a Lot or residential street for more than seventy-two (72) hours on any one occasion, and then only for the temporary purpose of active loading and unloading. The Association shall have the right to remove any vehicle or equipment stored in violation of this section upon written notice, the expense of which removal may be levied against the Owner as an Assessment.

7.8 Prohibition of Certain Activity. Nothing shall be done or kept within any Lot, Residence or Common Area that may result in cancellation of insurance on the Common Areas or increase the rate of such insurance, or that would violate any ordinance of the Town of Frederick, any Colorado statute, or any other law, code, or regulation applicable to the Property, including reasonable Rules adopted by the Board. No firearm shall be discharged within the Property, and no open burning fire shall be ignited within the Property (including the burning of trash, brush or rubbish).

7.9 Antennae; Swamp Coolers. Antennae shall be installed inside a Residence. Small (18”) satellite receivers may be installed on the exterior of a Residence. Swamp coolers shall be located below the roof ridge-line, subject to prior review and approval by the ACC.

7.10 Sign Restrictions. No Owner may erect or maintain any business, commercial, or advertising sign on the Property, other than one “for sale” or “for rent” sign for such Owner’s Lot no larger than eighteen by twenty-four inches. Owners may post political signs on such Owner’s Lot, to the extent permitted by §38-33.3-106.5, no earlier than forty-five (45) days before, and no later than seven (7) days after, an election day; the size of any political sign is limited to the lesser of: (a) the maximum size permitted by the Town of Frederick, or (b) thirty-six inches by forty-eight inches. Notwithstanding the foregoing, during the period of Declarant control the Declarant may post signage on Lots and Common Areas advertising the Property and/or directing construction traffic.

7.11 Owner Caused Damage. If, due to the act, omission or neglect of any Owner or such Owner’s Guest, any loss, damage or injury shall be caused to any person or property within the Common Area, such Owner shall be liable and responsible for the same.

7.12 Lease of a Residence. An Owner shall have the right to lease his or her Lot and Residence to a tenant, upon such terms as the Owner deems acceptable, subject to the following:

(a) All leases must be in writing and must provide for a single-family residential term of at least six (6) months. Short term rentals (including Air BnB, Home Away, VRBO, or similar) for any period of time less than six (6) months are prohibited. The Owner shall deliver to the Association a fully-executed copy of any lease or rental agreement, prior to any occupancy of a Residence by any tenant or occupant;

(b) Any lease or rental agreement involving a Lot or Residence shall expressly incorporate the terms and provisions of this Declaration by reference, and any such lease is hereby made expressly subject to all terms and provisions of this Declaration and the Articles, Bylaws, and Rules of the Association; further, any tenant’s right of occupancy is subject to all local, state and federal laws, ordinances, codes and regulations applicable to such Lot and Residence;

(c) Any failure by a tenant or occupant to faithfully comply with the terms and provisions of this Declaration (or the Articles, Bylaws, and Rules of the Association) shall constitute material breach of the lease, which breach shall be fully enforceable by the Board against such tenant or occupant; and

(d) In the event of any such breach or default, the Board may exercise all rights and remedies under the lease and Colorado law against the tenant or occupant, including eviction remedies, and may also exercise all such rights and remedies under this Declaration against the Owner, separately or concurrently.

7.13 No Temporary Structures; Accessory Structures. Except for a Residence, no building, improvement or structure of a non-residential, accessory or temporary nature (including any tent, camper, barn, shed or outbuilding) may be used or occupied on the Property as a residence or dwelling. No detached accessory building shall be constructed without prior ACC review and approval and a building permit if required by the Town of Frederick. No accessory structure shall exceed eight (8) feet in height, or have a footprint greater than ten (10) feet by twelve (12) feet, or be placed anywhere other than in the rear yard, and its design, appearance, building and roof materials, and color scheme shall match the principal Residence. No such structure or other improvement shall be located within the side or rear setbacks of any Lot.

7.14 Residence Exteriors. The ACC may consider the following guidelines in reviewing and approving residential plans and designs including any improvements or alterations associated with any remodel, re-construction, addition or modification to a Lot or Residence:

(a) Each Residence shall be designed and constructed in harmony with its existing surroundings and for compatibility with neighboring Residences. Architecture and design elements, color palettes, building materials and roofing materials shall blend with and provide continuity to the existing character of the neighborhood and neighboring Residences;

(b) Every design shall incorporate the use of ACC-approved building materials (including brick, stone, siding, stucco or other approved materials), so as to establish and maintain a quality, custom-built look and harmonious feel for the Property;

(c) Any fence, shed, outbuilding, accessory structure, or other exterior improvement shall follow such guidelines and must be pre-approved by the ACC prior to any construction;

(d) No above-ground pools shall be allowed on the Property; the location of any hot tubs shall be pre-approved by the ACC and shall be shielded from street view;

(e) Holiday decorations shall be taken down by the beginning of February;

(f) All Lot landscaping and irrigation designs and installations shall comply with Article Five and **Exhibit B** in addition to any additional specific guidelines adopted by the Board and/or the ACC.

(g) The ACC shall have final authority to review and approve architectural style, design quality, colors, building materials, placement or screening of accessory structures, landscaping plans, and exterior lighting within the Property, and may adopt and publish written Design Guidelines for the Property.

7.15 <u>Utility Lines</u>. All water, sewer, natural gas, electric, telecommunication, cable and other utility service lines shall be buried underground from their primary connecting source at the Lot line at the Owner's sole expense.

7.16 <u>Drainage</u>. Except for the approved and established grading, drainage and erosion control, no structure or improvement shall be placed or located inside platted Lot setbacks or in any manner that may obstruct, divert or otherwise alter established drainage courses and patterns. No landscaping or changes to existing terrain shall be made which may obstruct, divert or otherwise alter such drainage.

7.17 <u>Fences</u>. Except for fences constructed by or on behalf of Declarant for the Property, any fence appurtenant to a Lot is an "Improvement" subject to ACC review and approval prior to any construction. No new fence shall be constructed unless specific written permission is granted by the ACC and permitted by the Town of Frederick. In determining whether to grant such permission, the ACC may consider the natural topography and aesthetic desires of the neighborhood, and the ACC has discretion to regulate and restrict fence height and proposed style on corner Lots and all other perimeter Lot lines and interior (side and rear) Lot lines.

7.18 <u>No Surface Use for Drilling or Mining</u>. No Lot or Common Area shall be used for surface extraction or as the surface well-head location for any drilling, mining, quarrying, exploring for, removing, or developing any oil, gas, hydrocarbon, mineral, gravel, or related resource. Any related equipment including pipelines or storage tanks of any kind, above or below ground, are prohibited.

7.19 <u>ACC Rules and Procedures</u>. In addition to the foregoing, each Owner shall comply with any Rules or Design Guidelines adopted by the ACC and/or Board pursuant to ARTICLE FOURTEEN.

ARTICLE EIGHT: EXTERIOR MAINTENANCE

8.1 <u>Exterior Maintenance</u>. The maintenance, repair and upkeep of each Lot, including, but not limited to the Residence and all exterior improvements and appurtenances, shall be the responsibility of the Owner of such Lot. It shall be each Owner's obligation to commence landscaping his or her Lot within sixty (60) days after issuance of a Certificate of Occupancy for the Residence. Each Owner shall maintain the lawn and garden area within his or her Lot, and the Association may establish reasonable Rules regarding all exterior maintenance.

8.2 Special Easement. Declarant hereby reserves for itself and the Association, a nonexclusive easement to enter upon and use the Common Areas and each Lot as may be reasonably necessary or appropriate to perform the duties and functions permitted or required under this Declaration.

8.3 Maintenance Contract. The Board may employ or contract for the services of a maintenance contractor to perform certain duties of the Association for maintenance including landscaping, snow removal, or other such maintenance services benefitting the Property. The Board shall require any such contractor to maintain commercial general liability and casualty insurance naming the Association as a party entitled to coverage, and to indemnify, defend and protect the Association from and against any claims arising from such contractor's performance.

8.4 Owner's Failure to Maintain or Repair. In the event that a Lot, a Residence, or its improvements or appurtenances are not diligently maintained and repaired by an Owner, or in the event that the same are damaged or destroyed by casualty and the Owner does not diligently commence reasonable repair and restoration, then the Association after notice to the Owner may exercise the right to enter upon the Lot to perform such work as may reasonably be required to restore the Lot and improvements, and may assess the reasonable costs thereof against the Owner and Lot as an Assessment.

ARTICLE NINE: INSURANCE

9.1 General Requirements. Each Owner shall obtain and maintain sufficient property casualty and liability insurance for his or her Lot and Residence, and all other improvements and appurtenances of such Owner. THE ASSOCIATION WILL NOT PROVIDE INDIVIDUAL LOT COVERAGE IN ASSOCIATION POLICIES. The Association shall obtain and maintain insurance coverage specified in this Article 9 and/or as required by the Act, and each policy may provide that:

a) Owners are insured to the extent of such Owners' interest in the Common Areas, and no act or omission by an Owner, as such, will void any policy or be a condition to any recovery under a policy;

b) The insurer to the fullest extent waives any right of subrogation against Declarant, the Association, Board, Owners, and the members of Owners' households;

c) Such policy may not be canceled, substantially modified, or non-renewed (including for nonpayment of premium) without at least thirty (30) days' prior written notice to the Board and any Owner to whom a certificate of insurance has been issued;

d) Such policy should acknowledge that no assessment may be made against any Eligible Mortgagee or against others holding a lien superior to that of an Eligible Mortgagee, except as may be provided in the Act;

e) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner and Board member of the Association;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with a Best's rating of "A" or better, and all policies shall contain standard non-contributory mortgagee clause or equivalent endorsement appropriately naming any Eligible Mortgagee as beneficiary.

Such policies shall also provide that any "no other insurance" clause expressly excludes individual Owner policies from its operation, so that the property insurance policy purchased by the Board for the Association shall be deemed primary coverage, and any individual Owner policies shall be deemed excess coverage. In no event shall insurance coverage obtained and maintained by the Board for the Association provide for or be brought into contribution with any insurance purchased by an individual Owner or Mortgagee, unless otherwise required by law.

Insurance shall name the Association as policy owner and beneficiary, for the use and benefit of the Owners, and any loss covered by Association policies shall be adjusted exclusively by the Board and provide that all claims are to be settled on a replacement cost basis. The Board shall periodically review insurance policies to insure that coverages are sufficient, and at reasonable intervals shall obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent (100%) of the current replacement cost.

Deductibles shall be as the Board determines to be consistent with prudent business practice and the standard requirements of Eligible Mortgagees, not to exceed, however, Five Thousand Dollars ($5,000.00) or one percent of the face amount of the policy, whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to pay deductibles shall be included in Association reserves and may be so designated. The Board shall have authority to levy Assessments under Section 6.4 against any Owner(s) causing damage and/or loss, to reimburse deductibles paid or uninsured losses incurred by the Association.

9.2 Property and Liability Insurance. The Association shall obtain and maintain property insurance on the Common Areas for broad form covered causes of loss, in amounts not less than the full insurable replacement cost of the insured property, and comprehensive general liability insurance against claims and liabilities arising in connection with the existence, use, maintenance, management and regulation of the Common Areas, in an amount not less than One Million Dollars ($1,000,000.00) or other amount determined by the Board, and including property damage, bodily injury and death. Reasonable amounts of "umbrella" liability insurance in excess of these primary limits may be obtained.

9.3 Fidelity Insurance. The Association shall obtain and maintain fidelity insurance coverage for any Owner, Association employee, or Property Manager who handles or is responsible for Association funds. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon exclusion of persons who were without compensation from any definition of "employee" or similar expression. The fidelity insurance policy should cover the maximum funds (including reserves and working capital) in the custody of the Association or its Property Manager at any one time, but shall be not less than two (2) months' worth of annual total Assessments plus all reserves. The policy must include a provision requiring thirty (30) days' written notice to the Association before the policy can be canceled or substantially modified for any reason. Any Property Manager handling Association funds must be covered by its own fidelity insurance policy which must provide the same amount of coverage.

9.4 Additional Insurance.

a) If the area where the Property is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, then flood insurance for the Property shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the Property's current replacement cost or the maximum amount available. If the Property at the time of recording this Declaration is not identified as a Special Flood Hazard Area but later becomes reclassified as such, the Board shall endeavor to obtain flood insurance for the Common Areas in accordance with the above. Flood insurance may be discontinued if the Property is removed from any designated flood plain.

b) Adequate Directors and Officers liability insurance, including errors and omissions coverage for all Directors and Officers, written in an amount which the Board deems adequate;

c) Workmen's Compensation, Employer's Liability Insurance, and other similar insurance, in the amount and in the forms now or hereafter acquired by Colorado law; and

d) Such other insurance as the Board deems prudent and appropriate for the Association.

9.5 Premiums. Insurance premiums for insurance carried by the Association shall be paid by the Association as a Common Expense. In the event there are insufficient funds generated from the Common Expense Assessment to cover the cost of insurance, then the deficiency shall be chargeable to each Owner by Special Assessment in accordance with Paragraph 6.4 hereof. Any such insurance assessment shall be exempt from any voting requirement of the Membership and shall be prorated among Owners in the same proportion as the Common Expense Assessment.

9.6 Separate Insurance. No Owner shall be entitled to exercise any right to acquire or maintain insurance coverage such as would limit or decrease the amount of insurance coverage which the Association, on behalf of all Owners, may realize under any insurance policy maintained by the Association; nor shall any Owner cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner.

9.7 Damage to Property. Any portion of the Property for which insurance is required under §38-33.3-313 of the Act and for which insurance is carried by the Association, shall be repaired or reconstructed by the Association in the event of loss.

9.8 Condemnation. If all or any part of the Property is taken by any authority having the power of eminent domain, all compensation and damages for such taking shall be consistent with §38-33.3-107.

ARTICLE TEN: GENERAL MAINTENANCE OBLIGATION

10.1 By Association. The Association shall be responsible for the proper maintenance, upkeep, repair and reconstruction of all Common Areas according to the Declaration, Bylaws, and Rules of the Association. The Association shall maintain Common Areas including any irrigation systems, municipal water taps, drainage improvements, and other appurtenances located and installed in such Common Areas.

10.2 By Owners. Each Owner shall keep his or her Lot and Residence, and all improvements and appurtenances, in good order, condition and repair, maintained in a clean, neat and presentable condition, all according to the Declaration and Rules of the Association.

ARTICLE ELEVEN: DECLARANT RIGHTS

11.1 Reservation. The Declarant reserves the following Development Rights and Special Declarant Rights ("Declarant Rights") that may be exercised anywhere within the Property during the period of Declarant control:

(a) To construct and complete improvements within the Property including Residences, Common Area improvements, and related appurtenances on the Property;

(b) To exercise any Declarant Rights reserved herein and/or specified in §§38-33.3-103(14), (29) or -210 of the Act;

(c) To construct, maintain and operate model homes and show homes, including business offices, sales offices, property management offices, parking and storage areas, construction staging areas, and other development facilities consistent with §38-33.3-215;

(d) To install and maintain construction signage or advertising signage in Common Areas and entryways;

(e) To use and to permit others to use easements through the Property and Common Areas as may be reasonably necessary for construction and for purposes of discharging Declarant's obligations under the Act and this Declaration;

(f) To appoint and/or remove any member of the Board or the ACC during the period of Declarant control, subject to the provisions of the Declaration and Association Bylaws;

(g) To merge or consolidate the Property with other real property or subject it to a Master Association;

(h) To amend the Declaration as may be permitted by the Act, in connection with the exercise of any Declarant Rights;

(i) To exercise any other Declarant Right created by any other provision of this Declaration or the Act; provided that such exercise is consistent with §38-33.3-210 of the Act.

11.2 Rights Transferable. Any Declarant Right created or reserved for the benefit of Declarant may be transferred and assigned to any person as the successor to Declarant, by written instrument identifying the transferee, describing Declarant Right(s) so transferred, and duly recorded in the real property records of Weld County, Colorado. Such instrument shall be executed as provided by §38-33.3-210 of the Act, and the transferee shall thereupon be and become the Declarant for all purposes of the Declarant Right(s) so transferred.

11.3 Limitation. Declarant Rights shall terminate at the option and election of the Declarant by written notice to the Association, or if not so terminated by Declarant, then such Declarant Rights shall automatically terminate sixty (60) days after the end of the period of Declarant control.

11.4 No Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule that may interfere with, diminish, limit or restrict the exercise of any Declarant Right without the prior written consent of Declarant which consent may be withheld in Declarant's sole discretion.

11.5 Use by Declarant. The exercise of any Declarant Right by Declarant, its agents, representatives, successors, assigns, contractors or affiliates shall not unreasonably interfere with the occupancy or use of any Lot by its Owner.

11.6 Models, Sales, Management Office; Signs and Marketing. The Declarant, its duly authorized agents, representatives and employees may maintain any Lot owned by Declarant or any affiliate, or any part of the Common Area, as a model Lot or Residence, including sales, leasing or property management offices. The Declarant reserves the right to post signage and marketing displays on Lots or Common Areas in order to promote sales of Lots, and reserves the right to conduct general sales activity in a businesslike manner until all Lots are sold.

11.7 Declarant's Easements. Pursuant to §38-33.3-216 the Declarant reserves the right to conduct construction work on Lots and Common Areas, to store construction materials, and to control and have the right to access all such work until completion, without the requirement of any consent or approval by the Board. The Declarant has an easement through all Lots and Common Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserved in this Declaration.

11.8 Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Property and Common Areas, unless such property is represented as being the property of the Association. The Declarant reserves the right to remove from the Property (promptly after sale of the last Lot) any and all such property, whether or not deemed fixtures.

ARTICLE TWELVE: ELIGIBLE MORTGAGEES

12.1 Special Provisions. Except as provided by statute in the case of condemnation or substantial loss to the Lots or Common Areas, the Association may not unilaterally without proper consent:

(a) change the Owners' allocated interests or the method or formula for calculating the Common Expense Assessments allocated to the Lots;

(b) partition or subdivide any Lot;

(c) seek to abandon, partition, subdivide or transfer the Common Areas; except that the granting of easements for public utilities or other public purposes is not a transfer within the meaning of this Section 12.1(c); or

(d) use insurance proceeds for loss to property (whether Lots or Common Areas) for any purpose other than for the repair, replacement or reconstruction of such property.

12.2 Implied Approval. Implied approval by an Eligible Mortgagee shall be presumed when an Eligible Mortgagee fails to respond in writing to any proposal for amendment within thirty (30) days after proper notice of such proposal, delivered by certified mail with return receipt requested.

12.3 Books and Records. Owners and Eligible Mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the Act and Bylaws.

ARTICLE THIRTEEN: DURATION, AMENDMENT, TERMINATION

13.1 Duration. The covenants, conditions, restrictions and obligations of this Declaration shall run with the land and bind the Property in perpetuity, unless and until this Declaration is terminated according to its terms.

13.2 Amendments by Owners. This Declaration may be amended by the written agreement of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that no amendment may modify, limit, or restrict any Declarant Right during the period of Declarant control, and no amendment may change the single-family residential use to which all Lots are restricted. Any proposed amendment shall proceed according to § 38-33.3-217 of the Act. No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Declaration, Articles, or Bylaws, unless it is commenced within one (1) year from the effective date of said amendment.

13.3 Amendments by Declarant. At any time within the limits of Section 11.3, Declarant reserves the right to amend this Declaration without the consent of the Board, Owners, or Eligible Mortgagees, to make non-material changes such as clarifying or correcting technical, clerical, grammatical or typographical errors, or to comply with the Act or applicable lawful ordinance of the Town of Frederick.

13.4 Consent of Declarant Required. Notwithstanding anything to the contrary in this Declaration, no proposed amendment of any provision of this Declaration shall be effective during the period of Declarant control, unless Declarant has given its written consent to such amendment, which consent shall be evidenced by Declarant executing the certificate of amendment. Any expense associated with preparing and recording an amendment shall be allocated according to § 38-33.3-217(6) of the Act.

13.5 Termination. Except in the case of a taking of all Lots or Common Areas by condemnation, this Declaration may be terminated only by the written agreement of Owners to which at least seventy-five percent (75%) of the votes in the Association are allocated, including the consent of their Eligible Mortgagees if required by the Act, by an instrument(s) duly acknowledged, executed and recorded.

ARTICLE FOURTEEN: ARCHITECTURAL CONTROL

14.1 Architectural Control Committee. There is hereby established for the Property, a committee of the Board of Directors of the Association, to be known as the Architectural Control Committee ("ACC"). The number and qualifications of individual members of the ACC shall be as determined by the Board from time to time. With Board approval the ACC may adopt and publish written procedures and design guidelines, including Lot landscaping and irrigation systems designs, pursuant to which an Owner may submit to the ACC an application for proposed Improvements (defined below), for review and consideration by the ACC. The ACC may, with Board approval, charge a reasonable fee for reviewing application materials and may use such fees to engage the services of architects, contractors, engineers or other design consultants to assist in any review.

14.2 ACC Review and Approval Required. Except for existing Residences and established Improvements constructed by or on behalf of Declarant on Lots owned by Declarant or in the Common Areas, no new or additional building or structure, or exterior landscaping, construction, reconstruction, remodeling, alteration, installation, demolition, rebuilding or other improvement to a Lot (each, an "Improvement"), shall be commenced or constructed on the Property by or on behalf of any Owner, unless a complete set of reasonably-detailed Plans (defined below) for the proposed Improvement are first submitted to and approved by the ACC, prior to commencing any work.

14.3 Application to ACC. Applications for Improvements must be submitted to the ACC in writing, and ACC decisions shall be issued in writing, based on written Plans for the proposed Improvements. In the case of denial of any application, the ACC shall specify the reasons for denial in reasonable detail and shall suggest corrections or revisions to the Plans whereby the application might gain approval. If the ACC fails to issue a decision within thirty (30) calendar days after a complete application is submitted, then such submitted Plans shall be deemed approved by the ACC; provided, however, that the ACC may reasonably extend its review period for an additional fifteen (15) calendar days, by issuing written notice to the applying Owner during the first thirty (30) day review period.

14.4 Plans. The architectural, engineering, landscape, and/or construction plans, designs, drawings and specifications to be submitted by an Owner for any Improvement ("Plans"), shall describe the work in reasonable detail including all practical aspects and design elements of the proposed Improvement project, including its purpose, location, dimensions, elevations, architectural style, design elements, building materials, exterior color scheme, excavations and re-grading, irrigation, drainage, erosion control, construction schedule, and other matters reasonably related to such project, such as will enable the ACC to fairly consider the proposed Improvement project. Owners acknowledge and agree that Plans for Lot landscaping Improvements must comply with the water demand restrictions in **Exhibit B,** and that no landscape Plans or Improvements shall have the effect of increasing outdoor irrigation use beyond the approved Lot landscape designs reflected in **Exhibit B**. All proposed Improvements and any related Lot alterations shall demonstrate compatibility with existing Residences, structures and improvements, in terms of external design, architectural style, building materials, colors, scale, topography, and finish work. The

ACC may disapprove any incomplete or insufficiently detailed Plans and the same may be revised and re-submitted by an Owner.

14.5 Soils and Foundations. The Plans for any Improvement requiring structural modifications affecting a Residence, including structural, foundational work, or below-grade excavation, shall take into account the existing structure and the expansive, bentonite soils commonly found in the area of the Property, and such Plans shall provide for properly engineered structural and foundational elements and shall be drafted, stamped and certified by a Colorado registered professional engineer. The ACC may disapprove Plans that are not so stamped and certified.

14.6 Variance from Design Guidelines. Where unique circumstances such as Lot topography, setbacks, location of mature trees, rock outcroppings, aesthetic considerations including view corridors or solar easements, or as other site conditions may require, an Owner may request and the ACC may in its discretion grant, a reasonable variance from the strict application of these covenants and design guidelines, on such reasonable terms and conditions as the ACC may determine, and in such cases the ACC may solicit comment from adjoining Owners. Nothing in this Section shall obligate the ACC to grant any request and no such request may interfere with or adversely affect any adjacent Lot.

14.7 Diligence. Promptly after any ACC approval of Plans pursuant to this Article, the Owner shall proceed with reasonable diligence and cause the Improvements to be promptly and properly commenced, constructed and completed at the Owner's expense, in a workmanlike and diligent manner and according to all applicable building permits, building and fire codes, and other applicable laws and regulations.

14.8 No Liability Undertaken. The ACC does not undertake any technical review on behalf of any Owner nor does it purport to evaluate engineering sufficiency of any Plans or Improvements. Neither the Association nor its Board, the ACC, Declarant, or any Owner serving the ACC, shall be liable to any person or Owner who submits Plans, for any delay, or for any ACC review, approval, denial, or other act or omission related to ACC review of Plans. The Association does not by its review of Plans undertake any duty of care to any Owner, and each Owner submitting Plans to the ACC expressly acknowledges, covenants and represents that such Owner fully and exclusively relies on such Owner's own architect, engineer, contractor, or other consultant for the engineering and technical sufficiency of Plans and Improvements, and that the Association is fully released from any claim of liability or damages.

ARTICLE FIFTEEN: GENERAL PROVISIONS

15.1 Right of Action. The Association through its Board, and any aggrieved Owner, shall have an appropriate right of action against a defaulting Owner for failure to comply with the Declaration or Rules of the Association or with decisions of the Board made pursuant thereto. Owners shall have a similar right of action against the Association.

15.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association, and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

15.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included.

15.4 No Waiver. No provision in this Declaration shall be deemed waived or released by reason of delay or failure to enforce the same, irrespective of the number of violations that may occur.

15.5 Owner Mailing Addresses. Each Owner shall register his or her current mailing address with the Association, and except for monthly (or quarterly) statements and other routine notices, which may be sent by regular mail or electronically, all other notices or demands intended to be served shall be delivered personally or sent by prepaid certified mail, return receipt requested, to such registered mailing address. All notices, demands or other notices intended to be served upon the Board or the Association during the period of Declarant control shall be sent by prepaid first-class mail, addressed to the **Prosperity Homeowners Association, Inc., 2619 Canton Ct., Suite A, Fort Collins, Colorado 80525**.

15.6 Conflict. This Declaration is intended to comply with the requirements of the Act, as the same may be amended from time to time. If there is any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any other Association document, this Declaration shall control.

15.7 Forum for Disputes. All disputed matters regarding the interpretation, application and enforcement of this Declaration that cannot be resolved shall be submitted to the courts of Weld County, Colorado where the Property is located, which court shall be the exclusive forum for disputes and shall have authority to award to the prevailing party its costs and expenses including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this ____day of ___________________________, 2022.

DECLARANT:
JABLONSKI FAMILY LLLP,
a Colorado limited liability limited partnership

By:____________________________
Richard T. Jablonski, General Partner

STATE OF COLORADO)
) ss.
COUNTY OF ________________)

The foregoing Declaration was acknowledged before me this _____ day of ___________, 2022, by Richard T. Jablonski, as General Partner of Jablonski Family LLLP, the Declarant. Witness my hand and official seal:

____
Notary Public, State of Colorado

**INDEPENDENT BANK CORPORATION CONSENT
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF PROSPERITY SUBDIVISION**

The undersigned Eligible Mortgagee does hereby consent to the foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PROSPERITY SUBDIVISION.

INDEPENDENT BANK CORPORATION:

By:______________________________
Howard Wigert, Vice President

STATE OF COLORADO)
) ss.
COUNTY OF _________________)

The foregoing Consent was acknowledged before me this _____ day of ______________, 2022, by **Howard Wigert, Vice President** of Independent Bank Corporation. Witness my hand and official seal:

____
Notary Public, State of Colorado

**PROSPERITY METROPOLITAN DISTRICT CONSENT
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF PROSPERITY SUBDIVISION**

The undersigned Metropolitan District for the Property does hereby consent to the foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PROSPERITY SUBDIVISION.

PROSPERITY METROPOLITAN DISTRICT:

By:______________________________
Thomas E. Studebaker, Director

STATE OF COLORADO)
) ss.
COUNTY OF _________________)

The foregoing Consent was acknowledged before me this _____ day of ______________, 20___, by **Thomas E. Studebaker, Director** of Prosperity Metropolitan District. Witness my hand and official seal:

____
Notary Public, State of Colorado

EXHIBIT A

LEGAL DESCRIPTION AND FINAL PLAT
OF THE PROSPERITY SUBDIVISION PROPERTY

A TRACT OF LAND LOCATED IN THE NW 1/4 OF SECTION 32, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS:
THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN.
EXCEPTING THEREFROM THAT PORTION OF SAID LAND LYING WITHIN SAVANNAH SUBDIVISION, THE PLAT OF WHICH RECORDED SEPTEMBER 20, 2001 UNDER RECEPTION NO. 2885062, AND FURTHER EXCEPTING THAT PORTION AS DESCRIBED IN DECREE QUIETING TITLE RECORDED AUGUST 3, 2015 UNDER RECEPTION NO. 4130264.

EXHIBIT B

**LOT LANDSCAPING STANDARDS
FOR
PROSPERITY SUBDIVISION**