



Town of Frederick
Board of Trustees Agenda
Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, January 31, 2023

5:30 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, Interim Deputy Town Clerk
kgreen@frederickco.gov
720-382-5500

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Town of Frederick
Board of Trustees Agenda
Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, January 31, 2023

5:30 P.M.

Special 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.

Executive Sessions:

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 Municipal Judge Review.

For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e)(1) regarding impact fees.

Staff Reports:

- A. Administrative Report – Bryan Ostler, Town Manager
- B. Clerk Report – Meghan Martinez, Town Clerk

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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. Consider Reimbursement Agreements with the Michael Blumenthal Group (Columbine Heights, LLC) and Community Development Group that would amend the Town's Water Court Application and Add Four Additional Lower Boulder Preferred Shares to the Town of Frederick Water Court Change Case – Kevin Ash, Engineering Director
 - 1. Resolution 23-R-02 Approving a Reimbursement Agreement with Columbine Heights, LLC
 - 2. Resolution 23-R-03 Approving the Reimbursement Agreement with Community Development Group
- D. Resolution 23-R-04 Authorizing the Mayor to Execute an Application to Northern Colorado Water Conservancy District for an Annually Renewable Perpetual Water Contract for Right to Use C-BT Shares – Sarah Watson, Engineer
- E. Resolution 23-R-05 Cancelling Various Meetings – Meghan Martinez, Town Clerk

Action Agenda:

- F. Resolution 23-R-06 Approving an Intergovernmental Agreement with the Frederick Firestone Fire Protection District for Use of the Town Public Works Facility – Kent VanDyne, Public Works Director
- G. List of Bills – Jason Leslie, Deputy Town Manager
- H. Ordinance 1382 Amending the Frederick Land Use Code to Update the Land Use Table and Provide Related Definitions and Procedures by Amending Section 1.15, Definitions, by Replacing Section 3.4, Matrix of Permitted, Conditional, and Special uses by Zoning District – Use-Specific Standards, and by Amending Article 4, Subdivisions, Section 4.11, Specific Requirements and Review Standards for Administrative Applications, and Providing for Repealer, Severability and Effective Date – Ali vanDeutekom, Planning Manager
- I. Consideration of the Prosperity Subdivision Landscape Waiver – Ali vanDeutekom, Planning Manager

Mayor and Trustee Reports

Executive Session:

For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e)(1) regarding facilities.

Adjournment:



TOWN OF FREDERICK MEMORANDUM

TO: Honorable Mayor and Board of Trustees

FROM: Bryan Ostler, Town Manager

DATE: January 20, 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.

- January 31, 2023 – Executive Sessions: Judge Annual Review
- February 7, 2023 – Work Session Snow Removal, Exec. Session: Town Manager Annual Review
- February 14, 2023 – Meeting Cancelled
- February 21, 2023 – Work Session: No Topics Scheduled
- February 28, 2023 – Work Session (6:00 PM) Joint Meeting with Planning on Comprehensive Plan, Regular Meeting
- March 7, 2023 – Work Session: Strategic Plan/CIP Update; Town-wide IT

Communications and Engagement Department

This summary is intended to serve as an updated related to the Strategic Plan and does not encompass entire outputs or metrics.

Dynamic, Inclusive and Connected Community 3.1

- Town Event Preparation
 - 2023 event posters displayed in Town kiosks
 - Launch a volunteer management system – Galaxy Digital (embedded in Town website) for event sign-up, tracking, scheduling, and reporting volunteer activities and hours
 - Recruitment and Sponsors as of 1/17/2023
 - Sponsor commitments totaling \$15,700.00
 - 6 chainsaw carver applications
 - 27 food truck applications, food vendor spots for events are almost full.
 - 12 market vendor applications
- Frederick Forward – 2023 Comprehensive Plan & Downtown Plan Discussion – Preparation for Town Communications dissemination and survey launch
- Strategic Plan – Along with the Strategic Planning committee, participated in road show to present and discuss the strategic plan in each Town building.
- Community Partnership

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- Attend FHS Education Foundation Meeting
 - Meet with Rocky Mountain Christian for opportunities to partner
- Board Meeting - Attendance Board meetings to ensure Town communications align with Board's vision and work in progress

Safe and Secure

- Assist the Police Department as Lead PIO for a multi-jurisdictional response to an Officer Involved Shooting incident
- Presentation of "PIO Basics – Do's and Don'ts" for PD Supervisory Staff

Public Works

- Fleet Services:
 - 14 total service requests
 - 3 Unscheduled (Public Works 2 FFFPD 1)
 - 11 Scheduled (Public Works 7 PD, 3 FFFPD 1)
- Streets:
 - Public works crews continuously working on clearing inlets and clearing downtown area
 - Working on clearing snow and ice from neighborhoods, coordination and response to resident's concerns related to snow and ice
 - Assist PD with barricades and road closures on 200 block off 7th St
 - Potholes being filled in along county Rd 7 and all arterials
 - Cleaning up and stacking Christmas tree drop off
 - Grading of county Rd 5 and 16.5
 - Clearing of crosswalks of snow and ice
- Water:
 - Located valve along Tipple Parkway
 - Looped Agilent technologies and flushed line
 - Monthly water reads and shut offs
 - 35 locates completed
 - Working with leak detection in old town searching for possible leaks on service lines
- Other
 - Monthly meeting with Frederick code enforcement about roadsides and maintenance
 - Tina Rehder Gage Robertson, Teo Martinez, Rusty Ribble attended CIRSA Ice driving school in Georgetown

Engineering Department

Transportation

- Silver Birch/Godding Hollow Intersection:
 - Design is complete. Staff will be approaching the Board for direction on acquiring right-of-way northeast of the intersection to fully widen the intersection and install a sidewalk to the skate park.
- Neighborhood Speed Control Program:
 - No recent projects to update.
- Pavement Maintenance Projects:
 - Request for Bids are being developed for the Town's 2023 Pavement Maintenance Projects.
- Pavement Assessment:
 - The Town contracted with Roadway Asset Services (RAS) to provide a high level assessment of all the Town's asphalt roadways. This was completed and results from this assessment will provide guidance for future pavement maintenance programs.

Water

- Water Conservation Specialist:
 - Engineering is excited to announce a new member to the team. An offer was made and accepted by Kylie Couch for the Water Conservation Specialist position. Her start date is January 30th. Once she gets her “feet wet”, we can introduce her to the Board at a future meeting.
- NISP:
 - On December 9th, 2022, the long awaited Record of Decision was issued by the Army Corps of Engineers for the Northern Integrated Supply Project. A major hurdle was cleared for the Town of Frederick’s future water supply.
- Infrastructure Master Plan:
 - A contract for design services was awarded to Forsgren Associates Inc. at the October 11th Board Meeting. Design is underway and scheduled to take about a year to complete.
- Raw Water Change of Use:
 - The water court case is ongoing. Staff and its expert consultants recently met with the City of Boulder to address their concerns with our application. The process is lengthy but has significant value to the future water supply of the Town. Staff will provide the Board with updates throughout the entirety of the water court case.

Stormwater

- Groundwater Study:
 - A contract for design services was awarded to Smith Environmental at the December 13, 2022 Town Board meeting. Design is underway and expected to extend through 2023.
- Concrete Box Culvert(s) on Colorado Blvd/Bella Rosa:
 - A contract for design services was awarded to AVI at the October 25th, 2022 Town Board meeting. Design work is underway and will take about a year to complete.

Planning Department

- *Development Applications* – The development review process has a few steps land use applications go through prior to submitting an application such as a pre-application meeting and neighborhood meeting. There are eight projects that have completed the pre-application step. There are currently two neighborhood meetings scheduled. Nine projects have completed the neighborhood meeting, allowing them to submit an application. The following applications have been accepted for review and are now quasi-judicial.

<i>New Applications</i> <i>Project Name</i> <i>(Date of Application)</i>	<i>Subdivision</i>	<i>General Location</i>	<i>Brief Description</i>
<i>On Going Projects</i> <i>Project Name</i> <i>(Date of Application)</i>	<i>Subdivision</i>	<i>General Location</i>	<i>Brief Description</i>
Bear Industrial Park Block 2, Lot 4 (6/20/2022)	Bear Industrial Park	4201 Kodiak Ct	Proposed 7,506 Sq Ft 1 story building for light industrial.
Bear Industrial Park Replat 1 Block 2 Lot 2 (1/3/2023)	Bear Industrial Park	4180 Busch Place	Proposed installation of low voltage security fence.

Brunemeier Annexation- Wheatlands (4/4/2022)		Southwest corner of County Road 16 and County Road 17	Proposed single family attached and detached homes.
Columbine Heights		North of highway 52, West of WCR 17 and East of Savannah Subdivision	Proposed Rezone
Eagle Business Park Filing 4B Lot 1 (1/18/2022)	Eagle Business Park	4881 Eagle	Proposed 4,800 sq. ft single story building with outdoor storage.
Eagle Business Park Filing 5 Lot 1 & 2 (6/6/2022)	Eagle Business Park	Highway 52 and I-25	Replat of parcel and divide into 4 lots
Eagle Business Park Endeavour Agilent (2/07/2022)	Eagle Business Park	7400 Eagle	Site Plan for Agilent's expansion
File 32H-K268 Pad		6268 County Road 3 1/4	Propose to drill thirty-five (35) horizontal wells.
Glacier West Business Park Filing 2 Replat B Lot 9B	Glacier West	3470 Highway 52	Proposed 2 story building with office space on the top floor and 6 bay carwash on lower floor.
Hidden Creek Amendment 5 Replat (8/15/2022)	Hidden Creek	North of Tipple Parkway and East of Ridgeway Blvd	Proposed relocating lots and revising lot sizes from the final plat.
Meadowlark Business Park Filing 3 Block 2 Lot 3&4 (9/19/2022)	Meadowlark Business Park	5600 Iris Parkway	Request to divide the lot into 2 lots and a new 14,000 sq. ft. office building on the south lot.
Nelson Farms (1/3/2022)		Southwest corner of Silver Birch Blvd and Tipple Blvd	Proposed residential development on 236 acres
Park 4040 Replat B Lot 2 (12/19/2022)		9200 E. I-25 Frontage Road	Proposed 55,000 sq ft. flex warehouse for future unknown tenant
<i>Project Name (Date of Application)</i>	<i>Subdivision</i>	<i>General Location</i>	<i>Brief Description</i>
Penrose Sketch Plan (9/2/2022)	Penrose	Northeast corner of Ridgeway Blvd and Highway 52	Requesting a change in landscaping requirements for water usage.
Prosperity Waiver (8/18/2022)	Prosperity	South of Tipple Parkway and East of Angel View and North of Savannah	Proposed landscaping changes.
Raspberry Hill Business Park Lot 1 (11/7/2022)	Raspberry Hill Business Park	Southeast corner of I025 Frontage Road and Raspberry Way	Proposing exterior renovations to existing building
Raspberry Hill Business Park Lot 13 (5/2/2022)	Raspberry Hill Business Park	8274 Raspberry Way	Proposed office building and sales of pickup trucks.

Raspberry Hill Business Park Lot 11 Grading and Drainage (5/2/2022)	Raspberry Hill Business Park		Updating Grading and Drainage
Raspberry Hill Business Park Lots 4&5 (8/15/2022)	Raspberry Hill Business Park	8177 Raspberry Drive	Propose to combine lots for car dealership.
Raspberry Hill Business Park Lots 12 (8/15/2022)	Raspberry Hill Business Park	8177 Raspberry Drive	Proposed outdoor vehicle inventory storage lot.
Shores On Plum Creek (6/20/2022)	Shores On Plum Creek	North of Highway 52 and east and west of County Road 3.25	Proposed residential and commercial development.
Silverstone Filing 7 (1/18/2021)	Silverstone	North of Highway 52 and south of Tipple Parkway	Proposed Development of 581 residential homes.
Wyndham Hill Filing 10 Final Plat and Final Development Plan (11/16/2020)	Wyndham Hill	Generally west of WCR7, between WCR 14.5 and WCR 16.	Approximately 139 acres to be developed into 495 single family homes.



TOWN OF FREDERICK MEMORANDUM

TO: Honorable Mayor Tracie Crites and Board of Trustees

FROM: Meghan Martinez, Town Clerk

DATE: January 20, 2023

SUBJECT: **Town Clerk's Report**

- *Boards, Commissions and Committees*

- Scholarship Committee: The Town of Frederick Scholarship is available to graduating seniors on the Town's website and through their respective counselors. The deadline to apply is February 28th.

- *Frederick Municipal Court*

- The next municipal court date is Thursday, February 9, 2023 starting at 8:00 AM. We invite the Board to stop by and view the operations at Town Hall and would welcome any feedback.
- Year End Numbers: This year a total of 1,164 cases were filed with the Frederick Municipal Court.
- Assistant Town Clerk Emily Nitcher attended a two-day training on criminal justice records.
- January 2023 Court Numbers:

January Court Numbers										
Early Pay	Traffic	Criminal	Animal	Zoom	Review	Restitution	Pre-Trial	Trial	Total Appearances	Total
16	25	10	1 (Sentencing)	5	14	0	0	0	55	71

- *Liquor Licensing*

Special Event Permits

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<i>Organization</i>	<i>Event Date</i>	<i>Status</i>
Carbon Valley Chamber of Commerce	January 21, 2023	Approved

Current Liquor Licenses

<u><i>Licensee</i></u>	<u><i>Expiration Date</i></u>	<u><i>Status</i></u>
Back 9 at Bella Rosa	9/3/2023	Approved
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	1/24/2023	Approved
Frederick Liquor and Store	2/21/2023	Approved
Pete's Place	3/9/2023	Approved
7-Eleven Store 35269B	3/21/2023	Approved
WTF!	6/5/2023	Approved
Frederick Travel Center	6/30/2023	Approved
Gabe's Cafe	9/27/2023	Approved

Enforcement Issues

- No current enforcement issues.



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Trustee
Mark Lamach, Trustee
Kevin Brown, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

To Consider Reimbursement Agreements with the Michael Blumenthal group (Columbine Heights, LLC) and Community Development Group (CDG) that would amend the Town's water court application and add four additional Lower Boulder Preferred Shares to the Town of Frederick Water Court Change Case

Agenda Date: Town Board Meeting – January 24, 2023

Attachments:

- a. Resolution 23-R-02
- b. Reimbursement Agreement with Columbine Heights LLC
- c. Resolution 23-R-03
- d. Reimbursement Agreement with CDG

Finance Review: _____
Finance Director

Submitted by: Kevin Ash
Engineering Director

Approved for Presentation: Bryan Ostler
Town Manager

☐ Quasi-Judicial ☐ Legislative ☒ Administrative

Strategic Plan Alignment:

- Fiscally Responsible Governance – Partnering on the water court case will include cost sharing which will in turn provide savings to the Town.
- Strategic, Reliable, and Sustainable Infrastructure – Continued acquisition of Lower Boulder Preferred Shares is contemplated in the adopted water master plan and goes towards securing water resources for the future of the Town.

Summary Statement:

Approval of Reimbursement Agreements with Blumenthal Development Group (Columbine Heights, LLC) and Community Development Group (CDG) will commit the Town to direct its technical and legal

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consultants to perform due diligence on 4.0 Lower Boulder Preferred Shares provided by the development groups to determine the viability of those shares and ultimately add them to the Town of Frederick Water Court Change Case.

Detail of Issue/Request:

In March 2022, Michael Blumenthal, developer of Miner's Park and Columbine Heights, located four Lower Boulder Preferred water shares attached to property for sale in Frederick. Knowing that this was one of the few non-potable water sources the Town has historically used for development water, he initiated a conditional contract with the property owners. After some initial due diligence by staff, it was determined that these shares could provide water for his developments, but because the properties that Michael Blumenthal wanted the water to be used on are located up-gradient of the Lower Boulder Ditch, the shares would have to go through water court to be able to change this use. Since the Town had just begun its own water court change case, a request was made to the Town to add these shares to our current case. Also included in the request is that these shares be used to help meet the water demands for his developments (Miner's Park and Columbine Heights).

On May 3rd, 2022, staff met in executive session with the Town of Frederick Board, presented this option, and received direction to work with the developer on what an agreement might look like. Since that time multiple discussions, negotiations and alternatives have occurred:

1. These shares have been in front of the Lower Boulder Board. The Ditch Board has a Right of First Refusal requirement in the bylaws of the Ditch Company. The Ditch Board voted to not exercise its Right and allow the shares to be sold to the developers.
2. The opportunity for staff to discuss water conservation measures presented itself. Bringing more water is not the only solution – creating a development that uses less water has significant value too.
3. Implementation of water conservation measures caused the developer to re-evaluate their plan and determine that only two shares of Lower Boulder could meet their water demand needs if they were strong in water conservation.
4. With their own valuation showing that only two shares are needed, Michael Blumenthal reached out to CDG to see if they would have use for two shares, and they were interested in the opportunity.
5. CDG has “verbally committed” to water conservation measures for Silverstone – should they get an opportunity from the Town to satisfy their water demands with Lower Boulder shares.
6. The Town had concerns over a single 3-party agreement, and direction was given to the development groups to enter into their own individual agreement with the Town.

After months of negotiation, it feels like we have a positive water conservation direction to move forward. Over the last several years, we have asked developers to get creative and go find their own water. This scenario falls in line with that direction. Also of note is that this request exists only because of the timing of our own change case. This is the last opportunity to amend our water court application. In a month we will be too far down the road to provide due diligence to consider any additional amendments to our change case. This will be the only opportunity to add shares without impacts to our current court schedule.

Legal Comments:

The Reimbursement Agreements and Resolutions have been drafted and reviewed by both the Town Attorney, Jason Meyers and the Town's Water Attorney, Jennifer DiLalla.

Alternatives/Options:

Not approving these agreements is an alternative. The Town's water court change case will advance on its own merit and schedule with or without these additional shares added to the change case. Developers are free to do their own change case without the Town doing the heavy lifting. The optics of adding shares to the Town's water court change case that ultimately support residential development may not align with the Board's philosophy.

Only approving one of these agreements is an alternative. Originally, only the group represented by Michael Blumenthal was involved and they were solely bringing four preferred shares to the Town for consideration to be used on Miner's Park and Columbine Heights. The Board directed staff to continue negotiations with Mr. Blumenthal and see what a final agreement could look like. Adding another development group, CDG, represents a significant change to the original Board direction.

Financial Considerations:

Since these shares will support specific developments, the Reimbursement Agreements ensure that the Town will not incur any additional "Town out of pocket costs" associated with these shares. The developments will pay for both the due diligence work by the technical and legal consultants as well as the pro-rata share of water court costs associated with these shares throughout the duration of the case. The developers understand there is a level of financial risk involved. The final decreed ruling will determine the value of the shares.

Staff Recommendation:

Lower Boulder Preferred Shares do not come available on the market very often. Adding 4.0 shares to our portfolio is supported by the Water Master Plan.

Staff recommends that the Board approve the attached Resolutions.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 23-R-02**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO
APPROVING A REIMBURSEMENT AGREEMENT WITH THE
COLUMBINE HEIGHTS LLC**

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, pursuant to Colorado statute, is vested with the authority of administering the affairs of Frederick, Colorado; and,

WHEREAS, the Town is currently in the early stages of a water change case for water shares in the Lower Boulder Ditch, Water Division 1 Case No. 21CW3138, and has the ability to amend the case to add additional shares; and,

WHEREAS, the Columbine Heights LLC has obtained the right to purchase 2 preferred shares and wishes to include them into the Town's change case; and,

WHEREAS, the Developer will be responsible for the costs associated with the due diligence on the shares and then a pro rata share of the litigation costs thereafter as described in the Reimbursement Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado:

- 1) The REIMBURSEMENT AGREEMENT attached hereto as Exhibit A is hereby approved.
- 2) The Mayor is authorized to execute the agreement.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 24th DAY OF JANUARY, 2023.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor

REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (“Agreement”) is made by and between Community Development Group (“DEVELOPER”) and the Town of Frederick, a Colorado statutory municipality whose address is P. O. Box 435, Frederick, Colorado 80530 (the “TOWN”) (together, the “Parties”).

Recitals

- A. TOWN is a statutory municipality, as recognized under Title 31 of the Colorado Revised Statutes. TOWN is the owner and operator of Milavec Lake and raw water infrastructure within the Town of Frederick, Colorado, as well as shares of the New Consolidated Lower Boulder Reservoir and Ditch Company (“Lower Boulder Ditch Company” or “Lower Boulder”).
- B. The TOWN is in the process of litigating Case No. 21CW3138 in the Water Court for Water Division 1, to change the water rights associated with certain of the TOWN’s Lower Boulder shares for use throughout the TOWN’s corporate boundaries.
- C. DEVELOPER owns property within the Town of Frederick and is desirous for the Town to provide raw water service to DEVELOPER’s property.
- D. In order to effectuate future raw water service, DEVELOPER has obtained, or will obtain, two preferred shares of the Lower Boulder Ditch Company (“Subject Shares”) to dedicate the associated water rights to the TOWN as required by the TOWN’s applicable ordinances.
- E. Pursuant to the TOWN’s ordinances, the shares to be dedicated for this purpose must be useable within the TOWN’s water portfolio for all municipal purposes and throughout the TOWN. As of the date of this Agreement, the water rights associated with the Subject Shares are not decreed for municipal use throughout the TOWN.
- F. DEVELOPER has requested the TOWN to amend the TOWN’s application in pending Case No. 21CW3138 to include the Subject Shares, which will result in additional costs to the TOWN as a result of attorneys, engineers and other technical experts, and consultants performing research, document review, analysis, drafting of pleadings, and other work relating to the Lower Boulder’s required “Catlin” application process and to the TOWN’s prosecution of Case No. 21CW3138 (“Scope of Work”). The Scope of Work also includes TOWN’s outside counsel’s and technical experts’ communications with DEVELOPER and TOWN staff concerning the addition of the Subject Shares to the application in Case No. 21CW3138 and the prosecution of that application to final decree.
- G. So that the TOWN does not bear the increased cost of the legal and engineering fees and costs for the Scope of Work, the Parties desire to enter into this Agreement to establish the terms and conditions on which DEVELOPER will be responsible for the costs associated with the performance of the Scope of Work.

Accordingly, in consideration of the mutual promises in and subject to the limitations of this Agreement, TOWN and DEVELOPER agree as follows:

Agreement

1. **Effective Date.** This Agreement is effective as of the last date it is executed by the Parties (“Effective Date”).
2. **Scope of Agreement**
 - 2.1 This Agreement applies to all reasonable costs, fees, and expenses that the TOWN has incurred, is incurring, or will incur for third-party legal, engineering, technical, and administrative tasks associated with the following that are attributable to the amendment of the application in Case No. 21CW3138 to include the Subject Shares and to prosecution of such amended application to decree (“Reimbursable Costs”), including without limitation the following: the required “Catlin” proceeding before the Lower Boulder Ditch Company; any administrative proceeding necessary to allow use of the Subject Shares on a temporary basis while Case No. 21CW3138 remains pending; review of information related to the historical use of the Subject Shares and the chain of title to the Subject Shares; preparation, review, or amendment of any lease, contract, or other document in connection with DEVELOPER’s dedication of the Subject Shares to TOWN; negotiation and preparation of this Agreement; and, following any amendment of the application in Case No. 21CW3138 to include the Subject Shares, a pro-rata portion of TOWN’s costs for prosecution of such amended application to decree (“DEVELOPER’s Pro-Rata Water Court Costs”).
 - 2.1.1 DEVELOPER’s Pro-Rata Water Court Costs will equal 5.74% of TOWN’s overall costs to prosecute the amended water court application to final decree, beginning on the date on which the Water Court grants the motion to amend (“Post-Amendment Water Court Costs”). That percentage is determined as 2 (the number of the Subject Shares) divided by 34.8234 (the total number of Lower Boulder preferred shares that will be included in the amended application) ($2/34.8234 = 0.0574$).
 - 2.1.2 The Post-Amendment Water Court Costs include, without limitation, TOWN’s fees paid to third-party legal, engineering, and technical consultants; Water Court filing fees; and fees paid to third-party vendors for pre-trial and trial services, including court reporters.
 - 2.2 A preliminary itemization of the Scope of Work and the estimated Reimbursable Costs is attached as **Exhibit A** (“Preliminary Itemized Scope and Reimbursable Cost Estimate”). DEVELOPER acknowledges and agrees that the Preliminary Itemized Scope and Reimbursable Cost Estimate is the TOWN’s estimate of tasks and costs as of the Effective Date, and that the Scope of Work and Reimbursable

Costs are not limited by the Preliminary Itemized Scope and Reimbursable Cost Estimate. DEVELOPER further acknowledges and agrees that it is obligated to reimburse TOWN for all Reimbursable Costs hereunder, regardless of whether such costs exceed the estimate in **Exhibit A**.

- 2.3 Should the Lower Boulder Ditch Company deny the “Catlin” application to add the Subject Shares to the pending application in Case No. 21CW3138, or should the Water Court deny TOWN’s motion to amend the application to include the Subject Shares, DEVELOPER nonetheless shall reimburse TOWN for all Reimbursable Costs incurred by TOWN up to and include the date of such denial.
- 2.4 This Agreement does not apply to the TOWN’s routine administrative costs and fees incurred in TOWN’s ordinary operations.

3. Payment of Reimbursable Costs

- 3.1 Beginning in the first full month after the Effective Date, no later than the fifteenth day of each month, TOWN shall deliver to DEVELOPER a written invoice for all of TOWN’s Reimbursable Costs incurred in the previous month (“Monthly Invoice”). In the first such Monthly Invoice, TOWN also shall include all Reimbursable Costs incurred prior to the Effective Date.
- 3.2 Within thirty days of receipt of a Monthly Invoice, DEVELOPER shall make full payment to TOWN for all Reimbursable Costs reported on that invoice.
- 3.3 If DEVELOPER disputes whether a specific expense is a Reimbursable Cost, the Parties shall use the Dispute Resolution procedures described in Section 4 below.
- 3.4 If DEVELOPER fails to pay any undisputed Reimbursable Cost included on a Monthly Invoice within thirty days of receipt of that Monthly Invoice, the TOWN may charge DEVELOPER a late fee of 1% per month that the invoice remains unpaid. If an invoice remains unpaid for more than three months, TOWN may, in its sole discretion, elect one or more of the following remedies:
 - 3.4.1 If Case No. 21CW3138 remains pending and Subject Shares have not already been dedicated to the TOWN, remove the Subject Shares from the amended application and reject dedication of the Subject Shares to meet DEVELOPER’s raw water dedication requirement;
 - 3.4.2 If Case No. 21CW3138 has resulted in a final decree, and if DEVELOPER has dedicated the Subject Shares to TOWN, curtail delivery of raw water for the benefit of DEVELOPER;
 - 3.4.3 Initiate an action for damages in the District Court for Weld County.

4. Dispute resolution

- 4.1 If DEVELOPER disputes that specified invoiced expenses are Reimbursable Costs, the Parties shall negotiate in good faith for at least thirty days before taking any further action with respect to the dispute (“Negotiation Period”).
- 4.1.1 DEVELOPER shall provide TOWN a written explanation of the basis for such dispute. The date that TOWN receives that explanation is the first day of the Negotiation Period.
- 4.1.2 If the Parties do not reach agreement about the dispute within the Negotiation Period, which may be extended by the Parties’ written agreement, either party may initiate an action in the District Court for Weld County, requesting declaratory judgment to resolve the dispute.
- 4.1.3 During pendency of any action under Section 4.1.2 above, DEVELOPER shall make timely payment to TOWN for all invoiced Reimbursable Costs that are undisputed and that have not already been paid.
- 4.2 Should DEVELOPER and TOWN have a dispute over this Agreement other than a dispute over Reimbursable Costs, either party may initiate an action in the District Court for Weld County. In any such action, the Parties may seek all remedies available to them, including without limitation specific performance, and the prevailing party will be entitled to recover its reasonable attorneys’ fees.

5. Separate agreement for dedication of the Subject Shares. DEVELOPER acknowledges and agrees that DEVELOPER’s obligation to dedicate the Subject Shares to TOWN is governed by the Frederick Municipal Code and applicable annexation and development agreements, including any applicable Memorandum of Agreement for Public Improvements. DEVELOPER further acknowledges and agrees that TOWN cannot and will not accept dedication of the Subject Shares until the earlier of the following occurrences: (i) TOWN has obtained a final decree in Case No. 21CW3138, and the Subject Shares are expressly named as a source of the water rights changed by that decree; or (ii) TOWN has obtained an administratively approved Substitute Water Supply Plan allowing temporary use of the Subject Shares for all municipal purposes throughout TOWN. The determination to accept dedication of the Subject Shares prior to obtaining a final decree in Case No. 21CW3138 shall be in the sole discretion of the TOWN.

6. General provisions

- 6.1 Warranty of capacity to execute Agreement. The person executing this Agreement on behalf of each party represents that he or she has been duly authorized to execute the Agreement on that party’s behalf.

- 6.2 Governing law and venue. This Agreement is governed by the laws of the State of Colorado. In the event of a dispute over this Agreement, proper venue will lie in the District Court for Weld County.
- 6.3 Default. Subject to the provisions of Section 4 above, in the event of any default hereunder, the non-defaulting party shall give written notice to the defaulting party, which will have ten days following receipt of such notice to cure the default. If the default is not cured within the ten-day period, the non-defaulting party may exercise all rights available under Colorado law, including without limitation seeking damages for breach of contract.
- 6.4 Costs and attorneys' fees. If either party brings a legal action to enforce or to resolve a dispute about this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and other costs incurred in that action, in addition to any other relief to which such party may be legally entitled.
- 6.5 Merger. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement. All previous and contemporaneous negotiations, representations, and understandings between the Parties are incorporated and merged herein.
- 6.6 Severability. Unenforceability of any provision of this Agreement will not affect or impair the validity of any other provision, provided that the primary purposes of the Agreement remain fulfilled.
- 6.7 Headings. The division of this Agreement into sections and the insertion of headings are for convenience only and are not to affect the construction or interpretation of this Agreement.
- 6.8 Counterparts. This Agreement may be signed in counterparts.
- 6.9 Agreement binding. This Agreement benefits and binds the Parties and their executors, administrators, personal representatives, successors, heirs, and assigns.
- 6.10 No modification except by signed writing. This Agreement may be modified only by a signed writing executed by both Parties.
- 6.11 No waiver except by signed writing. No waiver of any provision of this Agreement is binding unless executed in writing by the party making the waiver. No such written waiver of any provision of this Agreement constitutes a waiver of any other provision, whether or not similar.
- 6.12 No assignment without written consent. Neither DEVELOPER nor TOWN may assign its rights or obligations hereunder without the other's written consent.

7. Notices. All notices and other communications required by this Agreement must be in writing. All such notices and communications, as well as all payments, will be deemed delivered as follows: (i) if delivered personally to the recipient, on the date of such delivery; (ii) if delivered by e-mail, on the date the email is sent; (iii) if delivered by overnight service provided by a courier such as Federal Express, on the next business day after deposit with such service; or (iv) if mailed to the recipient by first class mail, postage prepaid and properly addressed, on the third day after mailing. Notices, communications, and payments must be addressed as follows:

DEVELOPER:

Name:

Mailing Address:

TOWN:

Bryan Ostler, Town Manager
Town of Frederick
410 Locust Street
P. O. Box 435
Frederick, Colorado 80530
bostler@frederickco.gov

Persons and addresses to which notices, payments, and other communications are to be sent or may be changed by written notice given as described above.

TOWN OF FREDERICK

Mayor Traci Crites

Date: _____

DEVELOPER

Signature: _____

Printed Name: _____

Date: _____

ATTEST:

Meghan Martinez, Town Clerk

EXHIBIT A

PRELIMINARY SCOPE AND COST ESTIMATE:

SCOPE OF WORK:

ELEMENT is providing water resources services to support the Town of Frederick Water Court application filed in Case No. 21CW3138 to change the use of TOWN's 30.8234 Preferred and 40.7174 Common shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder" or "LBDC"). Community Development Group ("CDG") has proposed the dedication of 2.0 Preferred Lower Boulder shares ("CDG Shares") to the Town in satisfaction of raw water requirements for the Silverstone development. However, given that the location of this development is above the Lower Boulder Ditch, the CDG Group may not meet its raw water dedication requirement with Lower Boulder shares that have not been the subject of a Water Court change decree. For the CDG Shares to be an acceptable raw water dedication supply, therefore, they must be included in a Water Court change application. Additionally, for the CDG Shares to be included in a Water Court change application, they first must be included in what is known as a "Catlin" approval adopted by the LBDC Board. The CDG Group has proposed that the Town amend the application in Case No. 21CW3138 to add the CDG Shares rather than initiating a separate Water Court case to change the use of the shares.

This Scope of Services is for tasks to complete technical due diligence related to the historical use of the Shares, prepare technical information to support the Catlin application, and upon receiving the Catlin approval from LBDC, update the Preliminary Expert Report for Case No. 21CW3138 and provide technical content to update the Proposed Ruling to reflect inclusion of the Shares.

COMPENSATION:

The budget for the tasks described in the Scope of Work section above is a not-to-exceed amount to be billed on a time and materials basis.

Fee estimates from the Town's technical consultant (Element) and the Town's water attorney (MWHW) to perform the services needed to add the 2.0 Preferred shares to the Town's water court application is best described in two parts.

CDG would be responsible for 50% of the costs to amend the Catlin Application:

Element - \$56,500

MWHW - \$15,640

TOTAL (4 shares) = \$72,140

50% = \$36,070

Assuming these shares are successfully added to the water court application, CDG would then be responsible for 5.74% (2 Shares) of the estimated fees for the water court case. This is a pro-rata percentage derived from adding the Shares to the current 30.8234 Shares of Preferred Lower Boulder in the case. The current estimate for our water court case is:

Element - \$550,000

MWHW - \$654,700

TOTAL - \$1,204,700.

The estimated total CDG should expect from the water court case is $(\$1,204,700) \times (5.74\%) =$
\$69,189.11

The combined total for the CDG group for the Catlin amendment and the water court case would be $\$36,070 + \$69,189.11 =$ **\$105,259.11.**

This does not include any fees required by the Lower Boulder Ditch for their review.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 23-R-03**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO
APPROVING A REIMBURSEMENT AGREEMENT WITH THE
COMMUNITY DEVELOPMENT GROUP**

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, pursuant to Colorado statute, is vested with the authority of administering the affairs of Frederick, Colorado; and,

WHEREAS, the Town is currently in the early stages of a water change case for water shares in the Lower Boulder Ditch, Water Division 1 Case No. 21CW3138, and has the ability to amend the case to add additional shares; and,

WHEREAS, the Community Development Group has obtained the right to purchase 2 preferred shares and wishes to include them into the Town's change case; and,

WHEREAS, the Developer will be responsible for the costs associated with the due diligence on the shares and then a pro rata share of the litigation costs thereafter as described in the Reimbursement Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado:

- 1) The REIMBURSEMENT AGREEMENT attached hereto as Exhibit A is hereby approved.
- 2) The Mayor is authorized to execute the agreement.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 24th DAY OF JANUARY, 2023.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, CMC, Town Clerk

By _____
Tracie Crites, Mayor

REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (“Agreement”) is made by and between Columbine Heights LLC (“DEVELOPER”) and the Town of Frederick, a Colorado statutory municipality whose address is P. O. Box 435, Frederick, Colorado 80530 (the “TOWN”) (together, the “Parties”).

Recitals

- A. TOWN is a statutory municipality, as recognized under Title 31 of the Colorado Revised Statutes. TOWN is the owner and operator of Milavec Lake and raw water infrastructure within the Town of Frederick, Colorado, as well as shares of the New Consolidated Lower Boulder Reservoir and Ditch Company (“Lower Boulder Ditch Company” or “Lower Boulder”).
- B. The TOWN is in the process of litigating Case No. 21CW3138 in the Water Court for Water Division 1, to change the water rights associated with certain of the TOWN’s Lower Boulder shares for use throughout the TOWN’s corporate boundaries.
- C. DEVELOPER owns property within the Town of Frederick and is desirous for the Town to provide raw water service to DEVELOPER’s property.
- D. In order to effectuate future raw water service, DEVELOPER has obtained, or will obtain, 2.0 preferred shares of the Lower Boulder Ditch Company (“Subject Shares”) to dedicate the associated water rights to the TOWN as required by the TOWN’s applicable ordinances.
- E. Pursuant to the TOWN’s ordinances, the shares to be dedicated for this purpose must be useable within the TOWN’s water portfolio for all municipal purposes and throughout the TOWN. As of the date of this Agreement, the water rights associated with the Subject Shares are not decreed for municipal use throughout the TOWN.
- F. DEVELOPER has requested the TOWN to amend the TOWN’s application in pending Case No. 21CW3138 to include the Subject Shares, which will result in additional costs to the TOWN as a result of attorneys, engineers and other technical experts, and consultants performing research, document review, analysis, drafting of pleadings, and other work relating to the Lower Boulder’s required “Catlin” application process and to the TOWN’s prosecution of Case No. 21CW3138 (“Scope of Work”). The Scope of Work also includes TOWN’s outside counsel’s and technical experts’ communications with DEVELOPER and TOWN staff concerning the addition of the Subject Shares to the application in Case No. 21CW3138 and the prosecution of that application to final decree.
- G. So that the TOWN does not bear the increased cost of the legal and engineering fees and costs for the Scope of Work, the Parties desire to enter into this Agreement to establish the terms and conditions on which DEVELOPER will be responsible for the costs associated with the performance of the Scope of Work.

Accordingly, in consideration of the mutual promises in and subject to the limitations of this Agreement, TOWN and DEVELOPER agree as follows:

Agreement

1. **Effective Date.** This Agreement is effective as of the last date it is executed by the Parties (“Effective Date”).
2. **Scope of Agreement**
 - 2.1 This Agreement applies to all reasonable costs, fees, and expenses that the TOWN has incurred, is incurring, or will incur for third-party legal, engineering, technical, and administrative tasks associated with the following that are attributable to the amendment of the application in Case No. 21CW3138 to include the Subject Shares and to prosecution of such amended application to decree (“Reimbursable Costs”), including without limitation the following: the required “Catlin” proceeding before the Lower Boulder Ditch Company; any administrative proceeding necessary to allow use of the Subject Shares on a temporary basis while Case No. 21CW3138 remains pending; review of information related to the historical use of the Subject Shares and the chain of title to the Subject Shares; preparation, review, or amendment of any lease, contract, or other document in connection with DEVELOPER’s dedication of the Subject Shares to TOWN; negotiation and preparation of this Agreement; and, following any amendment of the application in Case No. 21CW3138 to include the Subject Shares, a pro-rata portion of TOWN’s costs for prosecution of such amended application to decree (“DEVELOPER’s Pro-Rata Water Court Costs”).
 - 2.1.1 DEVELOPER’s Pro-Rata Water Court Costs will equal 5.74% of TOWN’s overall costs to prosecute the amended water court application to final decree, beginning on the date on which the Water Court grants the motion to amend (“Post-Amendment Water Court Costs”). That percentage is determined as 2 (the number of the Subject Shares) divided by 34.8234 (the total number of Lower Boulder preferred shares that will be included in the amended application) ($2/34.8234 = 0.0574$).
 - 2.1.2 The Post-Amendment Water Court Costs include, without limitation, TOWN’s fees paid to third-party legal, engineering, and technical consultants; Water Court filing fees; and fees paid to third-party vendors for pre-trial and trial services, including court reporters.
 - 2.2 A preliminary itemization of the Scope of Work and the estimated Reimbursable Costs is attached as **Exhibit A** (“Preliminary Itemized Scope and Reimbursable Cost Estimate”). DEVELOPER acknowledges and agrees that the Preliminary Itemized Scope and Reimbursable Cost Estimate is the TOWN’s estimate of tasks and costs as of the Effective Date, and that the Scope of Work and Reimbursable

Costs are not limited by the Preliminary Itemized Scope and Reimbursable Cost Estimate. DEVELOPER further acknowledges and agrees that it is obligated to reimburse TOWN for all Reimbursable Costs hereunder, regardless of whether such costs exceed the estimate in **Exhibit A**.

- 2.3 Should the Lower Boulder Ditch Company deny the “Catlin” application to add the Subject Shares to the pending application in Case No. 21CW3138, or should the Water Court deny TOWN’s motion to amend the application to include the Subject Shares, DEVELOPER nonetheless shall reimburse TOWN for all Reimbursable Costs incurred by TOWN up to and include the date of such denial.
- 2.4 This Agreement does not apply to the TOWN’s routine administrative costs and fees incurred in TOWN’s ordinary operations.

3. Payment of Reimbursable Costs

- 3.1 Beginning in the first full month after the Effective Date, no later than the fifteenth day of each month, TOWN shall deliver to DEVELOPER a written invoice for all of TOWN’s Reimbursable Costs incurred in the previous month (“Monthly Invoice”). In the first such Monthly Invoice, TOWN also shall include all Reimbursable Costs incurred prior to the Effective Date.
- 3.2 Within thirty days of receipt of a Monthly Invoice, DEVELOPER shall make full payment to TOWN for all Reimbursable Costs reported on that invoice.
- 3.3 If DEVELOPER disputes whether a specific expense is a Reimbursable Cost, the Parties shall use the Dispute Resolution procedures described in Section 4 below.
- 3.4 If DEVELOPER fails to pay any undisputed Reimbursable Cost included on a Monthly Invoice within thirty days of receipt of that Monthly Invoice, the TOWN may charge DEVELOPER a late fee of 1% per month that the invoice remains unpaid. If an invoice remains unpaid for more than three months, TOWN may, in its sole discretion, elect one or more of the following remedies:
 - 3.4.1 If Case No. 21CW3138 remains pending and Subject Shares have not already been dedicated to the TOWN, remove the Subject Shares from the amended application and reject dedication of the Subject Shares to meet DEVELOPER’s raw water dedication requirement;
 - 3.4.2 If Case No. 21CW3138 has resulted in a final decree, and if DEVELOPER has dedicated the Subject Shares to TOWN, curtail delivery of raw water for the benefit of DEVELOPER;
 - 3.4.3 Initiate an action for damages in the District Court for Weld County.

4. Dispute resolution

- 4.1 If DEVELOPER disputes that specified invoiced expenses are Reimbursable Costs, the Parties shall negotiate in good faith for at least thirty days before taking any further action with respect to the dispute (“Negotiation Period”).
- 4.1.1 DEVELOPER shall provide TOWN a written explanation of the basis for such dispute. The date that TOWN receives that explanation is the first day of the Negotiation Period.
- 4.1.2 If the Parties do not reach agreement about the dispute within the Negotiation Period, which may be extended by the Parties’ written agreement, either party may initiate an action in the District Court for Weld County, requesting declaratory judgment to resolve the dispute.
- 4.1.3 During pendency of any action under Section 4.1.2 above, DEVELOPER shall make timely payment to TOWN for all invoiced Reimbursable Costs that are undisputed and that have not already been paid.
- 4.2 Should DEVELOPER and TOWN have a dispute over this Agreement other than a dispute over Reimbursable Costs, either party may initiate an action in the District Court for Weld County. In any such action, the Parties may seek all remedies available to them, including without limitation specific performance, and the prevailing party will be entitled to recover its reasonable attorneys’ fees.

5. Separate agreement for dedication of the Subject Shares. DEVELOPER acknowledges and agrees that DEVELOPER’s obligation to dedicate the Subject Shares to TOWN is governed by the Frederick Municipal Code and applicable annexation and development agreements, including any applicable Memorandum of Agreement for Public Improvements. DEVELOPER further acknowledges and agrees that TOWN cannot and will not accept dedication of the Subject Shares until the earlier of the following occurrences: (i) TOWN has obtained a final decree in Case No. 21CW3138, and the Subject Shares are expressly named as a source of the water rights changed by that decree; or (ii) TOWN has obtained an administratively approved Substitute Water Supply Plan allowing temporary use of the Subject Shares for all municipal purposes throughout TOWN. The determination to accept dedication of the Subject Shares prior to obtaining a final decree in Case No. 21CW3138 shall be in the sole discretion of the TOWN.

6. General provisions

- 6.1 Warranty of capacity to execute Agreement. The person executing this Agreement on behalf of each party represents that he or she has been duly authorized to execute the Agreement on that party’s behalf.

- 6.2 Governing law and venue. This Agreement is governed by the laws of the State of Colorado. In the event of a dispute over this Agreement, proper venue will lie in the District Court for Weld County.
- 6.3 Default. Subject to the provisions of Section 4 above, in the event of any default hereunder, the non-defaulting party shall give written notice to the defaulting party, which will have ten days following receipt of such notice to cure the default. If the default is not cured within the ten-day period, the non-defaulting party may exercise all rights available under Colorado law, including without limitation seeking damages for breach of contract.
- 6.4 Costs and attorneys' fees. If either party brings a legal action to enforce or to resolve a dispute about this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and other costs incurred in that action, in addition to any other relief to which such party may be legally entitled.
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- 6.6 Severability. Unenforceability of any provision of this Agreement will not affect or impair the validity of any other provision, provided that the primary purposes of the Agreement remain fulfilled.
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- 6.8 Counterparts. This Agreement may be signed in counterparts.
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- 6.11 No waiver except by signed writing. No waiver of any provision of this Agreement is binding unless executed in writing by the party making the waiver. No such written waiver of any provision of this Agreement constitutes a waiver of any other provision, whether or not similar.
- 6.12 No assignment without written consent. Neither DEVELOPER nor TOWN may assign its rights or obligations hereunder without the other's written consent.

7. Notices. All notices and other communications required by this Agreement must be in writing. All such notices and communications, as well as all payments, will be deemed delivered as follows: (i) if delivered personally to the recipient, on the date of such delivery; (ii) if delivered by e-mail, on the date the email is sent; (iii) if delivered by overnight service provided by a courier such as Federal Express, on the next business day after deposit with such service; or (iv) if mailed to the recipient by first class mail, postage prepaid and properly addressed, on the third day after mailing. Notices, communications, and payments must be addressed as follows:

DEVELOPER:

Name:

Mailing Address:

TOWN:

Bryan Ostler, Town Manager
Town of Frederick
410 Locust Street
P. O. Box 435
Frederick, Colorado 80530
bostler@frederickco.gov

Persons and addresses to which notices, payments, and other communications are to be sent or may be changed by written notice given as described above.

TOWN OF FREDERICK

Mayor Traci Crites

Date: _____

DEVELOPER

Signature: _____

Printed Name: _____

Date: _____

ATTEST:

Meghan Martinez, Town Clerk

EXHIBIT A

PRELIMINARY SCOPE AND COST ESTIMATE:

SCOPE OF WORK:

ELEMENT is providing water resources services to the TOWN to support the Water Court application filed in Case No. 21CW3138 to change the use of TOWN's 30.8234 Preferred and 40.7174 Common shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder" or "LBDC"). Columbine Heights LLC has proposed the dedication of 2.0 Preferred Lower Boulder shares to the Town in satisfaction of the raw water requirements for the Miner's Park and Columbine Heights developments. However, given that the locations of these developments are above the Lower Boulder Ditch, Columbine Heights LLC may not meet its raw water dedication requirement with Lower Boulder shares that have not been the subject of a Water Court change decree. For the Columbine Heights Shares to be a raw water dedication supply, therefore, they must be included in a Water Court change application. Additionally, for the Columbine Heights Shares to be included in a Water Court change application, they first must be included in what is known as a "Catlin" approval adopted by the LBDC Board. Columbine Heights LLC has proposed that the Town amend the application in Case No. 21CW3138 to add the Columbine Heights LLC Shares rather than initiating a separate Water Court case to change the use of the shares.

This Scope of Services is for tasks to complete technical due diligence related to the historical use of the Columbine Heights Shares, prepare technical information to support the Catlin application, and upon receiving the Catlin approval from LBDC, update the Preliminary Expert Report for Case No. 21CW3138 and provide technical content to update the Proposed Ruling to reflect inclusion of the Columbine Heights LLC Shares.

COMPENSATION:

The budget for the tasks described in the Scope of Work section above is a not-to-exceed amount to be billed on a time and materials basis.

Fee estimates from our technical consultant (Element) and our water attorney (MWHW) to perform the services needed to add the 2.0 Preferred shares to the Town's application is best described in two parts.

Columbine Heights LLC would be responsible for 50% of the costs to amend the Catlin Application:

Element - \$56,500
MWHW - \$15,640
TOTAL (4 shares) = \$72,140
50% = \$36,070

Assuming those shares are successfully added to the water court application, Columbine Heights LLC would also be responsible for 5.74% (2 Shares) of the estimated fees for the water court case. This is a pro-rata percentage derived from adding Shares to the current 30.8234 Shares of Preferred in the case. The current estimate for our water court case is:

Element - \$550,000

MWHW - \$654,700

TOTAL - \$1,204,700.

The estimated total Columbine Heights LLC should expect from the water court case is $(\$1,204,700) \times (5.74\%) = \mathbf{\$69,189.11}$

The combined total for Columbine Heights LLC for the Catlin amendment and the water court case would be $\$36,070 + \$69,189.11 = \mathbf{\$105,259.11}$.

This does not include any fees that are required by the Lower Boulder Ditch for their review.



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Trustee
Mark Lamach, Trustee
Kevin Brown, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

Annual Perpetual Use Renewal Water Contract for Colorado-Big Thompson Units

Agenda Date: Town Board Meeting - January 24, 2023

Attachments:

- a. Resolution 23-R-04
- b. Application to Northern Colorado Water Conservancy District for Annually Renewable Perpetual Water Contract for Right to Use Colorado-Big Thompson Project Water
- c. Application to Northern Colorado Water Conservancy District for Cancellation of Temporary Use Permit

Finance Review: _____
Finance Director

Submitted by: **Sarah Watson** _____
Civil Engineer II

Approved for Presentation: **Bryan Ostler** _____
Town Manager

☐ Quasi-Judicial ☐ Legislative ☐ Administrative

Summary Statement:

Northern Colorado Water Conservation District requires the Town to convert any Temporary Use Permits to permanent use after the Town acquires new Colorado-Big Thompson units. The Town must complete this process for the 197 units that were purchased by the Town in 2022.

Strategic Plan Alignment:

This request aligns with the Town's Strategic, Reliable & Sustainable Infrastructure Goal:

Frederick is dedicated to investing in existing and future transportation, water, storm water, and technology while planning for sustainable growth and development.

Built on What Matters.

Detail of Issue/Request:

In 2003 the Northern Water Board approved a policy that does not allow the Town to apply for renewal of Temporary Use Permits. In accordance with that policy the Town is required to convert Temporary Use Permits to perpetual use through a Section 131 contract before the expiration of the Temporary Use Permit. This process must be done annually by Resolution. The Town purchased 197 CBT units in 2022 that require the conversion to perpetual use.

The Town has funds budgeted for CBT purchases in 2023 and staff will bring contracts forward to the Board once complete. No large blocks have been offered to the Town recently. The Town's 2023 budget includes funds to purchase about 30 CBT units.

Legal Comments:

The Town Attorney has reviewed the Northern Water Section 131 Application documents and prepared the proposed resolution.

Alternatives/Options:

If the Town does not apply for the Section 131 Contract the Town will lose use of the 197 units.

Financial Considerations:

The \$500 application fee for the Section 131 Contract will be expensed from the Water Fund.

Staff Recommendation:

It is Staff's recommendation to approve Resolution 23-R-04.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 23-R-04**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO
AUTHORIZING THE MAYOR TO EXECUTE AN APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR
AN ANNUALLY RENEWABLE PERPETUAL WATER CONTRACT FOR
RIGHT TO USE C-BT SHARES**

WHEREAS, the Town of Frederick had previously obtained a Temporary Use Permit for the use of 197 units of Colorado-Big Thompson water shares (“C-BT”); and,

WHEREAS, the Northern Colorado Water Conservancy District (“Northern Water”) policies require the transition of Temporary Use Permits to a more permanent “Section 131” contract for continued use of the water shares; and,

WHEREAS, the Town of Frederick desires to apply for the Section 131 agreement.

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

1. The Board of Trustees authorizes the Mayor to sign the APPLICATION TO NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR ANNUALLY RENEWABLE PERPETUAL WATER CONTRACT FOR RIGHT TO USE COLORADO-BIG THOMPSON PROJECT WATER UNDER C.R.S. 37-45-131 attached hereto as Exhibit A.
2. The Board of Trustees authorizes the Mayor to sign the APPLICATION TO NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR CANCELLATION OF TEMPORARY USE PERMIT attached hereto as Exhibit B.

**INTRODUCED, READ, PASSED, AND SIGNED THIS 24TH DAY OF JANUARY,
2023.**

TOWN OF FREDERICK

By _____
Tracie Crites, Mayor

ATTEST:

By _____
Meghan C. Martinez, MMC, Town Clerk

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ANNUALLY RENEWABLE
PERPETUAL WATER CONTRACT FOR RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER
UNDER C.R.S. 37-45-131

Applicant, Town of Frederick, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 197 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for municipal, domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth ($1/310,000$) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: P.O. Box 435, Frederick, Colorado 80530.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.
8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant is necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.
10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this _____ day of _____, A.D., 2023.

TOWN OF FREDERICK

By _____

ATTEST:

(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 197 acre-feet of water is hereby made to the Town of Frederick, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER CONSERVANCY DISTRICT

By _____
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the _____ day of _____, A.D., 2023.

ATTEST: _____
Secretary

Allottee Contract Detail

Allottee: Frederick, Town of

Contact: Sarah Watson

Position: Water Engineer

Address: PO Box 435
Frederick CO 80530-0435

Phone:

Contract Information								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5238	5	0	Class "B"	Variable	Open	1	\$49.10	\$245.50
Document Number: 130938			Prev. IDs: 0					
Board Approved Date: 5/14/1976			Acc't Entity: Central Weld County Water District					
Effective Date: 5/14/1976			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5237	119	0	Class "B"	Variable	Open	1	\$49.10	\$5,842.90
Document Number: 130937			Prev. IDs: 0					
Board Approved Date: 1/10/1986			Acc't Entity: Central Weld County Water District					
Effective Date: 1/10/1986			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5236	300	0	Class "B"	Variable	Open	1	\$49.10	\$14,730.00
Document Number: 130936			Prev. IDs: 0					
Board Approved Date: 6/9/1989			Acc't Entity: Central Weld County Water District					
Effective Date: 6/9/1989			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
2241	20	0	Class "B"	Variable	Open	1	\$49.10	\$982.00
Document Number: 130935			Prev. IDs: 0					
Board Approved Date: 11/15/1991			Acc't Entity: Central Weld County Water District					
Effective Date: 11/15/1991			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								

Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5129	74	0	Section 131	Variable	Open	1	\$50.55	\$3,740.70
Document Number: 130728			Prev. IDs: 0					
Board Approved Date: 9/9/1994			Acc't Entity: Central Weld County Water District					
Effective Date: 9/9/1994			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5128	40	0	Section 131	Variable	Open	1	\$50.55	\$2,022.00
Document Number: 130727			Prev. IDs: 0					
Board Approved Date: 3/8/1996			Acc't Entity: Central Weld County Water District					
Effective Date: 3/8/1996			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5127	2,163	0	Section 131	Variable	Open	1	\$50.55	\$109,339.65
Document Number: 130726			Prev. IDs: 0					
Board Approved Date: 3/12/2004			Acc't Entity: Central Weld County Water District					
Effective Date: 3/12/2004			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5126	68	0	Section 131	Variable	Open	1	\$50.55	\$3,437.40
Document Number: 130725			Prev. IDs: 0					
Board Approved Date: 3/11/2005			Acc't Entity: Central Weld County Water District					
Effective Date: 3/11/2005			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
2242	421	0	Section 131	Variable	Open	1	\$50.55	\$21,281.55
Document Number: 130724			Prev. IDs: 0					
Board Approved Date: 3/10/2006			Acc't Entity: Central Weld County Water District					
Effective Date: 3/10/2006			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment

3092	196	0	Section 131	Variable	Open	1	\$50.55	\$9,907.80
Document Number: 130723			Prev. IDs: 2243					
Board Approved Date: 3/9/2007			Acc't Entity: Central Weld County Water District					
Effective Date: 3/9/2007			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
3388	37	0	Section 131	Variable	Open	1	\$50.55	\$1,870.35
Document Number: 130722			Prev. IDs: 3058, 3146, 3202, 3224					
Board Approved Date: 3/14/2008			Acc't Entity: Central Weld County Water District					
Effective Date: 3/14/2008			Lienholder(s):					
Trans Fee Coll. Date:								
Comments: PREVIOUS ID # 3146, 3202, 3224								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5472	2	0	Section 131	Variable	Open	1	\$50.55	\$101.10
Document Number: 134680			Prev. IDs: 5297					
Board Approved Date: 2/13/2009			Acc't Entity: Central Weld County Water District					
Effective Date: 2/13/2009			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5711	22	0	Section 131	Variable	Open	1	\$50.55	\$1,112.10
Document Number: 137671			Prev. IDs: 5610					
Board Approved Date: 3/12/2010			Acc't Entity: Central Weld County Water District					
Effective Date: 3/12/2010			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
5938	20	0	Section 131	Variable	Open	1	\$50.55	\$1,011.00
Document Number: 140128			Prev. IDs: 5861					
Board Approved Date: 3/11/2011			Acc't Entity: Central Weld County Water District					
Effective Date: 3/11/2011			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
6331	48	0	Section 131	Variable	Open	1	\$50.55	\$2,426.40
Document Number: 143880			Prev. IDs: 5969, 6017, 6100, 6122, 6148					

Board Approved Date: 3/9/2012			Acc't Entity: Central Weld County Water District					
Effective Date: 3/9/2012			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
6601	146	0	Section 131	Variable	Open	1	\$50.55	\$7,380.30
Document Number: 147598			Prev. IDs: 6290, 6312, 6411, 6440, 6474, 6486, 6490, 6506, 6522					
Board Approved Date: 3/8/2013			Acc't Entity: Central Weld County Water District					
Effective Date: 3/8/2013			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
6942	211	0	Section 131	Variable	Open	1	\$50.55	\$10,666.05
Document Number: 152035			Prev. IDs: 6688, 6697, 6698, 6699, 6701, 6781, 6792, 6793, 6803					
Board Approved Date: 3/14/2014			Acc't Entity: Central Weld County Water District					
Effective Date: 3/14/2014			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
7523	96	0	Section 131	Variable	Open	1	\$50.55	\$4,852.80
Document Number: 163218			Prev. IDs: 7320					
Board Approved Date: 3/10/2016			Acc't Entity: Central Weld County Water District					
Effective Date: 3/10/2016			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
7790	68	0	Section 131	Variable	Open	1	\$50.55	\$3,437.40
Document Number: 170653			Prev. IDs: 7657					
Board Approved Date: 3/9/2017			Acc't Entity: Central Weld County Water District					
Effective Date: 3/9/2017			Lienholder(s):					
Trans Fee Coll. Date:								
Comments: PREVIOUS CONTRACT ID NUMBERS: 7657 (3 AFU); 7662 (5 AFU); 7663 (6 AFU); 7692 (50 AFU); 7699 (4 AFU)								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
7991	15	0	Section 131	Variable	Open	1	\$50.55	\$758.25
Document Number: 179422			Prev. IDs: 7838					
Board Approved Date: 3/8/2018			Acc't Entity: Central Weld County Water District					
Effective Date: 3/8/2018			Lienholder(s):					

Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8458	302	0	Section 131	Variable	Open	1	\$50.55	\$15,266.10
Document Number: 243533			Prev. IDs: 8441					
Board Approved Date: 4/9/2020			Acc't Entity: Central Weld County Water District					
Effective Date: 4/9/2020			Lienholder(s):					
Trans Fee Coll. Date:								
Comments: Previous TU Permits: 8219 (6), 8337 (15), 8339 (5), 8375 (2), 8378 (129), 8404 (100), 8441 (45) - New Section 131 Contract Number 8458								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8849	4	0	Temporary Use	Variable	Open	1	\$50.55	\$202.20
Document Number: 310260			Prev. IDs: 8702					
Board Approved Date: 3/10/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 3/10/2022			Lienholder(s):					
Trans Fee Coll. Date: 1/25/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8850	11	0	Temporary Use	Variable	Open	1	\$50.55	\$556.05
Document Number: 310264			Prev. IDs: 8805					
Board Approved Date: 3/10/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 3/10/2022			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8851	5	0	Temporary Use	Variable	Open	1	\$50.55	\$252.75
Document Number: 310261			Prev. IDs: 8831					
Board Approved Date: 3/10/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 3/10/2022			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8901	11	0	Section 131	Variable	Open	1	\$50.55	\$556.05
Document Number: 310941			Prev. IDs: 8801					
Board Approved Date: 3/10/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 3/10/2022			Lienholder(s):					
Trans Fee Coll. Date:								
Comments:								

Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8948	60	0	Temporary Use	Variable	Open	1	\$50.55	\$3,033.00
Document Number: 311678			Prev. IDs: 7462					
Board Approved Date: 5/12/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 5/12/2022			Lienholder(s):					
Trans Fee Coll. Date: 4/1/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8956	1	0	Temporary Use	Variable	Open	1	\$50.55	\$50.55
Document Number: 313134			Prev. IDs: 5864					
Board Approved Date: 6/9/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 6/9/2022			Lienholder(s):					
Trans Fee Coll. Date: 5/31/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8957	6	0	Temporary Use	Variable	Open	1	\$50.55	\$303.30
Document Number: 313135			Prev. IDs: 8926					
Board Approved Date: 6/9/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 6/9/2022			Lienholder(s):					
Trans Fee Coll. Date: 4/1/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8959	7	0	Temporary Use	Variable	Open	1	\$50.55	\$353.85
Document Number: 313170			Prev. IDs: 8651					
Board Approved Date: 6/9/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 6/9/2022			Lienholder(s):					
Trans Fee Coll. Date: 4/1/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8980	1	0	Temporary Use	Variable	Open	1	\$50.55	\$50.55
Document Number:			Prev. IDs: 8374					
Board Approved Date: 8/11/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 8/11/2022			Lienholder(s):					
Trans Fee Coll. Date: 6/23/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment

8981	4	0	Temporary Use	Variable	Open	1	\$50.55	\$202.20
Document Number:			Prev. IDs: 8788					
Board Approved Date: 8/11/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 8/11/2022			Lienholder(s):					
Trans Fee Coll. Date: 6/21/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8982	4	0	Temporary Use	Variable	Open	1	\$50.55	\$202.20
Document Number:			Prev. IDs: 8925					
Board Approved Date: 8/11/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 8/11/2022			Lienholder(s):					
Trans Fee Coll. Date: 6/24/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8984	10	0	Temporary Use	Variable	Open	1	\$50.55	\$505.50
Document Number:			Prev. IDs: 8872					
Board Approved Date: 8/11/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 8/11/2022			Lienholder(s):					
Trans Fee Coll. Date: 6/20/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
8985	7	0	Temporary Use	Variable	Open	1	\$50.55	\$353.85
Document Number:			Prev. IDs: 8854					
Board Approved Date: 8/11/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 8/11/2022			Lienholder(s):					
Trans Fee Coll. Date: 6/23/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
9008	8	0	Temporary Use	Variable	Open	1	\$50.55	\$404.40
Document Number: 327377			Prev. IDs: 8118					
Board Approved Date: 9/8/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 9/8/2022			Lienholder(s):					
Trans Fee Coll. Date: 9/8/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
9012	2	0	Temporary Use	Variable	Open	1	\$50.55	\$101.10
Document Number: 327402			Prev. IDs: 1817					

Board Approved Date: 9/8/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 9/8/2022			Lienholder(s):					
Trans Fee Coll. Date: 8/6/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
9015	47	0	Temporary Use	Variable	Open	1	\$50.55	\$2,375.85
Document Number: 327488			Prev. IDs: 7367					
Board Approved Date: 9/8/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 9/8/2022			Lienholder(s):					
Trans Fee Coll. Date: 8/9/2022								
Comments:								
Contract ID	AFUs Owned	AFUs Withheld	Contract Class/ Contract Type	Quota Type	Rate Type	Unit Nbr	Assess Rate	Assessment
9018	20	0	Temporary Use	Variable	Open	1	\$50.55	\$1,011.00
Document Number: 327640			Prev. IDs: 7396					
Board Approved Date: 10/13/2022			Acc't Entity: Central Weld County Water District					
Effective Date: 10/13/2022			Lienholder(s):					
Trans Fee Coll. Date: 10/4/2022								
Comments:								
				Open Rate Assessment Total:			\$230,925.75	
Total AFUs:				4,581	Assessment Grand Total:			\$230,925.75

**APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR CANCELLATION OF TEMPORARY USE PERMITS**

The Town of Frederick hereby applies for the cancellation of the following Temporary Use Permits:

<u>Permits Dated</u>	<u>Acre-Feet</u>
March 10, 2022	11
March 10, 2022	04
March 10, 2022	05
May 12, 2022	60
June 9, 2022	07
June 9, 2022	01
June 9, 2022	06
August 11, 2022	01
August 11, 2022	10
August 11, 2022	07
August 11, 2022	04
August 11, 2022	04
September 8, 2022	47
September 8, 2022	02
September 8, 2022	08
October 13, 2022	<u>20</u>
 Total Quantity to be Released	 197

Dated at Frederick, Colorado this _____ day of _____, 2023.

TOWN OF FREDERICK

ATTEST:

By_____

(SEAL)

ORDER ON APPLICATION

Application having been made by the Town of Frederick for the cancellation of the above Temporary Use Permits, and Hearing having been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be canceled.

Dated the _____ day of _____, 2023.

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT**

ATTEST:

President

Secretary



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Windi Padia, Trustee
Kevin Brown, Trustee
Chad teVelde, Trustee

Resolution Canceling Meetings for 2023

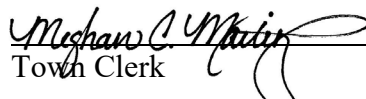
Agenda Date: Town Board Meeting – January 24, 2023

Attachments: a. Resolution

Finance Review:

Finance Director

Submitted by:


Town Clerk

Approved for Presentation:


Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

The attached resolution would cancel various work sessions for the 2023 calendar year.

Detail of Issue/Request:

The following board meetings would be cancelled with approval of the attached resolution:

- February 14, 2023 – Regular Meeting
- June 27, 2023 – Work Session
- July 4, 2023 – Work Session
- August 1, 2023 – Work Session
- November 21, 2023 – Work Session
- November 28, 2023 – Regular Meeting
- December 19, 2023 – Work Session
- December 26, 2023 – Regular meeting

Built on What Matters.

Currently, there are no topics scheduled for these meetings.

Legal Comments:

None.

Alternatives/Options:

The Board may choose to amend the resolution and remove any dates as they see fit.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff takes no position on the cancellation, as this is strictly a decision by the governing body.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 23-R-05**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
CANCELLING VARIOUS MEETINGS**

WHEREAS, the Board of Trustees of the Town of Frederick wishes to cancel various meetings in for the 2023 calendar year.

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

Section 1. The regularly scheduled meetings on February 14, 2023, June 27, 2023, July 4, 2023, August, 1, 2023, November 21, 2023, November 28, 2023, December 19, 2023 and December 26, 2023 are cancelled.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND SIGNED 24th DAY OF JANUARY, 2023.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Trustee
Mark Lamach, Trustee
Kevin Brown, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

Agenda Title for Memorandum

Agenda Date: Town Board Meeting - January 24, 2023

Attachments: a. IGA between Town of Frederick and FFFPD

Finance Review: _____
Administrative Services

Submitted by: Kent VanDyne
Public Works Director

Approved for Presentation: Bryan Ostler
Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Strategic Plan Alignment:

Effective, Efficient & Strategic Government Operations – The request for the partnership between the Town of Frederick, and the Frederick Firestone Fire Protection District aligns with the Town's Strategic Plan in multiple ways as this partnership touches our Safe & Secure line, as well as Fiscally Responsible Governance. This new IGA keeps us as close partners with our Fire District, with providing support and space to help lower their costs of necessary repairs and preventative maintenance, while giving our Fleet staff more time to service and maintain the Town's ever-growing fleet.

Summary Statement:

We are requesting entering an IGA between the Town of Frederick and the Frederick Firestone Fire District. The agreement will include the use of equipment, space and a list of bulk fluids that will be shared by both parties. The FFFPD will be providing their own Fleet Manager/Mechanic for the maintenance of their vehicles and apparatus.

Built on What Matters.

Detail of Issue/Request:

In the fall of 2018 the Town of Frederick, and the FFFPD agreed on an IGA that have the Town's Fleet Department perform maintenance on FFFPD owned fleet vehicles. The IGA was to begin in January of 2019, and would continue for a period of three years. The IGA included payment from the FFFPD for the Town's Fleet staff to purchase necessary equipment to perform work on the larger vehicles in a safe manner. This payment also partially paid towards one of the Fleet staff's wage, and for the sharing of basic fluids used in the maintenance of both Town owned fleet vehicles, and FFFPD fleet vehicles. Over the past three years, the Town staff has grown, and with that, the Town Fleet of vehicles and equipment has grown as well. Our Fleet Manager and two technicians have been struggling to keep up with the workload of maintaining 93 Town vehicles and pieces of equipment along with the 20+ vehicles of the FFFPD, which has required us to look at a solution to lessen the load of our Fleet staff, while still being a vital support to the FFFPD.

After joint meetings with Town, and FFFPD staff, we feel that we come up with a solution that provides support to both parties, and helps secure the already strong relationship that we have been able to develop over the years.

Providing this service to the FFFPD will help them keep vehicles and apparatus in good operational order, while they are in the process of building their own fleet services building, and will give the Town's Fleet Services department more of an opportunity to do necessary repairs and preventive maintenance on the Town's vehicles and equipment.

Legal Comments:

The contract and corresponding resolution have been drafted by the Town Attorney's office.

Alternatives/Options:

We feel that the option that we are proposing would be the best for both the Town and the FFFPD. There would be two options that the Town Council could consider, but these options would create a negative impact for both parties.

Option 1 would be to continue having Town Fleet staff maintain FFFPD vehicles and apparatus, which would result in an undue stress on the department. This would also require an amendment to the previous IGA to extend the term.

Option 2 would be to not provide any service or space to the FFFPD, which would put an undue stress on our Emergency Services, and could have a detrimental effect on the safety in our community. This would also require a wind down period for the FFFPD to make other arrangements.

Financial Considerations:

Revenue of \$15,000 for the fiscal year 2023 to cover the use of space, equipment, and bulk fluids per IGA.

Staff Recommendation:

Staff recommends that we move forward on the IGA with the FFFPD as presented.

**INTERGOVERNMENTAL AGREEMENT
FOR USE OF MAINTENANCE FACILITY
SPACE AND SHARING OF ASSOCIATED COSTS**

This *Intergovernmental Agreement For Use Of Maintenance Facility Space And Sharing Of Associated Costs* (“**Agreement**”), effective the 1st day of January, 2023 (“**Effective Date**”), is entered into by and between the Town of Frederick (“**Frederick**”) and Frederick-Firestone Fire Protection District (“**FFFPD**”). Frederick and FFFPD are referred to collectively as the “**Parties**” and individually as a “**Party**”.

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to C.R.S. § 29-1-201, *et seq.*; and

WHEREAS, Frederick has a fleet maintenance facility (“**Facility**”) and FFFPD needs a reliable local facility where FFFPD’s Fleet Manager/Mechanic (“**Mechanic**”) can maintain FFFPD’s apparatus and vehicles; and

WHEREAS, Frederick is willing to allow FFFPD to share portions of Frederick’s Facility space to accommodate FFFPD’s maintenance needs, which space is depicted in the diagram attached as **Attachment A** (“**Space**”); and,

WHEREAS, the Parties further desire to set forth their agreement as to the sharing of the costs of bulk fluids.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Use of Space and Equipment.** Frederick hereby grants FFFPD a license to use the Space and maintenance equipment located within the Facility, including by way of example only, access to lifts and stands necessary or appropriate for FFFPD to maintain its apparatus and vehicles. FFFPD will also have access to restroom facilities located within the Frederick Facility. FFFPD will be responsible for cleaning the Space utilized pursuant to this Agreement that is attributable to FFFPD employees, representatives, or invitees.

2. **Use of Bulk Fluids.** FFFPD is authorized to use bulk fluids necessary or appropriate for the maintenance of its apparatus and vehicles including:

- a. Synthetic Blend Diesel Engine Oil 15W-40
- b. Full Synthetic Gasoline engine oil 0W-20, 5W-20, 5W-30
- c. Multi-Vehicle Low Vis Full Synthetic Automatic Transmission Fluid
- d. Full Synthetic Heavy Duty Automatic Transmission Fluid
- e. Universal Hydraulic Tractor Brake fluid
- f. Multi-Purpose Extreme Pressure 80W-90 Gear Oil
- g. #2 Grease
- h. Titanium Poly Organic Antifreeze

- i. Bulk windshield washer fluid

3. **Compliance with Frederick's Rules Policies and Procedures.** FFFPD's Mechanic shall at all times comply with all of Frederick's rules, policies, and procedures that apply to the Facility. FFFPD will, for safety reasons, ensure that when FFFPD is in use of the Frederick Facilities there will be adequate personnel present and on site. This includes having at least two FFFPD personnel on site while work is occurring during the following times:

- a. Outside of Frederick normal operation hours, weekdays 7:00 AM through 3:30 PM
- b. Weekends and Observed Town Holidays
- c. As needed when the Town provides 48 hours' notice of scheduled personnel outings

4. **Facility Access.** Frederick will issue key cards to FFFPD personnel necessary to effectuate this Agreement. FFFPD key cards shall not be shared with any other person, and access may be revoked if abused. FFFPD will notify Frederick immediately if a key card becomes compromised, lost, or stolen.

5. **Communication and Scheduling.** In order to facilitate use of limited equipment and space, FFFPD will communicate and schedule routine maintenance items with Frederick at least 24 Hours in advance. Parties will strive to coordinate access to lifts and other equipment to provide minimal impact to their respective operations. Emergency maintenance and repairs shall be communicated as soon as practicable.

6. **Payments by FFFPD.**

a. FFFPD shall pay Frederick \$15,000 annually for use of the Space ("**License Fee**"). The Parties may mutually agree to adjust the License Fee for an ensuing calendar year to reflect FFFPD's proportional share of any increases in the charges for utilities to the Facility and necessary maintenance and repairs of the Facility. The term "maintenance and repairs" means routine maintenance and repairs for the upkeep of the Facility. The term does not include significant repairs or capital improvements to the Facility. Frederick shall invoice FFFPD in two equal installments in June and December of each year for that year's total License Fee. FFFPD shall pay undisputed invoices within thirty (30) calendar days of receipt.

b. Any undisputed invoices not paid within thirty (30) calendar days of the date received shall accrue interest at the rate of 10% per annum until paid in full.

7. **Non-appropriation.** All direct and indirect financial obligations of the Parties under this Agreement are contingent on funds being budgeted and appropriated by the governing body of the respective Party. In the event of a non-appropriation by the governing body of a Party, this Agreement shall terminate at the end of the then-current calendar year. Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the Parties within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. In the event

of a Party's non-appropriation, that Party shall only be financial liable for amounts for which it has previously appropriated funds.

8. **Term and Termination.** This Agreement shall commence on the Effective Date and shall continue until December 31, 2023 ("**Initial Term**"). Thereafter, this Agreement shall automatically renew for one (1) additional term ("**Renewal Term**" and collectively with the Initial Term, the "**Term**"), unless terminated in accordance with the applicable provisions of this Agreement. Either Party may elect to terminate this Agreement by providing written notice of termination to the other Party at least one hundred and eighty (180) calendar days in advance of the end of the Initial Term or Renewal Term. In addition, this Agreement shall terminate in the event of non-appropriation by a Party pursuant to Section 7, above.

9. **Governmental Immunity.** Nothing in this Agreement is intended, and shall not be construed, as a waiver of the rights, benefits, privileges and immunities provided to the Parties and their trustees, directors, officers, employees, volunteers and agents under federal and state law, including but not limited to, the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

10. **Relationship of the Parties.** By entering into this Agreement, the Parties are not creating, and shall not be construed as creating, a joint venture, partnership, authority or any other type of relationship between the Parties, and each Party shall remain a separate and distinct entity for all purposes under this Agreement.

11. **Employment of Mechanic and Other Personnel.** FFFPD shall be responsible for all aspects of its employment of the Mechanic and other FFFPD personnel, including but not limited to, compensation, benefits, and workers' compensation insurance which is intended to included coverage for incidents arising out of FFFPD's use of Frederick Facilities contemplated by this Agreement. Further, FFFPD shall be responsible for any intentional or negligent act or omission of its Mechanic; notwithstanding the foregoing, Frederick shall be responsible for any claim, suit or liability arising from or relating to this Agreement or the activities contemplated by this Agreement that are the result of an intentional or negligent act or omission of its trustees, officers, employees and agents.

12. **Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be given by personal delivery or certified/registered mail addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as a Party has previously furnished in writing to the other Party in accordance with this Section. If given by certified/registered mail, the notice shall be deemed to have been given seventy-two (72) hours after having been deposited in the United States mail.

ATTN: Town Manager
Town of Frederick
401 Locust Street
Frederick, CO 80530

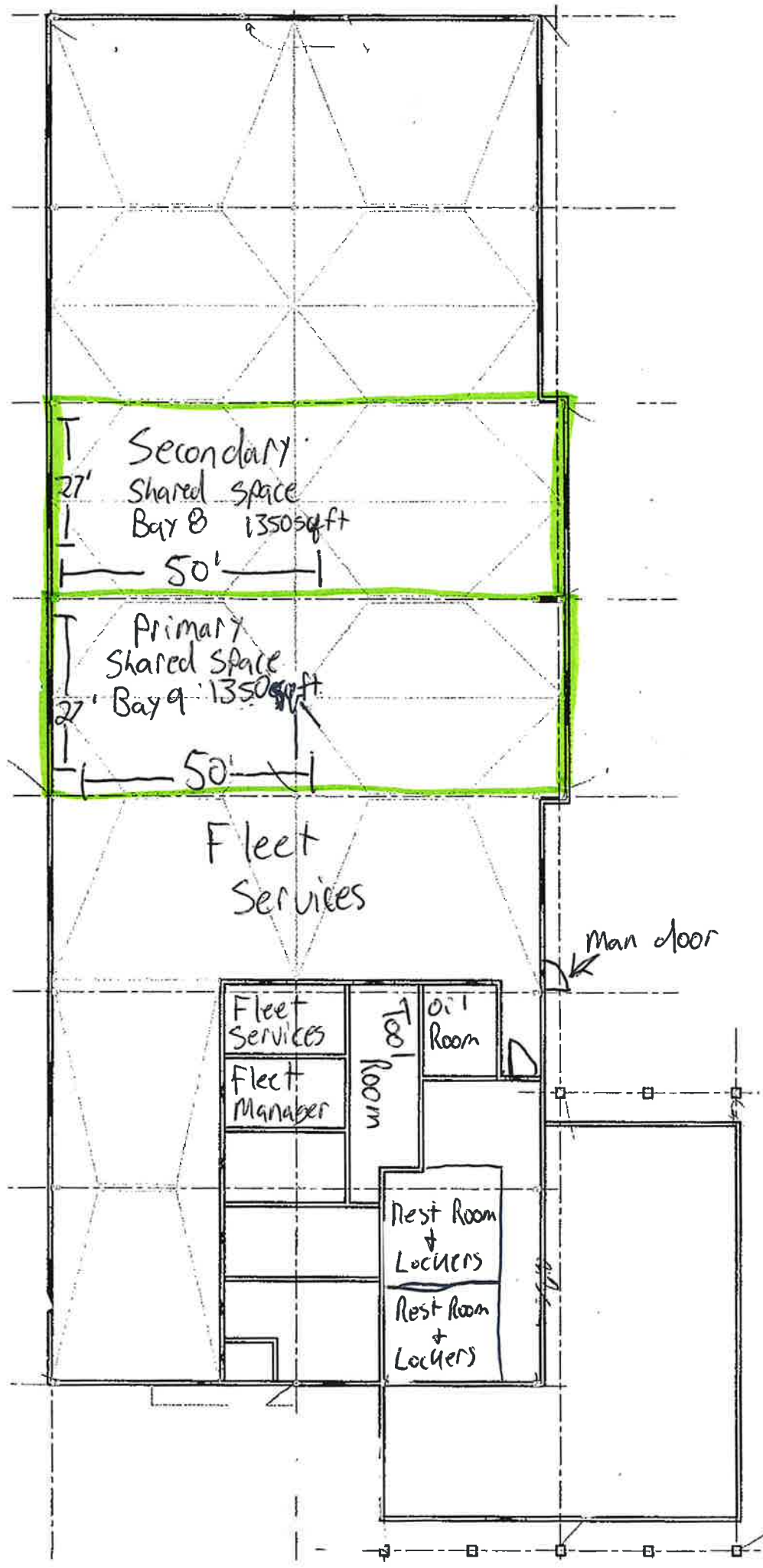
ATTN: Fire Chief
Frederick-Firestone Fire Protection District
8426 Kosmerl Place
Frederick, CO 80504

11. **Additional Terms.** Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Weld County District Court. This Agreement is the entire agreement between the Parties as to the subject matter herein and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. Course of dealing, no matter how long, shall not constitute an amendment to this Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement cannot be assigned by either Party. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. In any legal proceeding arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees, costs and expenses, including the reasonable attorneys' fees, costs and expenses incurred in collecting upon any judgment, order or award. This Agreement may be executed in counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one valid and binding instrument.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF FREDERICK	FREDERICK-FIRESTONE FIRE PROTECTION DISTRICT
By_____ Tracie Crites, Mayor	By_____ Edward Weimer, Board President
ATTEST: _____	ATTEST: _____
Meghan C. Martinez, CMC, Town Clerk	Katie Maselbas, Board Secretary



Secondary
27' Shared Space
Bay 8 1350 sq ft
50'

Primary
27' Shared Space
Bay 9 1350 sq ft
50'

Fleet
Services

Man door

Fleet
Services
Fleet
Manager

8'
Room

Oil
Room

Rest Room
+
Lockers
Rest Room
+
Lockers

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 23-R-06**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO
APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE
FREDERICK FIRESTONE FIRE PROTECTION DISTRICT FOR USE OF
THE TOWN PUBLIC WORKS FACILITY**

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, pursuant to Colorado statute, is vested with the authority of administering the affairs of Frederick, Colorado; and,

WHEREAS, the Town and the Frederick Firestone Fire Protection District (“FFFPD”) had an agreement wherein the Town provided maintenance services for FFFPD vehicles which terminated on December 31, 2022; and,

WHEREAS, the Town and FFFPD are interested in continuing to partner together in a modified manner wherein the Town will provide space for the FFFPD to provide service to its vehicles by FFFPD employees; and,

WHEREAS, the Town and FFFPD have memorialized the agreement as reflected in Exhibit A.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado:

- 1) The INTERGOVERNMENTAL AGREEMENT FOR USE OF MAINTENANCE FACILITY SPACE AND SHARING OF ASSOCIATED COSTS attached hereto as Exhibit A is hereby approved.
- 2) The Mayor is authorized to execute the agreement.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 24th DAY OF JANUARY, 2023.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Trustee
Mark Lamach, Trustee
Kevin Brown, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

List of Bills

Agenda Date: Town Board Meeting - January 24th, 2023

Attachments: a. List of Bills – December 2022

Finance Review: _____
Administrative Services

Submitted by: Jason Leslie
Deputy Town Manager

Approved for Presentation: Bryan Ostler
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

During the January 10, 2023 Board of Trustees meeting, a clerical error on the List of Bills was discovered. The item was pulled from the Consent Agenda while staff reviewed and committed to bringing back corrected at the next meeting scheduled January 24, 2023.

Detail of Issue/Request:

When the List of Bills report is exported from the Tyler Incode Financial software, there are formatting that is needed to make the report ready for publication. During this month's preparation, a couple clerical errors occurred. These errors were that two vendors were excluded and one vendor with the incorrect amount paid. Below are those findings.

Vendor Amount Incorrect:

The correct amount paid to Eldorado Artesian Springs, Inc is \$238.00

Built on What Matters.

Vendors Excluded

Element Water Consulting Inc was paid \$22,739.25

Stericycle Inc was paid \$154.54

Internal process has been changed to eliminate potential clerical errors in the future.

Legal Comments:

Not Applicable.

Financial Considerations:

Not Applicable.

Staff Recommendation:

Staff recommends approval of the list of bills for December 2022.

Town of Frederick - List of Bills
November 24, 2022 - December 29, 2022

4 RIVERS EQUIPMENT LLC	Equipment parts	150.05
AAA PEST PROS LLC	Pest control	85.00
ACCELA INC	User fees	17,265.15
ACCENT DETAILING	Building Permit refund	461.75
ACE HARDWARE OF FIRESTONE	Supplies	1,105.60
ACUSHNET COMPANY	Golf merchandise	3,332.56
ADAMSON POLICE PRODUCTS	Police uniforms	2,126.83
ADVANCED DIRECT MARKETING INC	Postage for calendar mailing	3,034.36
AGFINITY	Fuel tank rental and fuel	18,216.50
ALLIANCE SAFETY INC	Safety supplies	121.50
AMERICAN EAGLE DISTRIBUTING	Beverage order for restaurant	42.56
ASPECT MARKETING AND COMMUNICATIONS	Consulting services	5,964.00
ASPHALT DOCTORS	Asphalt patching	7,600.00
AVI PC	Colorado Blvd & Bella Rosa Drainage Project	3,507.63
BERMUDA SANDS APPAREL LLC	Staff uniforms	2,481.60
BETTER BUSINESS CLEANING	Monthly cleaning services	5,102.00
BK TIRE, INC.	Tire disposal and tire stock	1,350.96
BLACK CLOVER ENTERPRISES LLC	Golf shop merchandise	650.25
BLACK HILLS ENERGY	Public Works	9,786.16
BLUDOT TECHNOLOGIES INC	Economic Development Database subscription	5,035.00
BNBUILDERS	Hydrant meter deposit refund	2,200.00
BUILDING WARRIORS INC	Peer support	630.00
CALLAWAY GOLF	Stock golf balls	495.06
CAPITAL BUSINESS SYSTEMS INC	Copier lease program	2,674.24
CARD SERVICES	Supplies, travel & training	53,542.22
CARTEGRAPH	Cartegraph Software Implementation	11,450.00
CASELLE, INC.	Contract Support & Maintenance	2,207.00
CINDY KAMIGAKI	Reimbursement for supplies	12.21
CINTAS CORPORATION	Mat service	1,093.22
CITIZEN PRINTING	Calendar printing	13,665.00
COLORADO ASPHALT PAVEMENT ASSOCIATION	Membership renewal	250.00
COLORADO BARRICADE CO	Signs and street supplies	934.23
COLORADO WATER CONGRESS	Membership dues	525.00
COLORADO WATER WELL	Golf Course pump winterization	260.00
COMCAST CABLE	Monthly internet, tv and phone service	1,143.36
COMCAST PHONE	Town wide internet service	2,655.00
COMMUNITY COUNSELOR INC	Counseling services	750.00
COMPLETE CONSTRUCTION CORPORATION	Concrete work	1,565.00
COOL HAND ICE CARVING	Ice sculptures	2,000.00
CORKAT DATA SOLUTIONS LLC	Monthly IT support and computer equipment	35,705.70
COSTAR REALTY INFORMATION INC	Monthly subscription	540.00
DANA KEPNER CO	Water meter supplies	8,625.44
DEFALCO CONSTRUCTION COMPANY	Colo. Blvd & Tipple Pkwy intersection improvement	575,205.99
DNI HEATING AC REFRIGERATION	Clubhouse furnace repair	499.75
DOOLEY ENTERPRISES INC	Ammo	2,794.25
E-470 PUBLIC HIGHWAY AUTHORITY	Travel tolls	5.30
EASY PICKER GOLF PRODUCTS INC	Range picker parts	1,133.00
ELDORADO ARTESIAN SPRINGS INC	Water delivery service	238.00
ELEMENT WATER CONSULTING INC	Water Engineering Services	22,739.25
ELEVATED CLOUD SERVICES LLC	Hosting - ESRI & GIS/Microsoft subscription	575.00
ENVIROTECH SERVICES, INC.	Street supplies	1,281.00
EON OFFICE	Supplies	258.89
EVOLVE TECHNOLOGIES LLC	Phone support services and equipment	628.45
FACTORY MOTOR PARTS CO	Parts and supplies	542.09
FARNSWORTH GROUP INC	Architectural Planning Services	1,712.50
FASTENAL COMPANY	Maintenance shop supplies	443.93

Town of Frederick - List of Bills
November 24, 2022 - December 29, 2022

FBI NATIONAL ACADEMY ASSOCIATES INC	National dues	110.00
FERGUSON ENTERPRISES LLC	Fire hydrant & service equipment	819.42
FLEETPRIDE HEAVY DUTY PARTS & SERVICE	Replacement parts	1,194.66
FORSGREN ASSOCIATES INC	Potable Water Infrastructure Master Plan	20,857.50
FREEDOM MAILING SERVICES LLC	Utility billing statements	2,999.01
FRP APPAREL	Logo apparel	596.48
FSOC LLC	Equipment	6,606.00
G & G EQUIPMENT INC	Back pack blower	479.99
GALAXY DIGITAL LLC	Volunteer management software	2,500.00
GENERAL AIR	Shop supplies	21.12
GREEN MILL SPORTMAN'S CLUB	Range use	300.00
GREEN MOUNTAIN PROMOTIONS	Swag for events	3,439.11
HAMILTON LINEN	Linen service for restaurant	1,153.24
HIGH COUNTRY BEVERAGE	Beverage order for restaurant	175.85
HOUSEAL LAVIGNE ASSOCIATES LLC	25/52 Subarea Plan	41,872.50
IAN AUSTIN	Police Equipment Loan Program	2,000.00
IDEAL FENCING CORPORATION LLC	Guard rail repair	11,300.00
IMPLAN GROUP LLC	Economic Development Software	4,000.00
INTERSTATE RENTAL & SALES, INC.	Equipment rental	4,097.31
IWORQ SYSTEMS	Facility Department software	3,910.00
JC GOLF ACCESSORIES	Golf shop merchandise	95.54
JOHN DEERE FINANCIAL	Supplies	568.15
KENT VANDYNE	Reimbursement for PW Holiday party	64.00
KIM STRONG	Reimbursement for supplies	21.47
KINSCO LLC	Police uniforms	130.00
KODIAK RANCH	FOL hay and carriage rides	2,400.00
KP & ASSOCIATES	Retail Consulting Services	2,400.00
KYLE A RICHARDS	BOT meeting recording	75.00
L.G. EVERIST INC	Road base	1,407.45
L.L. JOHNSON DISTRIBUTING COMPANY	Equipment parts and repairs	1,645.08
LEFT HAND WATER DISTRICT	Rinn Valley irrigation	937.29
LONGMONT DEPARTMENT OF PUBLIC SAFETY	SWAT- Police services	5,000.00
LONGMONT HUMANE SOCIETY	Animal impound fees	1,052.25
LUMIN8 TRANSPORTATION TECHNOLOGIES LLC	Traffic signal maintenance	236.25
MAC EQUIPMENT INC	Maintenance equipment & supplies	7,480.60
MARTIN MARTIN INC	Silver Birch/Godding Hollow intersection	21,800.00
MASEK GOLF CAR COMPANY	Annual service kits for cart rental fleet	849.75
MATTHEW SULLIVAN	Boot reimbursement	100.00
MCCANDLESS INTL TRUCKS OF COLORADO	Vehicle and equipment parts	611.90
MENU MASTERS	Restaurant menu revisions	515.00
MIDWEST RADAR & EQUIPMENT	Radar certifications	1,107.00
MIRROR IMAGE BREWING COMPANY	Beverage order for restaurant	110.00
MITEL	Phone service	3,461.29
MOSES WITTEMYER HARRISON & WOODRUFF	Legal services	16,236.30
NATIONAL BUSINESS FURNITURE LLC	Office furniture	376.10
NORMA VERONICA PELAYES	Interpreting services	150.00
OCCUPATIONAL HEALTH CENTERS	Pre-Employment drug screening	143.50
O'REILLY AUTOMOTIVE INC	Tools and parts	3,275.64
PAUL SHINE	Boot reimbursement	150.00
POLICE AND SHERIFFS PRESS INC	Photo IDs	81.15
PRAIRIE MOUNTAIN MEDIA	Publishing costs	850.90
PRE ACTION FIRE INC	AES Quarterly Monitoring	525.00
PRINT EXPERTS	Printing services	1,864.92
PRO GOLF REPAIR LLC	Pro Golf services	497.00
PSYCHOLOGICAL DIMENSIONS	Psychological evaluations	750.00
R & R PRODUCTS	Parts for equipment repair	812.65

Town of Frederick - List of Bills
November 24, 20022 - December 29, 2022

RAMEY ENVIRONMENTAL COMPLIANCE	Water compliance/ORC Services Distribution	500.00
REDEMPTION ROAD COFFEE	Festival of Lights hot cocoa	1,950.00
REDI SERVICES LLC	Porta john services	395.00
REPUBLIC NATIONAL DISTRIBUTING CO LLC	Restaurant supplies	684.63
RICK ENGINEERING COMPANY - COLORADO	Frederick Comprehensive Plan	5,523.35
RIVER POOLS OF BOULDER	Hydrant meter deposit refund	2,200.00
RMD CONCEPTS INC	Golf equipment	129.95
ROADWAY ASSET SERVICES LLC	Pavement analysis and consulting services	4,133.50
SAFEWAY	Supplies	141.62
SAM'S CLUB / GECRB	Supplies	1,192.32
SCORR SOLUTONS	Tank maintenance	100.74
SCOTT MURDOCK TRAILER SALES LLC	Dump trailer	13,770.00
SHAWN BILLINGS	Police Equipment Loan Program	2,000.00
SHAWNA PAINTIN	Police Equipment Loan Program	2,000.00
SHORT ELLIOTT HENDRICKSON INC	Miners Park URA	547.70
SHRED VAULT COLORADO LLC	Document shredding	155.00
SOUTHERN GLAZERS WINE AND SPIRITS	Beverage order for restaurant	250.49
SPECTRUM TECHNOLOGIES INC	Golf equipment	1,599.99
SRIXON CLEVELAND GOLF XXIO	Golf merchandise	714.28
STAPLES ADVANTAGE	Office supplies	1,248.62
STERICYCLE INC	Document shredding	154.54
STIRLINI COFFEE COMPANY	Beverage order for restaurant	264.00
STRIGLOS COMPANIES, INC.	Adobe Pro subscription	80.00
SUNBELT RENTALS INC	Equipment rental	876.29
SUNSHINE CLEANERS	Uniform cleaning services	144.09
TELOS ONLINE INC	Back up link	75.00
TEO J. MARTINEZ	Boot reimbursement	100.00
THE ANTIGUA GROUP INC	Staff uniforms	2,419.86
THE SHERWIN-WILLIAMS CO	Paint supplies	74.25
TIMBERLAN INC	Equipment rental	2,500.00
TLO LLC	Investigation fees	110.00
TOWN OF FREDERICK	Petty cash replenishment	144.07
TRACTOR SUPPLY CREDIT PLAN	Tools	319.90
TRANSWEST TRUCK	Parts and supplies	147.04
TRI C CLUB SUPPLY INC	Janitorial supplies	212.44
TRT CONSTRUCTION	Town Hall remodel	12,212.50
U.S. POSTAL SERVICE (CMRS-FP)	Postage	600.00
UNITED POWER	Electric utility	7,887.61
UNIVERSITY AUTO PARTS INC	Stock parts	65.26
UPPER CASE PRINTING, INK.	Newsletter printing	1,234.14
US FOODS INC	Restaurant supplies	10,356.41
UTILITY NOTIFICATION CENTER OF COLORADO	Utility locates	227.50
VERIZON WIRELESS	Phone & wireless service	9,282.53
VICE SPORTING GOODS INC	Stock golf balls	1,571.25
WASTE CONNECTIONS OF COLO INC	Town trash collection	67,794.97
WELD COUNTY DEPARTMENT OF PUBLIC	Water testing	2,079.50
WELD COUNTY INFORMATION TECHNOLOGY	Computer software	135.62
WEX BANK	Fuel	531.29
		1,185,450.16



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Trustee
Mark Lamach, Trustee
Kevin Brown, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

Consideration of Amendments to Articles 1, 3 and 4 within the Frederick Land Use Code.

Agenda Date: Town Board Meeting - January 24th, 2023

Attachments:

- a. Ordinance
- c. Planning Commission Minutes
- d. Attachment A- Summary of the Planning Commission discussion
- e. PCR 2023-01C

Finance Review:

Administrative Services

Submitted by:

Ali van Deutekom

Planning Manager

Approved for Presentation:

Bryan Ostler

Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Strategic Plan Alignment:



2. Community and Economic Vitality-

2.5 Continue work on updating the Land Use Code

Summary Statement:

In 2022, the Frederick Land Use Code was assessed by the Town's Land Use Attorney, Todd Messenger. Out of the assessment came two interim, high priority updates; the land use table and implementation of the 25/52 East Subarea Plan. This is the first of the interim items, the land use table.

Built on What Matters.

Detail of Issue/Request:

In the summer of 2021, the Board of Trustees adopted a long-term Strategic Plan for the Town of Frederick. This plan is broken down into areas of concentration. One of the concentrations is; Community and Economic Vitality. Under the umbrella of 2. Community and Economic Vitality is; 2.5 Continue work on updating the Land Use Code. Special Land Use Counsel, Todd Messenger created the strategic assessment of the current code. The Update Framework was presented and accepted by the Planning Commission and the Town Board in 2022.

The interim amendments to the existing Land Use Code to update and modernize the land use table provides immediate public benefits in terms of protection of community character, economic development, and code administration. With the proposed changes, each use is a principal land use and is defined broadly enough to include a full range of activities with comparable impacts, yet narrow enough to avoid overlaps among listed land uses. Every land use listed in the Land Use Table is defined in the proposed changes. Where appropriate, the Land Use Code definition aligns with the Colorado State Statute definition.

The types of land uses permitted conditionally, by-right and special use in each zone district has largely remained the same. A fourth option for general application was added to the table as “limited use.” “Limited Uses” may have unusual or special characteristics, like a conditional use, but don’t require the public hearing level of approval and shall be approved administratively. The hierarchy of complexity for an application approval would be as follows;

Most complex to least complex; conditional use, limited use, permitted use, special use.

It is intended that the interim updates to the land use table, with adjustments as appropriate, will be incorporated into the revised Land Use Code when it is complete.

Review Criteria:

Section 4.7.9.b. For the purpose of establishing and maintaining sound, stable, and desirable development within the Town, the text of this Code shall not be amended except:

- (1) To correct a manifest error in the text of this Code;
- (2) To provide for changes in administrative practices as may be necessary to accommodate changing needs of the community and the Town staff;
- (3) To accommodate innovations in land use and development practices that were not contemplated at the adoption of this Code; or
- (4) To further the implementation of the goals and objectives of the Comprehensive Plan.

All four of the review criteria shall be met with the proposed code amendments.

Planning Commission:

The Planning Commission was held January 5th, 2023. The Commission voted 4- 0 to approve PCR-2023-01C which approved the amendments with the conditions. The conditions are; 1. Staff share with the Board the discussion by the Planning Commission, 2. The attorneys look into remedying the specific

aspects highlighted by the Planning Commission. Staff has provided a summary of the Planning Commission discussion as Attachment A.

Public Notice: This project was properly noticed according to the requirements found in C.R.S. §24-6-402(2)(c).

Legal Comments:

The Town's Land Use Attorney, Todd Messenger, created the Land Use Code Amendment Ordinance and revisions based on Planning Commission comments.

Alternatives/Options:

Enact:

I move that Ordinance No. 1382 be approved.

Amendments:

I move that the following language be (added to / removed from) from Ordinance No. 1382.

Decline to Enact:

I move that Ordinance No. 1382 not be approved at this time.

Financial Considerations:

Not Applicable.

Staff Recommendation:

Staff recommends enacting the ordinance with revisions made by the Planning Commission.

TOWN OF FREDERICK, COLORADO
ORDINANCE NO. 1382

AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO TO AMEND THE FREDERICK LAND USE CODE TO UPDATE THE LAND USE TABLE AND PROVIDE RELATED DEFINITIONS AND PROCEDURES BY AMENDING SECTION 1.15, DEFINITIONS, BY REPLACING SECTION 3.4, MATRIX OF PERMITTED, CONDITIONAL, AND SPECIAL USES BY ZONING DISTRICT – USE-SPECIFIC STANDARDS, AND BY AMENDING ARTICLE 4, SUBDIVISIONS, SECTION 4.11, SPECIFIC REQUIREMENTS AND REVIEW STANDARDS FOR ADMINISTRATIVE APPLICATIONS, AND PROVIDING FOR REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, the Town of Frederick is in the process of updating its comprehensive plan and revising its Land Use Code; and

WHEREAS, during the process, the Board of Trustees determined that interim amendments to the existing Land Use Code to update and modernize the land use table would provide immediate public benefits in terms of protection of community character, economic development, and Code administration; and

WHEREAS, the Board intends that the interim updates to the land use table, with adjustments as appropriate, will be incorporated into the revised Land Use Code when it is complete; and

WHEREAS, on [Insert Date] the Town of Frederick Planning Commission reviewed the proposed amendments to the Land Use Code and upon such review, recommended that the Board adopt same.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, WELD COUNTY, COLORADO, AS FOLLOWS:

Section 1. Sec. 1.15, Definitions, Town of Frederick Land Use Code, is amended as follows (strikethrough represents deleted text, underline means added text, and * * * means large blocks of unmodified text):

* * *

Adult-oriented use means a use of property where the principal use, or a significant or substantial adjunct to another use of the property, is the sale, rental, display or other offering of live entertainment, dancing, or material which is distinguished or characterized by its emphasis on depicting, exhibiting, describing, or relating to specified sexual activities or specified anatomical areas as the primary attraction to the premises, including, but not limited to:

(1a) Adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five ~~(5)~~ or fewer persons per machine at any one ~~(1)~~ time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

(2**b**) Adult bookstore or adult video store, which means a place where books, magazines, motion pictures, prints, photographs, periodicals, video or audio recordings, novelties and devices, or any of these things, which have as their primary or dominant theme, matter depicting, illustrating, describing, or relating to specified sexual activities or specified anatomical areas, are sold or offered for sale to adults; and includes a place with only a portion or section of its area set aside for the display or sale of such material to adults, except that any place, otherwise included within this definition, that derives not more than ~~ten~~10 percent ~~(10%)~~ of its gross income from the sale of such material shall be exempt from the provisions of this Section so long as such material is kept in a location where it is not visible and shall not be a self-service item for the customers of such place.

(3**e**) Adult cabaret, which means a nightclub, bar, restaurant or similar business which regularly features:

(a**1**) Persons who appear in a state of nudity;

(b**2**) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(c**3**) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(4**d**) Adult motel means a hotel, motel, or similar business which offers private rooms to the public and provides patrons live performances or closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(5**e**) Adult motion picture theater means a business where films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(6**f**) Adult photo studio means any establishment which, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing specified anatomical areas.

(7**g**) Adult theater means a theater, concert hall, auditorium, or similar business which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

(8**h**) Peep booth means a viewing room, other than a private room, of less than one hundred fifty (150) square feet of floor space upon the premises of a sexually oriented business where there are exhibited photographs, films, motion pictures, video cassettes, or other video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

(9i) Private room means a room in an adult motel that is not a peep booth, has a bed in the room, has a bath in the room or adjacent to the room, and is used primarily for lodging.

(10j) Sexual encounter establishment means a business or commercial establishment which, as one (1) of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one (1) or more of the persons exposes any specified anatomical area.

(11k) Sexually oriented business means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or other similar business and includes:

(a1) The opening or commencement of any sexually oriented business as a new business;

(b2) The conversion of an existing business, whether or not a sexually oriented business, to a sexually oriented business;

(c3) The addition of any sexually oriented business to any other existing sexually oriented business;

(d4) The relocation of any sexually oriented business; or

(e5) The continuation of a sexually oriented business in existence on the effective date of the initial ordinance codified herein.

~~(l) Specified anatomical areas means:~~

~~(1) Less than completely and opaquely covered: human genitals, pubic region, buttocks and female breast below a point above the top of the areola.~~

~~(2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.~~

~~(m) Specified sexual activities means acts, simulated acts, exhibitions, representations, depictions or descriptions of:~~

~~(1) Human genitals in a state of sexual stimulation or arousal.~~

~~(2) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.~~

~~(3) Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal.~~

~~(4) Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals, or excretory function.~~

~~(5) Flagellation, mutilation, or torture for purposes of sexual arousal, gratification or abuse.~~

~~(n) Stage means a raised floor or platform at least three (3) feet above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least thirty-six (36) square feet in area.~~

* * *

Agricultural activity. See Commercial agriculture. ~~means farming, including plowing, tillage, cropping, utilization of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except commercial logging and timber harvesting operations); the grazing or raising of livestock (except in feedlots); aquaculture; sod production; orchards; Christmas tree plantations; nurseries; and the cultivation of products as part of a recognized commercial enterprise. The application of fertilizers, herbicides, and pesticides is incidental to this activity.~~

Agricultural land means land that is being used for ~~agricultural activities~~commercial agriculture.

Agricultural uses means a category of land uses that includes agritainment and commercial agriculture.

Agritainment means a for-profit business operation, located and operated on agricultural land~~an agricultural property~~. The business provides educational and/or entertainment opportunities to its patrons in an agriculturally-oriented environment by way of activities, events, demonstrations, displays, interactive participation, tours, lectures, and/or the sale of agriculturally related products. Characteristic activities that may constitute~~uses permitted in~~ an agritainment business include but are not limited to:

- (1) Animal petting zoo and farm animal centers;
- (2) Community event;
- (3) Concessions;
- (4) Country store/craft shop;
- (5) Cultural or special events and religious festivals;
- (6) Educational activities and programs;
- (7) Farm tours;
- (8) Farmers market;
- (9) Farm-life activities and entertainment; and
- (10) Thematic vacations or events.

* * *

Alternative tower structure means man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounted structures that are compatible with the natural setting and/or surrounding structures, and camouflage or conceal the presence of antennas or towers so as to make them architecturally compatible with the surrounding area ~~pursuant to this Article~~. This term also includes any antenna or antenna array attached to an alternative tower structure. A stand-alone monopole

(including a replacement pole) in the right-of-way that accommodates small cell wireless facilities in considered an alternative tower structure to the extent it meets the camouflage and concealment standards of this [Codechapter](#).

~~Animal boarding means the operation of an establishment in which domesticated animals other than household pets are housed, groomed, bred, boarded, trained or sold. This term shall not include the operation of a kennel.~~

* * *

Assisted living facility [or congregate care](#) means a special combination of housing, supportive services, personalized assistance, and/or health care designed to respond to the individual needs of those who need help with activities of daily living. The facility may have a central and/or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential.

* * *

~~Automotive repair, major means an establishment primarily engaged in the repair or maintenance of commercial and heavy truck-oriented motor vehicles, trailers, and similar large mechanical equipment, including paint, body, and fender and major engine and engine part overhaul, provided that it is conducted within a complete enclosed building. Such use shall not include the sale of fuel, gasoline, or petroleum products.~~

~~Automotive repair, minor means an establishment primarily engaged in the repair or maintenance of passenger and light truck-oriented motor vehicles, trailer, and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune-ups and transmission work, car washing, detailing, polishing, or the like, provided that it is conducted within a completely enclosed building. Such use shall not include the sale of fuel, gasoline or petroleum products.~~

* * *

~~Bar or tavern means an establishment providing or dispensing fermented malt beverages and/or malt, vinous, or spirituous liquors, and in which the sale of food products such as sandwiches or light snacks is secondary.~~

[Bar, tavern, or nightclub means a business that sells alcoholic beverages for on-premise consumption, and / or evening entertainment such as live music, comedy acts, a floorshow, or dancing. The use may include tables and chairs, but does not have fixed theater-style seating. The use may include the sale of light snacks \(chips, pretzels, nuts, etc.\) and sandwiches \(prepackaged pizzas, burritos, subs, etc.\) as required by the applicable liquor license \(which may be any of the following classes of State alcohol licenses pursuant to C.R.S. § 12-47-401, et seq.: beer and wine, hotel and restaurant, tavern, vintner's restaurant, or lodging and entertainment facility\). The phrase "bar, tavern, or nightclub" does not include the phrase "sexually oriented business" or the temporary sale of alcohol for on-premise consumption.](#)

[Battery energy storage system means an electric storage resource capable of receiving electrical energy from the power grid and storing it in batteries for later provision of electrical energy back to the power grid, with a capacity of 150 MWh or greater. Battery](#)

Energy Storage Systems with a capacity of less than 150 MWh are classified as “Utilities, Minor.”

* * *

~~Bed and breakfast means an establishment operated in a private residence or portion thereof, which provides temporary accommodations to overnight guests for a fee and which is occupied by the operator of such establishment.~~

Bed and breakfast means the use of a single-family detached building as a place of overnight accommodation, in which:

(1) Five or fewer guest rooms are rented to guests for daily and / or weekly terms;

(2) Breakfast is provided to guests; and

(3) The operator resides on the premises.

Bed and breakfasts may also provide a location for private events (e.g., weddings and receptions).

* * *

Boarding and rooming house means a building or portion of which is used to accommodate, for compensation, four (4) or more boarders or roomers, not including members of the occupant’s immediate family who might be occupying such building. The word compensation shall include compensation in money, services, or other things of value.

* * *

Brew pub, distillery pub, or limited winery means:

(1) A brew pub as defined in C.R.S. § 44-3-103(5);

(2) A distillery pub as defined in C.R.S. § 44-3-103(14);

(3) A limited winery as defined in C.R.S. § 44-3-103(25);

(4) A microbrewery; or

(5) A microdistillery; or

(6) A microwinery.

~~Brewpub means an establishment that is primarily a restaurant where malt, vinous and/or spirituous liquors (beer, wine or hard liquor) are manufactured on the premises as an accessory use, primarily for sale and consumption on premises. A brewpub may distribute its products off-site as consistent with state law. Establishments that do not contain a restaurant component as the primary use are consider microbreweries, microwineries, or microdistilleries and are subject to different regulations. Regardless of the presence of a restaurant component, establishments that exceed the maximum production limits for microbreweries, microwineries, or microdistilleries are considered breweries, wineries or distilleries and are subject to different regulations.~~

~~Also see definitions and regulations for restaurants, microbreweries, microwineries, microdistilleries, breweries, wineries, and distilleries.~~

* * *

Bus or taxi terminal, on-demand transportation dispatch means an off-street premises that is used for the parking or storage of buses or taxis and the loading or unloading of passengers.

Business services means a business that is primarily engaged in providing support services to other businesses, such as advertising and mailing, commercial photography, janitorial services, and temporary labor services. Uses that are included within the phrases “office, general,” “light industry,” or “retail sales and services” (e.g., attorneys, accountants, contractors, or office supply shops), are not included within the phrase “business services”.

* * *

Campground or RV park means an area of land developed and intended to provide short-term accommodations to guests in recreational vehicles or tents.

* * *

Cemetery means land used or intended to be used for the interment of the remains of human bodies or pets, whether such interment is above ground or below ground. The term “cemetery” includes graveyards, mausoleums, tombs, and columbariums.

* * *

Commercial agriculture means a group of land uses that are related to grazing or raising livestock or land uses which produce products that originate from the land’s productivity, such as farming, ranching, forestry, viticulture, floriculture, beekeeping, tree farming, hemp cultivation, animal husbandry, and horticulture (including within greenhouses), and the storage, packaging, and processing of products produced on-site. The phrase “commercial agriculture” does not include the phrase “intensive agriculture”, nor does it include the cultivation or processing of marijuana.

Commercial equestrian facilities means a boarding stable, riding school or academy, riding arena, or exhibition facility for horses, donkeys, or mules, but not facilities that are associated with residential or agricultural uses and solely for the private use of the residential or agricultural landowner or lessee. Commercial equestrian facilities typically include barns, stables, corrals, riding arenas, or paddocks.

Commercial lodging means a building or group of buildings in which, in the aggregate, six or more rooms are used to provide overnight accommodations. The use may also include services such as meeting rooms, business centers (personal computers, fax machines, and printers for guest use), food service for guests, recreational facilities such as swimming pools and fitness centers, ballrooms, exhibit halls, and / or banquet rooms, provided that such services are subordinate to the use of the building or buildings for overnight accommodations.

Commercial vehicle means:

(1) Any motor vehicle, trailer, or semi-trailer that:

(a) Is designed or used to carry freight, other vehicles, equipment, passengers for a fee, or merchandise in the furtherance of any business enterprise; and

(b) Has a gross weight of more than 10,000 pounds;

(2) Any step van or truck that is designed for commercial moving or parcel delivery services;

(3) Any truck that is used for mobile retail sales (e.g., ice cream, lunches);

(4) Any vehicle with more than four wheels that is used for business purposes;

(5) Any trailer that is used to haul machinery, supplies, or equipment for business purposes (horse trailers, boat trailers, motorcycle trailers, RV trailers, and car trailers put to personal use are not included in the definition);

(6) Any trailer that is used for commercial hauling (e.g., waste, junk, lawn clippings) or commercial moving services;

(7) Any vehicle that has permanently mounted outside brackets or holders for ladders, tools, pipes, or other similar equipment, unless such vehicle is used for on-call emergency services contracted by the Town of Frederick or other governmental entity.

* * *

Community, civic, educational, and institutional uses means a category of land uses that includes cemetery, crematorium, day care center, adult or child, funeral home, hospital, place of assembly, prison or jail, school, elementary or middle, school, high, school, vocational or trade, and university or college.

* * *

Construction vehicle means:

(1) Any tracked vehicle used for construction, grading, or excavation, such as bulldozers, excavators, drilling machines for mining or driving piles, and comparable vehicles;

(2) Any wheeled vehicle that is used for construction that uses off-highway tires, including loaders, graders, soil compactors, skidders, and comparable vehicles;

(3) Dump trucks;

(4) Cement mixer trucks; and

(5) Bucket trucks.

* * *

Composting facility means a facility to which vegetative waste materials, such as lawn clippings, tree trimmings, weeds, and vegetable food scraps from more than one lot or parcel are delivered for composting. The phrase "composting facility" does not include processing of biosolids from wastewater.

* * *

Convenience lending means:

(1) A business engaged in providing short-term loans to individuals in exchange for personal checks or bank account access as collateral; or

(2) A business that, for a fee, cashes checks, warrants, drafts, money orders, or other commercial paper serving the same purpose, but is not a state or federally chartered bank, savings association, credit union, industrial loan company, or retail store that is engaged primarily in the business of selling consumer goods.

* * *

Crematorium ~~or crematory means a place where human or animal remains are reduced~~ means a facility for the burning of corpses, human or animal, to ashes. Crematoriums do not include establishments where incinerators are used to dispose of toxic or hazardous materials, infectious materials, or narcotics.

* * *

Data center means a building or portion thereof that is used by telecommunications carriers, internet access providers, or internet service providers, in which equipment for telecommunications and data processing use (e.g., servers, data storage devices, switches, routers, and other comparable technology infrastructure) is concentrated and physically secured. Equipment in a data center may be owned or operated by more than one entity. The phrase "Data center" does not include the phrase "wireless telecommunications facility."

* * *

Day Care Center, Adult or Child means:

(1) Adult day care center, which is a facility that is certified by the State of Colorado to provide health and social services on a less than 24-hour basis to elderly, blind, or disabled adults.

(2) Child day care center which is a facility, by whatever name known, which is maintained for the whole or part of a day for the care of five or more children under the age of 16 years and not related to the owner, operator, or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes: (i) facilities commonly known as "day care centers," "day nurseries," "nursery schools," "kindergartens," "preschools," "play groups," "day camps," "summer camps," "centers for mentally retarded children," and (ii) facilities that provide 24-hour care for dependent and neglected children, and (iii) facilities for children under the age of six years with stated educational purposes operated in conjunction with a public, private, or parochial college or a private or parochial school, except that the term does not apply to any kindergarten maintained in connection with a public, private, or parochial elementary school system of at least six grades. Child care centers are classified as either "small" (five to 12 children) or "large" (13 or more children).

* * *

Disposal means facilities for the disposal of non-nuclear waste or fill. The term includes solid waste disposal sites and facilities, as defined by C.R.S. § 30-20-101; and hazardous waste disposal sites, as defined by C.R.S. § 25-15-200.3.

* * *

Duplex (a/k/a dwelling, two-family) means a building that is comprised of two dwelling units, in one of two configurations: a side-by-side duplex, in which the dwelling units are separated by a shared wall with no penetrations, and each unit has a separate principal entrance; or an over-under duplex, in which dwelling units are separated by a floor, and the units may be accessed from an interior foyer with a staircase, or have separate principal entrances at street level.

~~Dwelling means a building used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, and multi-family dwellings.~~

~~Dwelling, multi-family. See multifamily. means a dwelling containing three (3) or more dwelling units, not including hotels, motels, fraternity houses and sorority houses, and similar group accommodations.~~

~~Dwelling, single-family means a building designed exclusively for occupancy by one (1) family, but not including a mobile home, otherwise provided herein.~~

Dwelling, single-family attached means a residential building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouses and duplexes.

~~Dwelling, single-family detached. See single-family detached. means a single-family dwelling which is not attached to any other dwelling or building by any means, excluding mobile homes and manufactured housing situated on a permanent foundation.~~

~~Dwelling, two-family means a building occupied by two (2) families living independently of each other.~~

~~Dwelling unit means one (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied, or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling, or mixed-use building.~~
a building or portion of a building that provides complete independent living facilities, including permanent provisions for living, sleeping, eating, cooking and sanitation, for one family.

* * *

Family means an individual living alone, or either of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:

(1a) Any number of persons related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship; or

(2b) Any unrelated group of persons consisting of:

(a1) Not more than three (3) persons;

- (b2) Not more than two (2) unrelated adults and their children, if any; or
- (c3) Not more than eight (8) developmentally disabled persons and appropriate staff occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

* * *

Fitness instruction or gymnasium means a business that provides instruction (generally by way of organized, regularly scheduled classes) related to movement and physical fitness within an enclosed building, including but not limited to:

- (1) Aerobics and stretching;
- (2) Boxing or kickboxing;
- (3) Dance;
- (4) Gymnastics;
- (5) Martial arts;
- (6) Spinning;
- (7) Swimming;
- (8) Weight lifting; or
- (9) Yoga.

* * *

Freestanding communications tower means a structure that is designed and constructed to support one or more wireless communication facilities and including all appurtenant devices attached to it. A freestanding communications tower may be designed to be solely supported by attachment to the ground, or supported by direct attachment to the ground and with guy wires, and may be of either lattice or monopole construction.

* * *

Fueling, fast-charging, or service station means a building or land area used for the retail dispensing or sales of vehicular fuels; Level 3 DC fast-charging of electric vehicles; towing of automobiles and light trucks (but not storage of inoperable automobiles or light trucks). The phrase "fueling, fast-charging, or service station" does not include the phrase "heavy motor vehicle repairs or service," but does include the phrase "light motor vehicle repairs or service," which may be integrated into the use. A fueling, fast-charging, or service station may include a retail store that sells goods and services, but primarily ready-to-eat food products (not intended for on-premises consumption), groceries, sundries, and automotive fluids and accessories (e.g., windshield washer fluid, batteries, motor oil, car window shades). The phrase "fueling, fast-charging, or service station" does not include the phrase "truck stop."

~~Funeral home means a building used for the preparation of the deceased for burial or cremation, for the display of the deceased and/or for ceremonies or services related~~

~~thereto, including cremation and the storage of caskets, funeral urns, funeral vehicles, and other funeral supplies.~~ an establishment that provides for:

(1) Human funeral services; and / or

(2) Embalming and the performance of other services used in the preparation of the dead for burial.

In addition to these functions, funeral homes may also store caskets, funeral urns, hearses and other vehicles used in funeral processions. A funeral home may also include a crematorium with no more than one incinerator as an accessory use.

* * *

Gasoline station. See fueling, fast-charging, or service station. ~~means any building, land area, premises, or portion thereof, where gasoline or other petroleum products or fuels are sold and light maintenance activities such as engine tune-ups, lubrication, minor repairs, and carburetor cleaning may be conducted. Gasoline station shall not include premises where major automobile maintenance activities such as engine overhaul, automobile painting, and body fender work are conducted.~~

General Commercial Uses means a category of land uses that includes business services, convenience lending, fitness instruction or gymnasium, liquor store, office, general, office, medical, pawnbroker, personal services, and retail sales and service.

* * *

Golf Course means land used for the game of golf, which may include accessory uses such as driving ranges, pro-shops, club houses, and restaurants.

* * *

Group home means a dwelling unit in which up to eight individuals live together (but not more than one who is required to register as a sex offender pursuant to C.R.S. § 18-3-412.5, as amended) and receive supportive services and are supervised by persons who live in the residence. For the purposes of this Code, there are four classifications of group homes:

(1) Community residential homes (a/k/a group home for persons with intellectual and developmental disabilities), which is a state-licensed group home, exclusively for the care of persons with developmental disabilities, as defined by C.R.S. § 25.5-10-202.

(2) Group home for the aged, which is a group home of persons who are 60 years of age or older who do not need nursing facilities, and who so elect, to live in conventional residential surroundings. The phrase “group home for the aged” does not include nursing facilities (as defined in C.R.S. § 25.5-4-103(14)) or institutions providing life care (as defined in C.R.S. § 11-49-101(6)).

(3) Group home for persons with behavioral or mental health disorders, which is a state-licensed group home for persons with behavioral or mental health disorders as defined in C.R.S. § 27-65-102, who are screened by a professional person as provided in C.R.S. § 27-65-102(27) prior to occupying the group home, and who do not include persons

determined to be not guilty by reason of insanity to a violent offense and persons who have been convicted of a felony involving a violent offense.

(4) Group home for substance use disorders, which is a state-certified Group Home serving persons protected by the provisions of the Federal Fair Housing Act living in a recovery residence.

~~Group home, developmentally disabled means a group home licensed by the State for the exclusive use of not more than eight (8) developmentally disabled persons and the appropriate staff.~~

~~Group home, elderly means an owner-occupied or nonprofit group home for the exclusive use of not more than eight (8) persons sixty (60) years of age or older and the appropriate staff.~~

~~(a) Nonprofit group home means a group home for the aged which is owned and operated by a person or organization as provided by C.R.S. Section 31-23-303.~~

~~(b) Owner-occupied group home means a group home for the aged which is owned and operated by an individual or individuals who actually reside at and maintain their primary place of residence in the group home.~~

~~Group home, mentally ill means a group home licensed by the state for the exclusive use of not more than eight (8) mentally ill persons and the appropriate staff.~~

* * *

~~Health club means a facility that provides physical fitness services and/or equipment to its members.~~

Hazardous waste disposal means a hazardous waste disposal site, as defined by C.R.S. § 25-15-200.3, as may be amended, superseded, or re-codified from time to time.

Heavy industry means industrial uses that are not specifically defined elsewhere in this Code, that can be described in one of the following three ways:

(1) Primary processing or manufacturing or repair operations not specifically defined elsewhere in this Chapter or this definition, that involve:

(a) A material risk of significant environmental contamination, explosion, or fire;

(b) Perceptible ground vibration at the property line;

(c) Excessive noise or dust emissions at the property line and downwind;

(d) Large-scale outdoor storage of inputs or products;

(e) Significant outdoor installations of processing equipment;

(f) Outside emission of objectionable odors;

(g) 12 or more round-trips by semi-trailer trucks per day; or

(2) Processing of minerals (except precious and semi-precious stone cutting for jewelry or precision instruments such as lasers or watches), ores, logs, pulpwood, or fossil fuels; or

(3) Activities that are required to undergo New Source Review under the Federal Clean Air Act, or are subject to construction or operation permits pursuant to the Colorado Stationary Sources Program or Title V of the Federal Clean Air Act.

For illustrative purposes, heavy industrial uses include (if they meet the thresholds of this definition), but are not limited to:

(1) Coal cleaning plants with thermal dryers; coke oven batteries; carbon black plants (furnace process); petroleum refineries; petroleum storage and transfer units (except retail gasoline stations); and bulk fuel dealers;

(2) Facilities used in the primary or secondary production of metals (e.g., primary zinc, copper, or lead smelters; primary aluminum ore reduction plants; iron and steel mills; sintering plants; secondary metal production plants; and blacksmith shops);

(3) Portland cement plants;

(4) Sawmills and pulp mills;

(5) Incinerators with the capacity to charge more than 250 tons of refuse per day;

(6) Lime plants; phosphate rock processing plants; sulfur recovery plants; and hydrofluoric, sulfuric, or nitric acid plants;

(7) Fossil fuel combustion (except for electricity generation) totaling more than 250 million BTUs per hour of heat input;

(8) Fabrication of motor vehicles, manufacturing equipment, durable goods, or pre-fabricated homes or home components;

(9) Drycleaner processing plants that use large quantities of PERC or comparable petrochemical solvents;

(10) Manufacture of plastic products (except assembly of parts that are manufactured elsewhere);

(11) Hot mix asphalt plants; and

(12) Meat processing involving butchering of large animal carcasses.

Heavy logistics center means a wholesaling, warehousing, or distribution use that provides a central location for receiving, storing, and distributing raw materials, semi-finished goods, or finished goods. Heavy logistics centers may be warehouses in which goods are stored (a/k/a “product warehouses”), or truck terminals in which goods are transferred between trucks or between trucks and trains or other transportation modes (a/k/a “truck terminals”), or moving warehouses (including indoor storage of portable on-demand storage containers), or wholesaling operations (but not wholesale membership clubs in which memberships are available to the general public, which are classified as “retail sales

and services”). Heavy logistics centers are expected to generate 24 or more truck round-trips per day.

Heavy motor vehicle repairs and service means:

(1) The provision of repair or service to passenger vehicles that includes work that does not qualify as “light motor vehicle repairs and service,” including but not limited to body repairs (collision centers), paint, upholstery, engine replacement or reconditioning, air conditioning replacement, tire recapping, and custom body work; and

(2) Any type of repairs to commercial vehicles or construction vehicles.

The phrase “heavy motor vehicle repairs and service” may include light motor vehicle repairs and service, as well as the installation of audio, video, and navigation systems (which, with respect to passenger vehicles, are otherwise classified as “retail sales and services”), but does not include the phrases “light industry” or “heavy industry.”

Heavy motor vehicle sales or rental means the sale or rental of commercial vehicles, recreational vehicles, boats, manufactured homes, or construction vehicles at the location where inventory is stored. The phrase “heavy motor vehicle sales or rental” includes outdoor storage of such vehicles for brokers. Not included in the definition are:

(1) Brokering of commercial or construction vehicles that are stored off-site and delivered directly to customers (an office, general use); and

(2) Indoor storage of commercial or construction vehicles for brokers who are located off-site (a light industrial or heavy logistics use).

Heliport means an area of land that is made available to the public or two or more private companies or individuals for the landing and takeoff of helicopters, which may include related buildings and facilities, such as fixed-base operators, hangars, fueling and de-icing facilities, maintenance facilities, and restaurants.

Helistop means an area of land or portion of a building or structure that is used for the landing and takeoff of helicopters for a single user (e.g., a news station, hospital, or law enforcement agency).

* * *

Hospital means an institution ~~providing health services primarily for human in-patient medical or surgical care for the sick or injured, and including related facilities such as laboratories, out-patient departments, training, and central services facilities and staff offices~~ that is licensed, certified, or approved as a “hospital” by the Colorado Department of Public Health and Environment (“CDPHE”), where sick or injured persons are given medical care and, in the course of same, may be housed overnight, fed, and provided nursing and related services. The term “hospital” also includes a free-standing emergency department.

Hospitality, Recreation, and Entertainment Uses means a category of land uses that includes bar, tavern, or nightclub, bed and breakfast, campground or RV park, commercial lodging, golf course, indoor amusement, recreation, and entertainment, indoor firing or gun range, outdoor commercial amusement, outdoor firing or gun range, outdoor stadium,

arena, amphitheater, or drive-in theater, park, active, park, passive, race track, restaurant, sexually-oriented business, and zoo.

Hotel, motel, or lodging establishment ~~means a building intended and used for occupancy as a temporary abode for individuals who are lodged with or without meals, in which there are five (5) or more guest rooms.~~ See commercial lodging.

* * *

Indoor amusement, recreation, and entertainment means a use that provides amusement and recreational activities indoors (except sexually-oriented businesses, indoor firing or gun ranges, fitness instruction or gymnasium, and bars, taverns, or nightclubs), including, but not limited to:

- (1) Arcades;
- (2) Bowling alleys;
- (3) Escape rooms;
- (4) Game arcades (e.g., video games, skee ball, and comparable amusement machines);
- (5) Indoor archery ranges;
- (6) Indoor axe throwing;
- (7) Indoor mini-golf;
- (8) Indoor playgrounds (may include conventional playground equipment, inflatables, trampolines, rock climbing walls, zip lines, and comparable equipment);
- (9) Indoor skydiving;
- (10) Indoor electric go-kart tracks;
- (11) Indoor skating rinks (ice or roller);
- (12) Laser tag;
- (13) Local area network ("LAN") gaming centers;
- (14) Ping-pong centers;
- (15) Pool / billiard rooms; and
- (16) Recreation centers.

Indoor Firing or Gun Range means an indoor area designed for the safe discharge of archery, rifles, shotguns, handguns, or any other firearm or similar device for the purpose of sport shooting or military/law enforcement training. The range may use silhouettes, skeet, trap, or other similar materials to facilitate target practice. Excluded from this use shall be general hunting and discharging of firearms on private property with the property owner's permission as prohibited by Municipal Code Section 10-224. Excluded from this use type are amusements that simulate shooting but do not involve potentially lethal projectiles (e.g., laser tag, foam darts, etc.) which are classified as "indoor amusement, recreation, or entertainment."

~~Industrial, heavy means uses engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous conditions. Heavy industrial shall also mean those uses engaged in the operation, parking, and maintenance of vehicles, cleaning of equipment, or work processes involving solvents, solid waste or sanitary waste transfer stations, recycling establishments, and transport terminals (truck terminals, public works yard). See heavy industry.~~

~~Industrial, light means uses engaged in the manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, or distribution of such products. Further, light industrial shall mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories, or the like. Light industrial shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining, primary metal, or related industries. See light industry.~~

Industrial, processing, recycling, storage, and disposal uses means a category of land uses that includes composting facility, disposal, heavy industry, heavy logistics center, light industry, recycling collection center, resource extraction, minerals, resource extraction, oil and gas, salvage yard, self-storage, storage yard, and waste transfer station.

* * *

Intensive agriculture means the raising, care, or feeding livestock, where the animals are stabled, confined, fed and/or maintained a total of 45 days or more in any 12-month period, and, where crops, vegetation, forage growth, or post-harvest residues are not growing, irrigated, or sustained in the normal growing season over any portion of the lot or facility. The phrase "intensive agriculture" also includes concentrated aquatic animal production. The phrase "intensive agriculture" does not encompass (without more) cattle and sheep that are moved between winter and summer pastures, including those confined for more than 45 days due to adverse conditions, and breeding stock on property where other cattle are grazing.

* * *

~~Junkyard means an industrial use contained within a building, structure, or parcel of land, or portion thereof, used for collecting, storing, or selling wastepaper, rags, scrap metal, or discarded material, or for collecting, dismantling, storing, salvaging, or demolishing vehicles, machinery, or other material and including the sale of such material or parts thereof. Junkyard shall not include a recycling facility.~~

~~Kennel means a facility licensed to house dogs, cats, or other household pets and/or where grooming, breeding, boarding, training, or selling of animals is conducted as business.~~

Kennel, indoor means an indoor facility (with no outdoor components) in which four or more household pets of the same species are temporarily housed, groomed, bred, boarded, or trained, and may also be incidentally treated for medical conditions. The phrase "kennel,

indoor” includes for-profit facilities; as well as not-for-profit or public facilities at which abandoned or rescued animals are housed and offered for adoption.

Kennel, Outdoor means a facility in which four or more household pets of the same species are temporarily housed, groomed, bred, boarded, or trained, and may also be incidentally treated for medical conditions, which facility includes an outdoor component, such as dog runs. The phrase “kennel, outdoor” includes for-profit facilities; as well as not-for-profit or public facilities at which abandoned or rescued animals are housed and offered for adoption.***

Light Industry means a land use that involves research and development, assembly, remanufacturing, compounding, packaging, testing, or treatment of products, generally from previously prepared materials or components, with limited outside storage and limited truck traffic, external impacts, or risks, such that the use is not defined as “Heavy Industry” or “Heavy Logistics Center.” Light industry also includes wholesaling, warehousing, and distribution uses that involve fewer than 24 truck round-trips per day. The phrase “light industry” does not include the phrase “light motor vehicle repairs and service.” For illustrative purposes, light industrial uses may include:

- (1) Assembly, testing, repair, or refurbishing of products, instruments, electronics, office and computing machines, and fixtures using pre-manufactured components;
- (2) Offices of general contractors; specialty subcontractors; tradesmen; or telecommunications providers which include:
 - (a) Overhead door access to indoor storage of tools, parts, and materials;
 - (b) Parking of commercial vehicles or a fleet of cars, vans, or light trucks that are used in the business; or
 - (c) Limited outdoor storage areas;
- (3) Food production (e.g., commercial kitchen or bakery) and packaging, but not:
 - (a) Meat processing involving butchering of large animal carcasses;
 - (b) Medical marijuana-infused products manufacture; or
 - (c) Restaurants;
- (4) Beverage production (alcoholic and non-alcoholic) and bottling, except at scales that place such production within the definition of “brew pub, distillery pub, or limited winery”;
- (5) Furniture making or refinishing;
- (6) Manufacture of textiles or apparel;
- (7) Screen printing of apparel (except low volume screen printing at a retail store);
- (8) Printing and publishing, except copy centers, and except printing presses that require a Stationary Source permit or Title V permit for air emissions;

(9) Research, development, and testing laboratories (e.g., for development of products, equipment, or materials), if not classified as “office, general”, “office, medical”, or “heavy industry”;

(10) Disassembly of consumer electronics and/or appliances into component parts, where all operations and storage are within an enclosed building;

(11) Manufacture of glass products (e.g., window panes, bottles and jars), including hand-blown products;

(12) Fabrication of building materials such as countertops, drywall, and cut stone (if not classified as heavy industry);

(13) Manufacture or compounding of pharmaceutical products, dietary supplements, health and beauty products, and herbal products;

(14) Packaging of products;

(15) Storing, selling, and/or distributing merchandise for or to retailers; industrial, commercial, institutional, or professional business users; or wholesalers (but not wholesale membership clubs in which memberships are available to the general public, which are classified as “Retail Sales and Services”); or

(16) Collection, processing (bailing, compacting, flattening, grinding, shredding, crushing, mechanical sorting, or cleaning), and storage of recyclable materials (e.g., waste paper, motor oil, aluminum and other scrap metal, polystyrene foam, porcelain, batteries, electronic components, textiles, plastics, discarded clothing or shoes, cardboard, and other recyclable household materials) prior to transport to another location for reuse or recycling, provided that all collection and processing activities and materials storage are located within an enclosed building.

Light motor vehicle repairs and service means:

(1) Routine service to passenger vehicles that generally takes less than 90 minutes to complete (e.g., tire rotation and balance, brake service, oil changes, glass repair and replacement, fluid changes, etc.); and

(2) Repairs and service to motorcycles, scooters, snowmobiles, all-terrain vehicles (“ATVs”), riding lawnmowers, and other vehicles with engines of less than 1,500 cc displacement.

The phrase “light motor vehicle repairs and service” does not include the phrases “heavy motor vehicle repairs and service,” “heavy industry,” or “light industry.”

* * *

~~Limited indoor recreation facility means a place where recreation activities occur completely within an enclosed structure, including but not limited to bowling alleys, skating rinks, pool halls, video, and pinball parlors.~~

~~Limited outdoor recreation facility means a place with outdoor activities, including but not limited to miniature golf, batting cages, water slides, skateboard parks, driving ranges, and go-cart tracks.~~

Liquor store means a business that sells alcoholic beverages, including distilled spirits or hard liquor, for off-premises consumption. The phrase “liquor store” includes businesses that are licensed pursuant to C.R.S. § 12-47-401, et seq., as retail liquor stores or liquor-licensed drug stores. The phrase “liquor store” does not include a business that sells only beer or wine for off-premises consumption.

* * *

Live-work unit means a type of residential mixed-use building that combines a dwelling unit with an integrated permissible non-residential use (see definition of “residential mixed-use”) that is open to the public and principally used or operated by one or more of the residents of the dwelling unit.

* * *

~~Long term care facility means any of the following:~~

~~(a) — Convalescent center means a health institution that is planned, organized, operated, and maintained to offer facilities and services to inpatients requiring restorative care and treatment and that is either an integral patient care unit of a general hospital or a facility physically separated from, but maintaining an affiliation with, all services in a general hospital.~~

~~(b) — Intermediate health care facility means a health-related institution planned, organized, operated, and maintained to provide facilities and services which are supportive, restorative, or preventive in nature, with related social care, to individuals who, because of a physical or mental condition, or both, require care in an institutional environment but who do not have an illness, injury, or disability for which regular medical care and twenty-four-hour-per-day nursing services are required.~~

~~(c) — Nursing care facility means a health institution planned, organized, operated, and maintained to provide facilities and health services with related social care to inpatients who require regular medical care and twenty-four-hour-per-day nursing services for illness, injury, or disability. Each patient shall be under the care of a physician licensed to practice medicine in the State. The nursing services shall be organized and maintained to provide twenty-four-hour-per-day nursing services under the direction of a registered professional nurse employed full time.~~

* * *

Manufactured home means a single-family dwelling which:

- ~~(a) — Is partially or entirely manufactured in a factory;~~
- ~~(b) — Is at least twenty-four (24) feet wide and thirty-six (36) feet long;~~
- ~~(c) — Is permanently affixed to and installed on an engineered permanent foundation;~~
- ~~(d) — Has a pitched or cosmetically equivalent roof, and brick or wood exterior siding; and~~
- ~~(e) — Complies with HUD or UBC standards, as applicable, or meets or exceeds equivalent requirements and performance engineering standards.~~ a building that is

transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities, and which has certification required by the United States Secretary of Housing and Urban Development and was constructed in compliance with the requirements of 42 U.S.C. § 5401, et seq., Manufactured Home Construction and Safety Standards, and the regulations of the Department of Housing and Urban Development that are promulgated thereunder. The phrase “manufactured home” does not include the phrase “recreational vehicle,” nor does it include the phrase “mobile home.”

Manufacturing means a business which makes products by hand or by machinery.

Marijuana uses means: (1) any “medical marijuana business,” as the phrase is defined in C.R.S. § 44-10-103(35), as may be amended, superseded, or re-codified from time to time; and any “retail marijuana business,” as the phrase is defined in C.R.S. § 44-10-103(58), as may be amended, superseded, or re-codified from time to time.

* * *

~~Medical and dental offices and clinics means an establishment operated by one (1) or more duly licensed members of the human health care professions, including but not limited to physicians, dentists, chiropractors, psychiatrists, and osteopaths, where patients are not lodged overnight but are admitted for examination and/or treatment.~~ See office, medical.

* * *

~~Meeting place and place for public assembly means a hall, auditorium, or other suitable room used for the purpose of conducting meetings of the membership and guests of the owner of such structure. The same shall not include commercial endeavors such as commercial movie picture houses, stage productions, or the like.~~ See place of assembly.

~~Membership club means an association of persons, whether incorporated or unincorporated, for some common purpose, excluding groups organized primarily to render a service carried on as a business, a not-for-profit club, and churches or places of worship or assembly.~~

* * *

~~Mini-storage warehouse means a building or a group of buildings containing separate, individual self-storage units divided from the floor to ceiling by a wall with an independent entrance from the exterior of the building, designed to be rented or leased to the general public for private storage of personal goods, materials, and equipment.~~ See self-storage.

* * *

~~Mobile home means a single-family dwelling unit partially or entirely manufactured in a factory, built on a permanent chassis, and designed to be transported on streets to the place where it is to be occupied as a dwelling unit. A mobile home shall conform to the following design and installation standards:~~

~~(a) —Is at least twenty-four (24) feet wide and thirty-six (36) feet long;~~

~~(b) — Is permanently affixed to and installed on an engineered, permanent perimeter foundation;~~

~~(c) — Has a pitched or cosmetically equivalent roof and brick or wood exterior siding; and~~

~~(d) — Complies with HUD or UBC standards, as applicable, or meets or exceeds equivalent requirements and performance engineering standards.~~ a dwelling that is built on a chassis designed for long-term residential occupancy, that is capable of being installed in a permanent or semi-permanent location, with or without a permanent foundation, and with major appliances and plumbing, gas, and electrical systems installed but needing the appropriate connections to make them operable, and that may be occasionally drawn over the public highways, by special permit, as a unit or in sections to its permanent or semi-permanent location. Mobile homes are different from manufactured homes in that they were either constructed before the adoption of 42 U.S.C. § 5401, et seq., Manufactured Home Construction and Safety Standards, or are otherwise not in compliance with said federal law and its implementing regulations. The phrase “mobile home” does not include the phrase “recreational vehicle.”

* * *

Motorcycle, scooter, or ATV sales or rental means the sale or rental of motorcycles, scooters, snowmobiles, or ATVs at the location where inventory is stored. The phrase “motorcycle, scooter, or ATV sales or rental” includes outdoor storage of motorcycles, scooters, snowmobiles, or ATVs for off-site brokers. The phrase does not include:

(1) — Brokering of motorcycles, scooters, snowmobiles, or ATVs that are stored off-site and delivered directly to customers (a general office use); or

(2) — Indoor storage of motorcycles, scooters, snowmobiles, and ATVs for brokers who are located off-site (a light industrial or heavy logistics use, depending upon the volume of sales).

Motor vehicle and transportation uses means a category of land uses that includes fueling, fast-charging, or service station, truck stop, heliport, helistop, motor vehicle wash, surface parking, structured parking, passenger motor vehicle sales or rental, heavy motor vehicle sales or rental, motorcycle, scooter, or ATV sales or rental, and bus or taxi terminal, on-demand transportation dispatch, and RV storage.

Motor vehicle wash means any area or business using self-service, in-bay automatic, or conveyor equipment for cleaning and washing motor vehicles, whether as a part of another business operation (e.g., as an accessory use to fueling, fast-charging, or service station), or as a stand-alone operation, of any type, on a commercial basis.

* * *

Multifamily means a building that is comprised of three or more dwelling units, sharing common vertical walls or horizontal floors and ceilings, that is not otherwise defined as a townhome or a multiplex (e.g., residences commonly referred to as apartments, garden apartments, apartment buildings, or condominiums).

~~Multiple-family dwelling means a dwelling containing three (3) or more dwelling units, including what is commonly known as an apartment building, but not including group, row or townhouses, or hotels, motels, condominiums, fraternity and sorority houses, and similar group accommodations. See multifamily.~~

Multiplex means a building that is comprised of three to five dwelling units, which is architecturally designed to resemble a large single-family detached building (i.e., the boundaries of the individual dwelling units are not easily discernible from outside of the building, garage doors are screened from view, and entry doors are arranged so that when viewed from the adjacent street, there appears to be only one principal entrance to the building).

* * *

~~Nightclub means a bar or tavern containing more than one hundred (100) square feet of dance floor area. See bar, tavern, or nightclub.~~

* * *

Nursing home, memory care, Alzheimer's care means a State-licensed residential facility that is regulated as a skilled nursing facility (as defined in C.R.S. § 26-4-103(11)), which provides meals, assistance with daily activities, such as dressing, grooming, and bathing, and medical care for persons who are temporarily or permanently unable to care for themselves. The phrase "nursing home, memory care, Alzheimer's care" does not include "group home for the elderly."

Office, general means buildings from which professional, administrative, financial, clerical, brokering, real estate, and limited technical services are provided. The phrase includes, but is not limited to, the following types of businesses:

- (1) Accounting, auditing and bookkeeping;
- (2) Advertising and graphic design (except mailing services, which are "business services");
- (3) Architectural, engineering, and surveying services;
- (4) Attorneys and court reporters;
- (5) Banks, savings and loans, credit agencies, and investment companies;
- (6) Brokering of motor vehicles, commodities, and other items where the thing brokered is not stored on-site for any length of time;
- (7) Business incubators (unless the businesses being incubated are classified as another type of use, such as light industry);
- (8) Computer programming and data recovery services;
- (9) Corporate headquarters;
- (10) Data processing and word processing services;
- (11) Detective agencies;
- (12) Government offices;

- (13) Insurance;
- (14) Interior design;
- (15) Real estate sales and off-site rental offices;
- (16) Research and development (not including on-site manufacturing or fabrication, and not including marijuana uses);
- (17) Retail catalog, internet, and telephone order processing, but not warehousing; and
- (18) Virtual office services.

Office, medical means office space used for the examination or treatment of patients on an outpatient basis (with no overnight stays by patients), generally by appointment, including:

- (1) Chiropractors, licensed massage therapists, occupational therapists, physical therapists, and acupuncturists;
- (2) Dentists, orthodontists, and oral surgeons;
- (3) Medical lab testing facilities;
- (4) Medical doctors (physicians, pediatricians, obstetricians, gynecologists, radiologists, geriatricians, surgeons, podiatrists, osteopaths, ophthalmologists, anesthesiologists, etc.);
- (5) Medical imaging centers;
- (6) Midwives;
- (7) Nutritionists, Ayurveda medicine practitioners, traditional Chinese medicine practitioners, homeopaths;
- (8) Optometrists;
- (9) Speech therapists;
- (10) Outpatient surgery centers;
- (11) Psychiatrists, clinical psychologists, clinical social workers, hypnotherapists, and marriage and family therapists;
- (12) Physiatrists, physiotherapists, orthotics, prosthetics, recreational therapists, audiologists, respiratory therapists, rehabilitation counselors, prosthetic technicians, and personal care assistants; and
- (13) Other comparable health care professionals.

* * *

~~Oil and gas operation means any structure, facility, or activity which is constructed on or disturbs land in association with oil or gas drilling, production, or waste treatment and disposal, including but not necessarily limited to wells, tanks or tank batteries, pits, access roads for ingress and egress, and pipelines.~~ See mineral extraction, oil and gas.

* * *

Other wireless communications facilities means:

(1) Wireless Communications facilities that are mounted on a base station; including but not limited to those wireless communications facilities attached to a roof or a wall; or

(2) Modification of an existing wireless communications tower or base station that involves:

(a) Collocation of new transmission equipment;

(b) Removal of transmission equipment; or

(c) Replacement of transmission equipment.

Outdoor commercial amusement means uses that provide commercial amusement outdoors, including but not limited to:

(1) Amusement parks or theme parks;

(2) Batting cages;

(3) Bumper boats;

(4) Go-Kart tracks;

(5) Golf driving ranges;

(6) Miniature golf establishments;

(7) Outdoor paintball courses; and

(8) Water slides and wave pools.

The phrase “outdoor commercial amusement” does not include the phrases “outdoor firing or gun range”, “golf course”, “outdoor stadium, arena, amphitheater, or drive-in theater” or “race track”, or the term “zoo”.

* * *

Outdoor firing or gun range means the use of land designed for the safe discharge of archery, rifles, shotguns, handguns, or any other firearm or similar device for the purpose of sport shooting or military/law enforcement training. The range may use silhouettes, skeet, trap, or other similar materials to facilitate target practice. Excluded from this use shall be general hunting and discharging of firearms on private property with the property owner’s permission as prohibited by Municipal Code Section 10-224. Excluded from this use type are amusements that do not involve potentially lethal projectiles (e.g., paintball) which are classified as “outdoor commercial amusement.”

Outdoor stadium, arena, amphitheater, or drive-in theater means:

(1) Outdoor stadium or arena, which is an outdoor area surrounded by tiered rows of seats or benches, designed for the viewing of live sporting events, rodeos, equestrian events, livestock exhibitions, concerts, or other organized entertainment.

(2) Amphitheater, which is an outdoor stage (covered or uncovered) designed for live performances and / or the display of films, that faces a lawn or hardscaped area used for temporary or permanent seating.

(3) Drive-in theater means an area of land that includes one or more large outdoor screens or other structure for the display of motion pictures and an area for parking automobiles from which the motion pictures are viewed.

* * *

Overhead power lines (110 kV or more) means high voltage (110 kilovolts or more) power lines that are used to transmit electricity over long distances.

* * *

Park means an area open to the general public and reserved for recreational, educational, or scenic purposes. Parks are classified as “active” or “passive”. See park, active and park, passive.

Park, active means an area of land that provides for active outdoor recreation opportunities for the public (open to the community) or residents of a subdivision or development, which are generally not commercial in nature. The phrase “park, active” includes areas for active recreational activities including, but not limited to:

(1) Skate parks;

(2) Sports fields and play courts (e.g., tennis courts, basketball courts, pickleball courts, and outdoor racquetball or squash courts);

(3) Outdoor swimming pools and splash parks.

Park, Passive means an area of land that provides passive outdoor recreation opportunities for the public (open to the community) or residents of a subdivision or development, which are generally not commercial in nature. The phrase “park, passive” includes areas for passive recreational activities including, but not limited to:

(1) Jogging, cycling, tot-lots, fitness trails, and playgrounds;

(2) Arboretums, wildlife sanctuaries, forests, and other natural areas which may be used for walking or hiking; or

(3) Other passive recreation-oriented parks, including picnic areas.

Parking garage ~~means an off-street parking area within a building.~~ See structured parking.

Parking lot ~~means an off-street parking area or vehicular use area.~~ See surface parking.

Passenger motor vehicle sales or rental means the sale or rental of passenger vehicles at the location where inventory is stored. The phrase “passenger motor vehicle sales or rental” includes outdoor storage of passenger vehicles for brokers. Not included in the definition are:

(1) Brokering of passenger vehicles which that are stored off-site and delivered directly to customers (a general office use);

(2) Indoor storage of passenger vehicles for brokers who are located off-site (a light industrial or heavy logistics use, depending upon the volume of sales); and

(3) Passenger motor vehicle rental locations that have not more than five rental vehicles stored on-site at any one time (a retail sales and services use).

Pawnbroker means a business that is regulated by C.R.S. § 29-11.9-101, et seq., that:

(1) Regularly contracts to advance money to customers on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, has the option to cancel the contract; or

(2) Purchases tangible personal property that has not previously been sold at retail in the course of its business of reselling tangible personal property.

* * *

~~Personal and business service shops means shops primarily engaged in providing services generally involving the care of the person or such person's apparel or rendering services to business establishments, such as laundry or dry-cleaning retail outlets, portrait/photographic studios, beauty or barber shops, employment service, or mailing and copy shops excluding publishing and engraving.~~

Personal services means a business that is engaged in the provision of informational, instructional, personal improvement, personal care, or similar services within an enclosed building, including but not limited to:

(1) Art, music, and computer programming instruction;

(2) Beauty and barber shops;

(3) Cooking instruction;

(4) Driving schools;

(5) Handicraft or hobby instruction;

(6) Laundry and dry-cleaning retail outlets;

(7) Portrait shops or photography studios;

(8) Shoe repair; or

(9) Tailor/alterations shops.

* * *

Photovoltaic arrays (2 MW or more) means a photovoltaic generation facility with a nameplate capacity of 2 MW or more that is a principal use of land. Photovoltaic arrays that have a nameplate capacity of less than 2 MW are classified as "Utilities, minor". Photovoltaic arrays that are installed on rooftops or over parking lots are not regulated as principal uses.

* * *

Place of assembly means a building, portion of a building, or property in which people assemble for civic, educational, religious, social, or cultural purposes. This use includes

facilities used for worship and accessory celebratory events; meeting halls; event centers; fraternal organizations; outdoor assembly areas; and private clubs.

* * *

Planning Director means the person designated by the Town Manager to administer the provisions of this Code.

* * *

~~Principal building entrance means a primary point of public pedestrian access into a building. The phrase “principal building entrance” does not include doors used principally as emergency exits, or doors that provide restricted access (e.g., for employees or deliveries).~~ See principal entrance.

Principal entrance means a door that provides a primary point of public pedestrian access into a building. The phrase “principal building entrance” does not include doors used principally as emergency exits, or with regards to premises that are open to the public, doors that provide restricted access (e.g., for employees or deliveries).

* * *

Prison or jail means a facility for the judicially required detention or incarceration of people, where inmates and detainees are under 24-hour supervision by professionals, except when on approved leave. The facility may also be established in conjunction with a law enforcement or public safety building, established for the temporary detention of adult or juvenile persons while being processed for arrest or detention by law enforcement.

* * *

~~Professional office means an office for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants, and others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise exists, except as accessory to the professional services.~~ See office, general.

* * *

Protective care means a licensed homeless youth shelter as defined in C.R.S. § 26-6-102(17), a day treatment center as defined in C.R.S. § 26-6-102(10), a secure residential treatment center as defined in C.R.S. § 26-6-102(35), an acute treatment unit as defined in 2 CCR § 502-1, substance use disorder treatment facilities that provide ASAM Level III residential services as such services are defined in 2 CCR § 502-1 (e.g., non-hospital residential detoxification units), residential child care facilities that are designated to provide mental health services (see § 7.701.2.G., 12 CCR § 2509-8), psychiatric residential treatment facilities, and comparable facilities.

* * *

Race track means a commercial facility consisting of a track, either paved or unpaved, which is used primarily for the sport of racing motor vehicles (cars, motorcycles, or all-terrain vehicles, but not go-karts). A racetrack may include seating, concession areas, restaurants, sky boxes, parking facilities, maintenance facilities, accessory offices, garages,

and accessory retail facilities. The phrase “race track” includes any facility used for driving automobiles under simulated racing or driving conditions (test tracks, “shakedown” tracks, or other similar facilities), regardless of whether they include seating, concession areas, or retail facilities for the general public.

* * *

Recording or TV Studio means a facility for the recording and production of audio or video material, such as the recording of music, voice, video, for live broadcast or post-production.

Recreational vehicle (“RV”) means a vehicle that is:

- (1) Built on a single chassis;
 - (2) 400 square feet or less when measured at the largest horizontal projections;
 - (3) Designed to be self-propelled or permanently towable by a light duty truck;
- and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

~~Recreational~~The phrase “recreational vehicle” also includes (RV) meansany vehicle ~~that~~which may be used for recreation or personal purposes, ~~including and shall include~~, but not be limited to, a boat, motor home, camper trailer, detached camper or detached trailer of any design, whether commercially manufactured or homemade, ~~but not including a manufactured home or mobile home.~~ ~~Recreational~~The phrase “recreational vehicle” includes any trailer used to transport any recreational vehicle(s). Additionally, the following shall be considered a~~For illustrative purposes, the phrase “recreational vehicle” includes:~~

(1a) Camping trailer or tent trailer, which means a folding structure, constructed of canvas, plastic, or similar water repellent material, designed to be mounted on wheels and designed for travel and recreation.

(2b) Motorized camper, motor home, recreational conversion van or bus, which means a recreational vehicle consisting of a portable, temporary dwelling to be used for travel, recreation, and vacation uses, and constructed as an integral part of a self-propelled vehicle.

(3e) Pick-up camper, which means a vehicle designed to be mounted on or loaded into a pick-up truck chassis for use as a temporary dwelling for travel and recreation.

~~(d) — Tent means a portable or temporary cover or shelter, with or without side panels, which is supported by poles and is made of canvas, plastic, or similar materials.~~

(4e) Travel trailer, which means a towed vehicle designed as a temporary dwelling for travel and recreation.

(5f) Travel trailer, self-contained, which means a trailer which can operate independently of connections to sewer, water, and electric systems. It contains a water-flushed toilet, lavatory, shower or bath, and kitchen sink, all of which are connected to water storage and sewage holding tanks located within the trailer.

Recreational vehicle park ~~means a parcel of land specifically developed for locating only recreational vehicles on lots on a short-term basis.~~ [See campground or RV park.](#)

Recreational vehicle storage ~~facility~~ means a parcel of land specifically developed for ~~locating, storing, displaying, or selling~~ [privately-owned recreational vehicles in exchange for compensation, whether such storage is outdoors, covered, or indoors.](#)

* * *

[Recycling collection center](#) means a location for the collection of recyclable materials (e.g., waste paper, motor oil, aluminum and other scrap metal, polystyrene foam, porcelain, batteries, electronic components, textiles, plastics, discarded clothing or shoes, cardboard, and other recyclable household materials), for processing (bailing, compacting, flattening, grinding, shredding, crushing, mechanical sorting, or cleaning) and storage prior transport to another location for reuse or recycling, where some or all processing and storage activities are located outside of a building. Such a facility, if entirely enclosed within a building or buildings, shall be considered “light industry.” The phrase “recycling collection center” does not include the phrase “salvage yard.”

Recycling facility ~~means a building used for the collection and/or processing of recyclable material. Processing shall mean the preparation of material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting, or cleaning. Such a facility, if entirely enclosed within a building or buildings, shall be considered a warehouse.~~ [See recycling collection center.](#)

* * *

Research laboratories ~~means a building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products except as incidental to the main purpose of the laboratory.~~ [See office, general or office, medical, as applicable.](#)

[Residential forms](#) means a category of residential land uses that includes single-family detached, duplex, townhome, multiplex, multifamily, and manufactured home.

[Residential mixed-use](#) means a building that contains a residential use and one or more [hospitality, recreation and entertainment uses, general commercial uses, community, civic, educational, and institutional uses, or workshop and custom small industry uses that are open to the public, provided that such uses are permissible in the underlying zoning district.](#) The phrase “residential mixed-use” includes the phrase “live-work unit,” but also includes buildings in which the dwelling units are separated from the non-residential uses. Multifamily uses are not classified as “residential mixed-use” if they include an on-site leasing office, or if they provide recreational, leisure, or business center amenities that are available only for the use of residents of the multifamily use and their guests. However, multifamily uses that provide support services for residents that are not typical within the multifamily housing market, such as schools, day care facilities, job training, or similar functions, are classified as “residential mixed-use.”

~~Resource extraction, processes, and sales means removal or recovery by any means whatsoever of sand, gravel, soil, rock, minerals, mineral substances, or organic substances other than vegetation, from water or land on or beneath the surface thereof, exposed or~~

~~submerged. The term shall also apply to any processing or reprocessing, packaging, or sale of renewable energy through passive or active means, including but not limited to solar, wind, and hydro-turbine power generation, processing or storage.~~

Resource extraction, minerals means the extraction of coal or other mineral resources (including sand and gravel, but not oil and gas) from the land (surface or subsurface). The phrase “resource extraction, minerals” does not include cut and fill operations within a property, construction or maintenance of canals or reservoirs, or the removal and transportation of fill from one property to another as part of an approved development plan, provided that both properties are controlled by the same landowner

Resource extraction, oil and gas means any structure, facility, or activity which is constructed on or disturbs land in association with oil or gas drilling, production, or waste treatment and disposal, including but not necessarily limited to wells, tanks or tank batteries, pits, access roads for ingress and egress, and pipelines.

Restaurant means an establishment in which the principal business is the sale of food and beverages that are prepared for customers and served in a ready-to-consume state. A restaurant may include indoor and / or outdoor dining areas, and drive-up, drive-in, or drive-through facilities. Restaurants may also provide live entertainment for customers seated at indoor dining tables. Fermented malt beverages, and/or malt, special malt, or vinous and spirituous liquors may be produced and sold on the premises as provided in applicable alcohol beverage licenses. The term “restaurant” does not include the phrase “bar, tavern, or nightclub” (although they can be co-located as zoning may allow), and does not include the phrase “adult-oriented use.”

~~Restaurant, drive-in or drive-through means any establishment in which the principal business is the sale of foods and beverages to the customer in a ready-to-consume state and in which the design or principal method of operation of all or any portion of the business is to allow food or beverages to be served directly to the customer in a motor vehicle without the need for the customer to exit the motor vehicle. See restaurant.~~

~~Restaurant, fast food means any establishment in which the principal business is the sale of food and beverages to the customer in a ready-to-consume state, and in which the design or principal method of operation includes the following characteristics:~~

- ~~(a) Food and beverages are usually served in paper, plastic or other disposable containers;~~
- ~~(b) The consumption of food and beverages is encouraged or permitted within the restaurant building, within a motor vehicle parked upon the premises or at other facilities on the premises outside the restaurant building, or for carry-out; and~~
- ~~(c) Drive-through facilities are allowed, subject to review of traffic patterns, vehicle stacking areas, and entrance and exit locations. See restaurant.~~

~~Restaurant, standard means any establishment in which the principal business is the sale of food and beverages to customers in a ready-to-consume state; where fermented malt beverages and/or malt, special malt or vinous and spirituous liquors may be produced on the premises as an accessory use; and where the design or principal method of operation includes one (1) or both of the following characteristics:~~

~~(a) Customers are served their food and/or beverages by a restaurant employee at the same table or counter at which the items are consumed; or~~

~~(b) Customers are served their food and/or beverages by means of a cafeteria-type operation where the food or beverages are consumed within the restaurant building.~~

~~Also see definitions and regulations for brewpubs, microbreweries, microdistilleries, microwineries, breweries, wineries, and distilleries. [See restaurant.](#)~~

* * *

~~Retail establishment, large means a retail establishment, or any combination of retail establishments in a single building, occupying more than twenty-five thousand (25,000) gross square feet of floor area, devoted to the sale or rental of goods, including stocking, to the general public for personal or household consumption or to services incidental to the sale or rental of such goods, except that no supermarket shall be deemed to be a large retail establishment.~~

~~Retail establishment, small means an establishment, or any combination of retail establishments in a single building, occupying twenty-five thousand (25,000) or less gross square feet of floor area devoted to the sale or rental of goods, including stocking, to the general public for personal or household consumption or to services incidental to the sale or rental of such goods.~~

Retail sales and services means a use involving the sale, lease, or rental of consumer, home, and business goods to consumers. Such uses include but are not limited to department stores, furniture stores, clothing stores, second-hand stores, thrift shops, consignment stores, and establishments providing the following products or services: antiques, appliances, art, art supplies, beauty supplies, bicycles, books, building supplies, magazines and newspapers, craft supplies, copies, costumes, dry goods, electronics, fabric, framing, games, garden supplies, gifts, groceries, hardware, head shops, home improvement goods, household products, jewelry, lumber, music, musical instruments, office supplies, party supplies, pets and pet supplies, pharmaceuticals, phones, photography equipment, produce, sporting goods, stationary, temporary signs, toys, and videos; and new automotive parts and accessories. The phrase also includes services such as charitable donation collection centers, coin laundries, installation of electronics (e.g., audio systems and navigation systems) into motor vehicles, passenger motor vehicle rentals provided that not more than five rental vehicles are stored on-site at any time, picture framing, real estate offices that are open for walk-in traffic; repairs of products sold by the establishment (e.g., a computer store may also repair computers), repairs of consumer electronics, tattoo parlors, and comparable services.

The phrase “retail sales and services” does not include uses that are classified or defined more specifically in this Code, including but not limited to restaurants (all types); sexually-oriented businesses; retail marijuana uses; pawnbrokers, convenience lending, and liquor store. retail sales and services uses are generally conducted indoors.

* * *

Salvage yard means any establishment that is maintained, used, or operated for storing, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor

vehicle parts. Salvage yards are also referred to by Colorado law as “automobile graveyards.” See C.R.S. § 43-1-502.

* * *

School, elementary or middle means a school that provides general full-time educational curriculum for two or more grades from Kindergarten through eight.

School, high means a school that provides general full-time educational curriculum for grades nine through 12.

School, vocational or trade means an educational facility that primarily teaches skills that directly prepare students for jobs in a trade or profession, resulting in a certificate, diploma, or degree awarded upon the student’s completion of the curriculum. Examples include, but are not limited to, art schools, business colleges, trade schools, massage schools, and beauty schools.

* * *

Self-storage means a facility that provides individual storage compartments within a building for household or commercial goods. Storage spaces may be accessed from interior hallways or individual outside doors or overhead doors. A self-storage use may include a single dwelling unit for one or more persons employed by and residing at the self-storage facility for the purpose of on-site management and security.

* * *

~~Shooting range means an area or structure specially designed for the safe discharge of archery, rifles, shotguns, handguns, or any other firearm or similar device for the purpose of sport shooting or military/law enforcement training. The range may use silhouettes, skeet, trap, or other similar materials to facilitate target practice. Excluded from this use shall be general hunting and discharging of firearms on private property with the property owner’s permission as prohibited by Municipal Code Section 10-224. See indoor firing or gun range or outdoor firing or gun range, as applicable.~~

~~Shooting range, indoor means an indoor area designed for the safe discharge of archery, rifles, shotguns, handguns, or any other firearm or similar device for the purpose of sport shooting or military/law enforcement training. The range may use silhouettes, skeet, trap, or other similar materials to facilitate target practice. Excluded from this use shall be general hunting and discharging of firearms on private property with the property owner’s permission as prohibited by Municipal Code Section 10-224. See indoor firing or gun range.~~

~~Shooting range, outdoor means the use of land designed for the safe discharge of archery, rifles, shotguns, handguns, or any other firearm or similar device for the purpose of sport shooting or military/law enforcement training. The range may use silhouettes, skeet, trap, or other similar materials to facilitate target practice. Excluded from this use shall be general hunting and discharging of firearms on private property with the property owner’s permission as prohibited by Municipal Code Section 10-224. See outdoor firing or gun range.~~

* * *

Single-family detached means a building that serves as a single dwelling unit, which is typically located on a privately-owned lot with private yards on each side of the building. Single-family detached buildings may also be located on property that is subject to a condominium declaration, such that the building is surrounded by limited common elements for use by residents of the single-family detached residence, which serves essentially the same purpose as a private yard.

Small cell wireless facility means a wireless communications facility where each antenna is located inside an enclosure of no more than three ~~(3)~~ cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three ~~(3)~~ cubic feet; and primary equipment enclosures are not larger than ~~seventeen (17)~~ cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, backup power systems, grounding equipment, power transfer switch, and cut-off switch.

* * *

Special residential uses means a category of land uses that includes assisted living or congregate care, group home, residential mixed-use, nursing home, memory care, Alzheimer's care, and protective care.

~~Special school means places of education for all types of activities including martial arts, dance, instruction to play a musical instrument, or other similar personal skill instruction.~~

* * *

Specified anatomical areas means:

(1) Less than completely and opaquely covered: human genitals, pubic region, buttocks and female breast below a point above the top of the areola; or

(2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

Specified sexual activities means acts, simulated acts, exhibitions, representations, depictions or descriptions of:

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast;

(3) Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal;

(4) Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals, or excretory function; or

(5) Flagellation, mutilation, or torture for purposes of sexual arousal, gratification or abuse.

* * *

Stage means a raised floor or platform at least 3 feet above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least 36 square feet in area.

* * *

Storage yard means a location for outdoor storage of operable equipment and materials for off-site processing, construction projects, or right-of-way maintenance; and / or operable recreational vehicles, boats, trucks, commercial vehicles, or passenger vehicles. A storage yard may include an accessory office and a dwelling unit for one or more persons employed by and residing at the storage yard for the purpose of on-site management and security. The phrase “storage yard” does not include the phrase “salvage yard” and does not include outdoor storage that is accessory to another principal use.

* * *

Structured parking means a structure that is composed of one or more above-ground or below-ground levels that are used for the parking of passenger motor vehicles. Structured parking may be totally below grade (underground structured parking); or partially or totally above grade (above-ground structured parking); and may be separate from or integrated into a building that is used for other purposes. Structured parking includes parking lifts. Structured parking is the principal use of land if it is not related to a specific land use on the same parcel. Structured parking uses may include electric vehicle charging stations as an accessory use.

* * *

~~Supermarket means a retail establishment primarily selling food, as well as other convenience and household goods, which occupies a space of not less than twenty-five thousand one (25,001) square feet.~~ See retail sales and services.

Surface parking means an area of land that is designated for the parking of passenger motor vehicles in parking spaces, the related parking aisles, the landscaped areas that are surrounded by parking spaces and parking aisles, and the landscaped areas at the corners of the paved areas insofar as their inclusion in the surface parking area gives it a regular shape. Surface parking uses may include electric vehicle charging stations as an accessory use. The phrase “surface parking” does not include driveways on individual residential lots, nor does it include individual garages or carports. Surface parking is a principal use of property if it is not related to a specific land use on the same parcel.

* * *

~~Tavern means an establishment providing or dispensing fermented malt beverages and/or malt, special malt, vinous, or spirituous liquors and in which the sale of food products such as sandwiches or light snacks is secondary.~~ See bar, tavern, or nightclub.

* * *

Townhome means a building that is comprised of three or more dwelling units, in which the dwelling units are separated by a shared wall with no penetrations, and each unit has a separate principal entrance.

* * *

Truck stop means an establishment engaged primarily in the fueling or charging of tractor trucks or similar commercial vehicles, and may also include facilities for parking, servicing, or repair, ~~or parking~~ of tractor trucks or similar ~~heavy~~-commercial vehicles (but not body repairs (collision centers), paint, upholstery, engine replacement or reconditioning, air conditioning replacement, tire recapping, or custom body work), ~~including~~ and the sale of accessories and equipment for such vehicles. A truck stop may ~~also~~ include overnight accommodations, showers, or restaurant facilities primarily for the use of truck crews. The phrase “truck stop” does not include the phrase “fueling, fast-charging, or service station.”

* * *

University or college means an educational institution that is authorized by the State of Colorado or other nationally recognized accrediting entity to award associates’ or higher degrees.

Utilities, major means generating plants (except nuclear and photovoltaic), electrical switching stations, electrical transmission substations, water or wastewater treatment plants, or and other comparable infrastructure. The phrase “major utilities” does not include utility or communications uses that are more specifically defined as utility, minor or essential utilities.

Utilities, minor means water booster stations, wastewater lift stations, electrical distribution substations, gas regulator substations, battery energy storage systems with a capacity less than 150 MWh, and other comparable infrastructure used in the provision or distribution of utility service.

Utility uses means a category of land uses that includes battery energy storage system, data center, overhead power lines (110 kV or more), photovoltaic arrays (2 MW or more), utilities, minor, and utilities, major.

* * *

Veterinary facilities, small animal clinic means any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases wherein the animals are limited to dogs, cats, or other comparable household pets and wherein the overnight care of said animals is ~~prohibited except when~~ limited to cases in which overnight care is necessary in the medical treatment of the animal.

Veterinary facilities, large animal clinic means any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases wherein the animals are not limited to dogs, cats, or other comparable household pets (any may include by way of illustration and not limitation horses, cows, bison, elk, deer, llamas, alpacas, sheep, goats, chickens, turkeys, ducks, and pigs), and wherein the overnight care of said animals is ~~prohibited except when~~ limited to cases in which overnight care is necessary

in the medical treatment of the animal. A veterinary facilities, large animal clinic use may include a wildlife rehabilitation use.

~~Veterinary hospital means any facility which is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases.~~

Veterinary and Domestic Animal Uses means a category of land uses that includes commercial equestrian facilities, kennel, indoor, kennel, outdoor, veterinary facilities, large animal clinic, veterinary facilities, small animal clinic, and wildlife rehabilitation.

* * *

~~Warehouse and distribution means a use engaged in storage, wholesale, and distribution of manufactured products, supplies, or equipment, including accessory offices or showrooms, including incidental retail sales, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.~~

~~Warehousing means a business which stores or stocks merchandise or commodities.~~

Waste transfer station means the use of land or a facility, regardless of name or title, to unload solid waste from vehicles, and, with or without intermediate processing (bailing, compacting, flattening, grinding, shredding, crushing, mechanical sorting, or cleaning) subsequently re-load the waste onto other vehicles for delivery to another waste transfer station, storage site, or disposal site. in addition to transferring solid waste, a waste transfer station may also include a recycling collection center and / or light industrial uses related to recycling.

Wildlife rehabilitation means a premises used for wildlife rehabilitation by the holder of a Wildlife Rehabilitator License or Provisional Wildlife Rehabilitator license issued by the State of Colorado pursuant to 2 CCR § 406-14.

* * *

~~Winery shall mean an industrial use with appropriate state liquor licensing that is primarily a manufacturing facility that produces more than one hundred thousand (100,000) gallons per year of vinous beverages on site. Wineries may, but are not required to, include a tasting room in which guests/customers may sample and/or purchase the product as with bar, tavern and restaurant uses with appropriate liquor licensing. See light industry.~~

* * *

Wireless telecommunications uses means a category of land uses that includes freestanding communications tower, alternative tower structure, small cell wireless facility, and other wireless communications facilities.

* * *

Workshop and custom small industry means a ~~facility~~light industrial use wherein goods are produced or repaired by hand, using hand tools or small-scale equipment, including small

engine repair, furniture making and restoring, upholstering, restoration of antiques and other art objects, or other similar uses.

* * *

Zoo means a place where live animals are confined and exhibited to the public. The animals may also be studied, given medical treatment, and bred. The term “zoo” does not include the phrases “park, passive” or “commercial agriculture”, retail sales and service uses that sell live animals, or any of the uses listed under the heading veterinary and domestic animal uses.

Section 2. Sec. 3.4, Matrix of Permitted, Conditional, and Special Uses by Zoning District – Use-Specific Standards, Town of Frederick Land Use Code, is repealed and replaced in its entirety with the following:

Sec. 3.4. Permitted, Conditional, Special, and Limited Uses by Zoning District; Use-Specific Standards; Residential Protection Standards; Accessory Use and Structure Standards (including ADUs and Home Occupations)

1. *Interpretation of Use Tables; Multiple Uses of a Lot.*
 - a. *Generally.* The tables set out in this Section (“Use Tables”) describe which land uses are allowed (“A”), allowed if certain conditions are met (and in some cases, after posted no-tice and comment) (“S”), allowed after notice and comment if certain conditions are met (“L”), allowed after public hearing if certain conditions are met (“C”), and not allowed (“-”) in each zoning district.
 - b. *Legend.* The following symbols are used in the matrices in this Division:
 - i. “P” means “allowed.” Allowed uses are subject to administrative review for compliance with the general requirements of this Code, which include the standards set out in subsections 12 through 23, inclusive of this section, as may be applicable.
 - ii. “L” means “limited use.” Limited uses are subject to administrative review for compliance with use-specific standards, and for compliance with the general requirements of this Code, which include the standards set out in subsections 2 through 11 of this section, inclusive, as may be applicable.
 - iii. “S” means “special use.” Special uses are subject to administrative review for compliance with use-specific standards, and for compliance with general standards for all limited uses, and the general requirements of this Code, which include the standards set out in subsections 2 through 11 of this section, inclusive, as may be applicable. Special uses do not require a public hearing, but have additional notice and public comment requirements compared to limited uses. Special uses are not “as-of-right” uses.

- iv. “C” means “conditional use.” Conditional uses are subject to public hearing review for compliance with use-specific standards, general standards for all conditional uses, and the general requirements of this Code, which include the standards set out in subsections 2 through 11 of this section, inclusive, as may be applicable. Conditional uses are not “as-of-right” uses.
- v. “-” means that the use is not allowed in the specified district.

c. *Use-Specific Standards.*

- i. “Use-specific standards” are those standards that apply to individual limited or conditional uses (not to permitted uses), as set out in subsections 2.b. and c., 3.b., 4.b., 5.b., 6.b., 7.b., 8.b., 9.b., 10.b., and 11.b.. For the purposes of applying use-specific standards, the phrase “all zoning districts” means all zoning districts where the use is designated as a limited use or a conditional use.
 - ii. Use-specific use standards in this Section are applied in addition to the general criteria that are applicable to all uses and to the general development and subdivision standards stated in Articles 2, 4, and 15 (as applicable) respectively. In the case of any conflict between a use-specific standard and a general development standard, the use-specific standard applies unless otherwise expressly provided.
- d. *Multiple Uses.* Proposed uses that combine more than one listed use, except those that qualify as “mixed-use,” shall meet the requirements for each listed use that applies.
- e. *Uses That Are Not Allowed.* The following uses are not allowed in any zoning district in the Town of Frederick:
- i. Hazardous waste disposal
 - ii. Marijuana uses
- f. *Other Standards.* Subsections 12 through 24 of this section set out standards for certain characteristics of land uses or for certain contexts within the Town, which are not necessarily specific to listed uses or zoning districts. These standards, where applicable, are applied in addition to all other applicable standards in this Code.

2. *Residential Uses.*

- a. *Residential Land Use Table.* The residential forms and special residential land uses that are allowed in each zoning district are set out in Table 3-1, Residential Land Uses.

Table 3-1 Residential Land Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Residential Uses (Forms)																
Single-Family Detached	P	P	P	P	-	-	P	P ²	P ²	-	-	-	C	-	-	-
Duplex	-	-	-	P	P	-	-	P ²	P ²	C	-	-	C	-	-	-
Townhome	-	-	-	P	P	-	-	P ²	P ²	C	-	C	C	-	-	-
Multiplex	--	-	-	P	P	-	-	P ²	P ²	C	-	C	C	-	-	-
Multifamily	-	-	-	C	L	-	-	P ²	P ²	C	-	C	C	-	-	-
Manufactured Home	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-	-
Special Residential Uses																
Assisted Living or Congregate Care	-	-	L	L	L	-	-	-	C ²	L	-	C	P	L	-	-
Boarding and Rooming House	-	-	-	-	C	-	-	-	-	L	-	C	L	-	-	-
Group Home	L	L	L	L	L	-	L	L ²	L ²	L	-	C	C	-	-	-
Residential mixed-use ¹	-	-	-	-	-	-	-	L ²	L ²	C	L	L	P	P	-	-
Nursing Home, Memory Care, Alzheimer's Care	-	-	C	C	L	-	-	-	C ²	L	-	C	P	L	-	-
Protective Care	-	-	-	-	C	-	-	-	-	-	-	-	C	C	-	-
TABLE NOTE: ¹ Residential mixed-use includes "mixed use" projects that contain "mixed-use dwelling units". ² All uses in the D-A and D-B zoning districts are subject to chapter 15 of this Code.																

b. Use-Specific Standards for Residential Uses and Special Residential Uses.

- i. *Single-family detached.* Single-family detached may be approved within the C-E zoning district if it is demonstrated that the requirements of section 3.4.2.c., below, are met.
- ii. *Duplex.*
 1. C-N: Duplex may be approved within the C-N zoning district if it is part of a horizontally mixed-use development and situated such that it provides a transition between the nonresidential component of the development and existing or approved adjacent duplex or single-family detached residential development.
 2. C-E: In the C-E zoning district, duplexes may be approved within the C-E zoning district if it is demonstrated that the requirements of section 3.4.2.c., below, are met.
- iii. *Townhome.*
 1. All zoning districts: Townhome buildings shall not contain more than 8 dwelling units.
 2. C-N and C-H52: Townhomes may be approved within the C-N or C-H52 zoning district if they are part of a horizontally

mixed-use development and situated such that they provide a transition between the nonresidential component of the development and existing or approved adjacent townhome, duplex, or single-family detached residential development.

3. C-E: Townhomes may be approved within the C-E zoning district if it is demonstrated that the requirements of section 3.4.2.c., below, are met.

iv. *Multiplex.*

1. C-N and C-H52: Multiplex may be approved within the C-N or C-H52 zoning district if it is part of a horizontally mixed-use development and situated such that it provides a transition between the nonresidential component of the development and existing or approved adjacent duplex or single-family detached residential development.
2. C-E: Multiplex may be approved within the C-E zoning district if it is demonstrated that the requirements of section 3.4.2.c., below, are met.

v. *Multifamily.*

1. C-E: Multifamily may be approved within the C-E zoning district if it is demonstrated that the requirements of section 3.4.2.c., below, are met.
2. All zoning districts except C-E: Multifamily may be approved if it is part of a horizontally mixed-use development and situated such that it provides a transition between the nonresidential component of the development and existing or approved adjacent residential development.

vi. *Assisted Living or Congregate Care.*

1. R-1: Assisted living or congregate care facilities may be approved within the R-1 zoning district if:
 - a. The subject property is at least 2.5 acres in area;
 - b. The floor area ratio does not exceed 0.2; and
 - c. The subject property takes access from a collector or arterial street.
2. R-2: Assisted living or congregate care facilities may be approved within the R-2 zoning district if:
 - a. The subject property is at least 2 acres in area;
 - b. The floor area ratio does not exceed 0.25; and
 - c. The subject property takes access from a collector or arterial street.

3. R-3: Assisted living or congregate care facilities may be approved within the R-3 zoning district if:
 - a. The subject property is at least 1.5 acres in area;
 - b. The floor area ratio does not exceed 0.3; and
 - c. The subject property takes access from a collector or arterial street.
4. D-B: Assisted living or congregate care facilities may be approved within the D-B zoning district if they are spaced from other assisted living or congregate care facilities, and from nursing home, memory care, Alzheimer's care facilities, such that no two such facilities are located on the same block.
5. C-N and C-H52: Assisted living or congregate care facilities may be approved within the C-N and C-H52 zoning districts if the principal access to the subject property is a collector or arterial street.
6. BLI: Assisted living or congregate care facilities may be approved within the BLI zoning district if they are part of or adjacent to a hospital campus.

vii. *Boarding and Rooming House.*

1. R-3: Boarding and rooming house may be approved within the R-3 zoning district if the capacity of the facility is limited to not more than four boarders or roomers, and the building is designed as (or to resemble) a single-family detached dwelling.
2. C-N, C-H52, and C-E: Boarding and rooming house may be approved within the C-N, C-H52, and C-E zoning districts if it is demonstrated that:
 - a. Public ingress and egress to the building is provided using a single, common principal entrance.
 - b. Access to sleeping rooms is from the interior of the building.
 - c. Not less than one full bathroom that is accessible from a common area is provided for every five occupants or fraction thereof.
 - d. Sleeping rooms do not include cooking facilities.

viii. *Group Home.*

1. All zoning districts: In addition to the standards of the underlying zoning district, the following standards apply to the specified types of group homes:

- a. Group homes for the aged shall be spaced from each other (measured between the nearest lot lines) by the lesser of:
 - i. 750 ft.; or
 - ii. Such minimum spacing as is required so that no two group homes occupy the same block or take access from the same street segment.
 - b. Group homes for persons with behavioral or mental health disorders shall be spaced from each other (measured between the nearest lot lines) by the lesser of:
 - i. 750 ft.; or
 - ii. Such minimum spacing as is required so that no two group homes occupy the same block or take access from the same street segment.
 - 2. R-MH2, D-A, D-B, C-N, and C-H52: Group homes may be approved within the R-MH2, D-A, D-B, C-N, and C-H52 zoning districts if they are located within:
 - a. An existing residential building that meets applicable state licensing requirements; or
 - b. A new building that conforms to the requirements of the underlying zoning district.
 - 3. C-E: Group homes may be approved within the C-E zoning district if it is demonstrated that the requirements of section 3.4.2.c., below, are met.
- ix. *Residential mixed-use.*
 - 1. D-A and D-B. Residential mixed-use may be approved within the D-A and D-B zoning districts if the use is configured as one or more live-work units that comply with the standards set out in Section 15.11.2.
 - 2. C-H52. Residential mixed-use may be approved within the C-H52 zoning districts if:
 - a. The use is configured as one or more live-work units; or
 - b. The ground floor is occupied exclusively by non-residential uses that are open to the public, with the exception of a lobby providing access to upper floors.
 - 3. C-N and C-C. Residential mixed-use may be approved within the C-N and C-C zoning districts if:
 - a. The use is configured as one or more live-work units; or

- b. The subject property is at least 1.75 acres in area.
- x. *Nursing home, memory care, Alzheimer's care.*
 - 1. R-1: Nursing home, memory care, Alzheimer's care facilities may be approved within the R-1 zoning district if:
 - a. The subject property is at least 2.5 acres in area;
 - b. The floor area ratio does not exceed 0.2; and
 - c. The subject property takes access from a collector or arterial street.
 - 2. R-2: Nursing home, memory care, Alzheimer's care facilities may be approved within the R-2 zoning district if:
 - a. The subject property is at least 2 acres in area;
 - b. The floor area ratio does not exceed 0.25; and
 - c. The subject property takes access from a collector or arterial street.
 - 3. R-3: Nursing home, memory care, Alzheimer's care facilities may be approved within the R-3 zoning district if:
 - a. The subject property is at least 1.5 acres in area;
 - b. The floor area ratio does not exceed 0.3; and
 - c. The subject property takes access from a collector or arterial street.
 - 4. D-B: Nursing home, memory care, Alzheimer's care facilities may be approved within the D-B zoning district if they are spaced from other nursing home, memory care, Alzheimer's care facilities, and from assisted living or congregate care facilities, such that no two such facilities are located on the same block.
 - 5. C-N and C-H52: Nursing home, memory care, Alzheimer's care facilities may be approved within the C-N and C-H52 zoning districts if the principal access to the subject property is a collector or arterial street.
 - 6. BLI: Nursing home, memory care, Alzheimer's care facilities may be approved within the BLI zoning district if they are part of or adjacent to a hospital campus.
- xi. *Protective Care.*
 - 1. R-3: Protective care may be approved within the R-3 zoning district if:

- a. The subject property takes access from a collector or arterial street;
 - b. The rear yard and the side yards behind the front building line are enclosed with a solid wall that is at least 6 ft. in height.
 - 2. C-E: Protective care may be approved within the C-E zoning district if:
 - a. The subject property does not take access from a street segment that also provides access to single-family detached, duplex, townhome, or multiplex residential uses; and
 - b. The rear yard and the side yards behind the front building line are enclosed with a solid wall that is at least 6 ft. in height.
 - 3. BLI: Protective care may be approved within the BLI zoning district if the rear yard and the side yards behind the front building line are enclosed with a solid wall that is at least 6 ft. in height.
- c. *Standards for all residential uses (forms) and group homes in the C-E zoning district.* Residential uses may only be proposed as a secondary use in the C-E zoning district and shall be limited to 25 percent of the total gross area of the overall plan. Such uses shall be subject to site plan review, which shall demonstrate compliance with the standards of this subsection c.:
 - i. *Mix of housing types.* A mix of permissible housing types shall be included in any development plan proposing residential uses, as follows:
 - 1. A minimum of two residential uses shall be required on any residential portion of a development plan greater than 10 acres but less than 30 acres in area, including all parcels that are part of a phased development.
 - 2. A minimum of three residential uses shall be required on any residential portion of a development plan greater than 30 acres in size, including all parcels that are part of a phased development.
 - ii. *Limitations on single-family detached uses.*
 - 1. Lot area for single-family detached uses shall not exceed 6,250 square feet.
 - 2. A maximum of 50 percent of a residential portion of the project may be occupied by single-family detached lots and adjacent streets and alleys.

- iii. *Variability and arrangement of lots.* Lot sizes and dimensions shall be varied to provide for a variety of housing types and configurations, and to avoid monotonous streetscapes. The lot size and layout pattern shall be designed to allow residences to face toward a street.
- iv. *Access to a park, central feature, or gathering place.* At least 90 percent of the dwellings shall be located within 1,320 ft. (walking distance, without crossing an arterial street) of a neighborhood park, a privately owned park, or a central feature or gathering place that is located either within the project or within an adjacent development. Such parks, central features, or gathering places shall contain one or more of the following uses:
 - 1. Public parks (active or passive) or other open lands; or
 - 2. Privately-owned parks (active or passive) meeting the following criteria:
 - a. Land Area.
 - i. In development projects greater than two acres in gross area, private parks must be a minimum of 10,000 sf. in area.
 - ii. In development projects with a gross area of two acres or less, such private parks must be a minimum of six percent of the gross site area.
 - b. Location. Parks must be highly visible, secure settings formed by the street layout and pattern of lots and easily observed from streets. Rear facades and rear yards of dwellings shall not abut more than two sides or more than 50 percent of the perimeter of the park.
 - c. Accessibility. All parts of each park shall be safely and easily accessible by pedestrians, and open to the public.
 - d. Facilities. Parks shall consist of multiple-use turf areas, walking paths, plazas, pavilions, picnic tables, benches, or other features for various age groups to utilize.
 - e. Maintenance. Parks shall be maintained by the developer or property owners' association.
 - f. Storm drainage. If the park integrates storm drainage and detention functions, the design of such facilities shall not result in slopes or gradients that conflict with other recreational and civic purposes of the park.
 - 3. Community facilities or neighborhood support/recreation facilities (which are permitted as an accessory use to housing). If such facility is smaller than the required minimum size for

privately owned parks as required in subparagraph 2 above, then the facility shall be physically integrated with such park space as needed to meet the required minimum size.

3. *Hospitality, Recreation, and Entertainment Uses.*

- a. *Hospitality, Recreation, and Entertainment Use Table.* The hospitality, recreation, and entertainment land uses that are allowed in each zoning district are set out in Table 3-2, Hospitality, Recreation, and Entertainment Uses.

Table 3-2 Hospitality, Recreation, and Entertainment Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Adult-Oriented Use	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Bar, Tavern, or Nightclub	-	-	-	-	-	-	-	L	L	C	L	L	L	C	-	-
Bed and Breakfast	P	L	L	-	-	-	-	L	L	-	-	-	-	-	-	-
Brew Pub, Distillery Pub, or Limited Winery	-	-	-	-	-	-	-	L	L	L	L	P	L	P	P	-
Campground or RV Park	L	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial Lodging	-	-	-	-	-	-	-	P	P	C	P	P	P	C	-	--
Golf Course	C	C	C	C	C	-	C	-	-	-	-	-	C	C	-	P
Indoor Amusement, Recreation, and Entertainment	-	-	-	-	-	-	-	P	P	P	P	P	P	C	C	-
Indoor Firing or Gun Range	L	-	-	-	-	-	-	-	-	-	-	L	L	L	L	-
Outdoor Commercial Amusement	-	-	-	-	-	-	-	-	-	C	C	C	C	C	-	-
Outdoor Firing or Gun Range	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C
Outdoor Stadium, Arena, Amphitheater, or Drive-In Theater	-	-	-	-	-	-	-	C	C	-	-	C	C	C	-	P ¹
Park, Active	P	P	P	P	P	P	P	-	-	P	P	P	P	P	P	P
Park, Passive	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Race Track	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Restaurant	-	-	-	-	-	-	-	P ¹	P ¹	P ¹	P ²	P ²	P ¹	L	C	-
Zoo	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C
TABLE NOTES:																
¹ Drive-in and drive-through facilities are not allowed. Restaurants that include outdoor dining areas are subject to the residential protection standards of section 3.4.12.																
² If the use includes drive-in, drive-through, or outdoor dining facilities, it is processed as a limited use ("L"). See section 3.4.3.b. for applicable standards.																

- b. *Use-Specific Standards for Certain Hospitality, Recreation, and Entertainment Uses.*

- i. *Adult-oriented use.* Adult-oriented uses may be approved in the I zoning district if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.
- ii. *Bar, Tavern, or Nightclub.*
 - 1. All zoning districts: Bar, tavern, and nightclub uses may be approved if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.
 - 2. BLI: Bar, tavern, and nightclub uses may be approved if it is demonstrated that not more than 35 percent of the contiguous land area within the BLI zoning district in which the use is proposed is used or approved for bar, tavern, or nightclub, commercial lodging, restaurants, retail sales and services, indoor amusement, recreation, and entertainment, or day care facilities, adult or child.
- iii. *Bed and Breakfast.*
 - 1. R-E and R-1: Bed and breakfast uses may be approved in the R-E and R-1 zoning districts if it is demonstrated that:
 - a. The use is an adaptive re-use of an existing single-family detached dwelling unit, located on a lot that conforms to the underlying zoning district requirements; and
 - b. All parking that is required for the use is provided on-site.
 - 2. D-A and D-B: Bed and breakfast uses may be approved in the D-A and D-B zoning districts if it is demonstrated that:
 - a. The use is an adaptive re-use of an existing single-family detached dwelling unit; and
 - b. All parking that is required for the use is provided on-site or on private property within 150 feet of the bed and breakfast (remote parking), measured lot line to lot line. If remote parking is used, its availability shall be secured by agreement in a form approved by the Town attorney or by common ownership of the owner of the property upon which the bed and breakfast use is located.
- iv. *Brew Pub, Distillery Pub, or Limited Winery.* Brew pub, distillery pub, or limited winery uses may be approved in the D-A, D-B, C-N, C-C, C-H52, C-E, BLI, and I zoning districts if it is demonstrated that:
 - 1. The applicable residential protection standards of section 3.4.12 are met; and

2. Spent or used grain (and comparable nontoxic byproducts of the brewing process) may be stored outdoors for not more than 24 hours, provided that the temporary storage area of spent or used grain is:
 - a. Designated on the approved site plan;
 - b. Located in the interior side or rear yard or within the building envelope; and
 - c. Fully enclosed within a suitable container, secured, and screened behind a solid, opaque fence or wall measuring that is at least five feet in height.
- v. *Campground or RV Park*. Campground or RV park uses may be approved in the A zoning district if it is demonstrated that:
 1. The minimum area of the subject property is 10 acres;
 2. If the use includes a campground, it is developed to the “modern” standard as defined in 6 CCR 1010-9 § 2.10e.
 3. The density, dimensions, and location of each campsite shall be as set out in Table 3-3, Campsite Standards.

Table 3-3 Campsite Standards	
Density of campsites (per acre of the subject property)	6 sites/acre
Minimum RV campsite dimensions	35 ft. x 50 ft.
Minimum tent campsite dimensions	35 ft. x 35 ft.
Minimum and maximum number of campsites (tent or RV) in a cluster	Min.: 4 / Max.: 12
Minimum spacing between clustered campsites	40 ft.

4. The route between the nearest arterial street and the campground does not include a local residential street.
5. Campsites are configured as follows:
 - a. Access to camping spaces shall be from paved internal, private streets.
 - b. Parking spaces must be paved or gravel.
 - c. An internal pedestrian circulation system shall be provided that connects clusters of campsites to each other and to amenities and sanitary facilities.
 - d. Areas between campsite clusters shall be used to provide amenities or landscaping.
6. The campground or RV park is enclosed by a six-foot tall privacy fence.
7. If the use adjoins an arterial street or is located within 250 feet of the boundary of an R-E, R-1, R-2, or R-3 zoning district, a 25-

foot wide landscape buffer shall be provided along property lines that abut the street and that are closest to the zoning district boundary. The landscape buffer shall be planted with one tree and five shrubs (outside of the required privacy fence) for every 35 feet of property line for which a buffer is required.

vi. *Commercial Lodging.*

1. C-N: Commercial lodging may be approved in the C-N zoning district if it is demonstrated that:
 - a. The use does not include conference facilities or ballrooms; and
 - b. If the use adjoins the boundary of an R-E, R-1, R-2, or R-3 zoning district, a five-foot tall privacy fence shall be provided along the district boundary line, and an eight-foot wide landscape strip shall be provided along the inside of the fence, planted with one tree for every 35 feet of property line for which a buffer is required.
2. BLI: Commercial lodging may be approved in the BLI zoning district if it is demonstrated that (at the time of application and inclusive of the proposed use) not more than 35 percent of the contiguous land area within the BLI zoning district in which the use is proposed is used or approved for bar, tavern, or nightclub, commercial lodging, restaurants, retail sales and services, indoor amusement, recreation, and entertainment, or day care facilities, adult or child.

vii. *Golf Course.* Golf course uses may be approved in the R-E, R-1, R-2, R-3, R-MH2, C-E, and BLI zoning districts if it is demonstrated that:

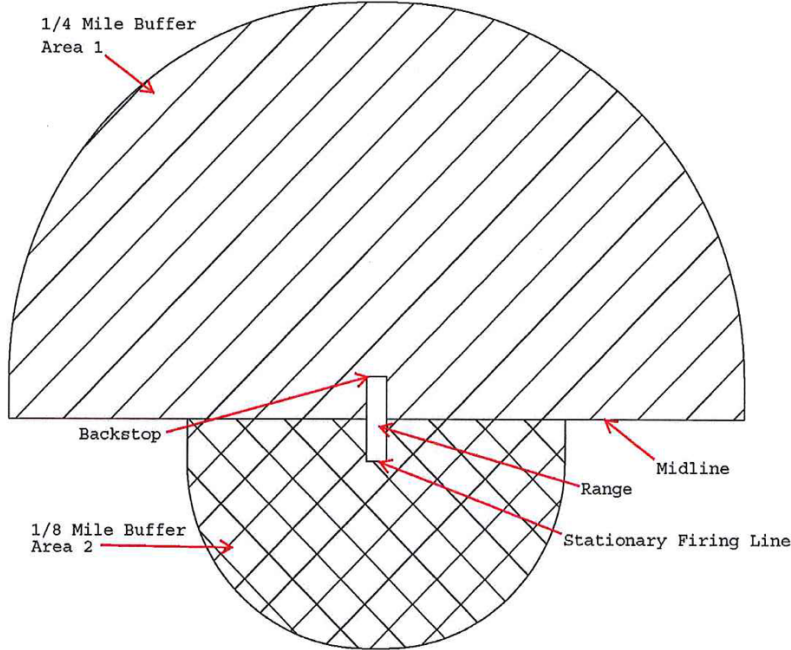
1. Appropriate controls will prevent golf balls from leaving the subject property, including but not limited to spacing the centerline of each hole not less than 150 feet from property lines;
2. All principal and accessory buildings are set back not less than 50 feet from property lines; and
3. The golf course provides an organizing feature and open space amenity to a residential, light industrial, or office park development.

viii. *Indoor Amusement, Recreation, and Entertainment.* Indoor amusement, recreation, and entertainment uses may be approved in the BLI or I zoning district if it is demonstrated that (at the time of application and inclusive of the proposed use) not more than 35 percent of the contiguous land area within the zoning district in which the use is proposed is used or approved for commercial lodging, restaurants,

retail sales and services, indoor amusement, recreation, and entertainment, or day care facilities, adult or child.

- ix. *Indoor Firing or Gun Range.* Indoor firing or gun range may be approved in the A, C-H52, C-E, BLI, and I zoning districts if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.
- x. *Outdoor Commercial Amusement.* Outdoor commercial amusement uses may be approved in the C-N, C-C, C-H52, C-E, and BLI zoning districts if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.
- xi. *Outdoor Firing or Gun Range.* All outdoor firing ranges will be reviewed concurrently by the Town of Frederick Police Department. Outdoor firing or gun range may be approved in the A and P zoning districts if it is demonstrated that all of the following standards are met:
 - 1. The residential protection standards of section 3.4.12.
 - 2. Hours of operation shall be limited to the hours between sunrise and sunset, except that the hours may be extended until 10:00 p.m. one night per week with the approval of the Director for purposes of subdued lighting certification of law enforcement officers or civilians as part of a formal course of instruction.
 - 3. All shooting stations shall be located a minimum of 200 feet from any property line.
 - 4. When an outdoor range is proposed, all existing, habitable dwellings in the area shall be mapped as shown in Figure 3-1. No existing habitable dwelling is permitted within Area 1 or Area 2 as shown on Figure 3-1.
 - a. Area 1 represents a 1,320-foot buffer measured from the exterior berm and backstop.
 - b. Area 2 represents a 660-foot buffer from the exterior berm and stationary firing line.
 - c. The midline is the dividing line between Area 1 and Area 2 and is half the distance between the backstop and the stationary firing line.

Figure 3-1
Shooting Range Diagram – Areas 1 and 2 and Midline



5. Stationary firing lines shall be covered by a baffle system beginning at least three feet behind the firing line, unless used for skeet or trap shooting.
6. A baffle system covering all firing lines shall eliminate “blue-sky” above the shooter’s vision of the bullet backstop. Blue sky elimination is used for the purpose of eliminating the likelihood that any bullet will travel over the backstop area, leaving the shooting range. This requirement may be waived if a Range Technical Team Advisor provides evidence that the baffles are not necessary to ensure the safety of neighboring properties and this evidence is verified by a Town expert as established by the Director and Chief of Police.
7. The perimeter of the outdoor range shall be surrounded by a fence, wall, or other impediment to pedestrians with a minimum height of six feet and meeting all other applicable regulations identified in Article 2.
8. Warning signs shall be posted at 150-foot intervals along the entire perimeter of the outdoor firing or gun range. The signs shall state in both English and Spanish, “CAUTION: Firearms in Use. Keep Out” and be made of a weather-proof material. Signs shall be yellow and black and must be able to be read by a person or ordinary visual acuity from a distance of five feet.

9. In addition to the standard requirements for a conditional use application, the application for an outdoor shooting range shall also include the following:
 - a. A complete layout of each range, including firing lines, blue sky elimination technique, target areas, backstops, and berms;
 - b. Sound study or projected noise contours;
 - c. Existing and proposed structures; occupied dwellings within 1,320 feet of the secured boundaries of the facility; roads, streets, or other access areas; buffer areas, and parking areas for the facility; and
 - d. A proposed lead management program.
- xii. *Outdoor Stadium, Arena, Amphitheater, or Drive-In Theater.*
 1. All zoning districts except D-A and D-B: Outdoor stadium, arena, amphitheater, or drive-in theater uses may be approved if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.
 2. D-A and D-B: In the D-A and D-B zones, the use is restricted to outdoor amphitheaters that are owned and operated by the Town of Frederick or other governmental or quasi-governmental entity. Such uses are specifically not subject to the limitations of Table 3-12, Residential Protection Spacing Standards.
- xiii. *Race Track.* Race track uses may be approved in the I zoning district if it is demonstrated that:
 1. The applicable residential protection standards of section 3.4.12 are met;
 2. The road course will not be illuminated; and
 3. The use will not operate between 8:00 p.m. and 9:00 a.m.
- xiv. *Restaurant.*
 1. C-C and C-H52: Restaurant uses in the C-C and C-H52 zoning districts that include drive-in or drive-through facilities may be approved if it is demonstrated that:
 - a. The applicable residential protection standards of section 3.4.12 are met.
 - b. The applicable stacking and design standards of section 3.4.18 are met.
 2. BLI and I: Restaurant uses may be approved in the BLI or I zoning district if it is demonstrated that:

- a. At the time of application and inclusive of the proposed use, not more than 35 percent of the contiguous land area within the BLI zoning district in which the use is proposed is used or approved for bar, tavern, or nightclub, commercial lodging, restaurants, retail sales and services, indoor amusement, recreation, and entertainment, or day care facilities, adult or child.
 - b. If the use includes drive-in or drive-through facilities:
 - i. The applicable residential protection standards of section 3.4.12 are met; and
 - ii. The applicable stacking and design standards of section 3.4.18 are met.
- xv. *Zoo.* Zoos may be approved in the A and P zoning districts if it is demonstrated that:
1. The minimum area of the subject property is 10 acres;
 2. Noise generated by the use does not exceed 45 dBA at any residential building wall between the hours of 9:00 p.m. and 7:00 a.m.;
 3. The use is located within a building or enclosed by security fencing that is adequate to prevent animals from escaping and to prevent unauthorized access to the facility;
 4. The zoo operator maintains a Colorado wildlife exhibitor's park license; and
 5. The applicable residential protection standards of section 3.4.12 are met.

4. *General Commercial Uses.*

- a. *General Commercial Use Table.* The general commercial land uses that are allowed in each zoning district are set out in Table 3-4, General Commercial Uses.

Table 3-4 General Commercial Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Business Services	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	-
Convenience Lending	-	-	-	-	-	-	-	-	-	L	L	L	L	-	-	-
Fitness Instruction or Gymnasium	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-
Office, General	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-
Office, Medical	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	-
Pawnbroker	-	-	-	-	-	-	-	-	-	C	L	C	C	-	-	-

Table 3-4 General Commercial Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Personal Services	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-
Recording or TV Studio	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	-
Retail Sales and Services	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-

b. *Use-Specific Standards for Certain General Commercial Uses.*

- i. *Convenience Lending.* Convenience lending may be approved in the C-N, C-C, C-H52, and C-E zoning districts if it is demonstrated that:

1. Such uses are spaced not less than 1,320 feet from each other and from pawnbroker uses, measured from principal entrance to principal entrance; and
2. The applicable residential protection standards of section 3.4.12 are met.

- ii. *Pawnbroker.* Pawnbroker may be approved in the C-N, C-C, C-H52, and C-E zoning districts if it is demonstrated that:

1. Such uses are spaced not less than 1,320 feet from each other and from convenience lending uses, measured from principal entrance to principal entrance; and
2. The applicable residential protection standards of section 3.4.12 are met.

5. *Veterinary and Domestic Animal Uses.*

- a. *Veterinary and Domestic Animal Use Table.* The veterinary and domestic animal land uses that are allowed in each zoning district are set out in Table 3-5, Veterinary and Domestic Animal Uses.

Table 3-5 Veterinary and Domestic Animal Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Commercial Equestrian Facilities	L	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kennel, Indoor	P	C	-	-	-	-	-	-	-	C	P	C	P	P	C	-
Kennel, Outdoor	L	-	-	-	-	-	-	-	-	-	-	-	-	L	L	-
Veterinary Facilities, Large Animal Clinic	P	-	-	-	-	-	-	-	-	-	-	-	-	P	C	-
Veterinary Facilities, Small Animal Clinic	P	-	-	-	-	-	-	-	-	P	P	P	P	P	P	-
Wildlife Rehabilitation	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	P

b. *Use-Specific Standards for Certain Veterinary and Domestic Animal Uses.*

- i. *Commercial Equestrian Facilities.* Commercial equestrian facilities may be approved in the A and R-E zoning districts if it is demonstrated that:
 1. Corrals are spaced at least 100 feet from any existing residence or retail sales building (if a residence or retail sales building is constructed or relocated on the subject property, the corral must be relocated to maintain the 100-foot spacing).
 2. The facility accommodates no more than two horses per acre.
 3. At least 1/2 acre of pasture is provided for each horse.
- ii. *Kennel, Indoor.* Kennel, indoor uses may be approved in the R-E, C-N, C-H52, and I zoning districts if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.
- iii. *Kennel, Outdoor.* Kennel, outdoor uses may be approved in the R-E, C-N, C-H52, and I zoning districts if it is demonstrated that:
 1. The applicable residential protection standards of section 3.4.12 are met;
 2. All animals will be housed indoors during the hours between 10:00 p.m. and 7:00 a.m.; and
 3. Outdoor dog runs and comparable facilities are appropriately secured to prevent animal escape.
- iv. *Veterinary Facilities, Large Animal Clinic.* Veterinary services, large animal clinic may be approved in the I zoning district if it is demonstrated that the applicable residential protection standards of section 3.4.12 are met.

6. *Community, Civic, Educational, and Institutional Uses.*

- a. *Community, Civic, Educational, and Institutional Use Table.* The community, civic, educational, and institutional land uses that are allowed in each zoning district are set out in Table 3-6, Community, Civic, Educational, and Institutional Uses.

Table 3-6 Community, Civic, Educational, and Institutional Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Cemetery	C	C	-	-	-	-	-	-	-	-	-	-	-	-	-	L
Crematorium	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-
Day Care Center, Adult or Child	C	C	C	C	C	-	-	-	-	P	P	P	P	P	C	C
Funeral Home	-	-	-	-	-	-	-	P	-	-	L	L	C	C	-	-

Table 3-6 Community, Civic, Educational, and Institutional Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Hospital	-	-	-	-	-	-	-	-	-	-	C	C	P	P	C	C
Place of Assembly	C	-	L/C ¹	L/C ¹	L/C ¹	-	L/C ¹	P	P	P	P	P	P	P	C	P
Prison or Jail	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C
School, Elementary or Middle	P	P	P	P	P	P	P	-	-	P	P	P	P	P	P	P
School, High	P	P	P	P	P	P	P	-	-	P	P	P	P	P	P	P
School, Vocational or Trade	-	-	-	-	-	-	-	-	-	P	P	C	P	P	C	C
University or College	-	-	-	-	-	-	-	-	-	P	P	C	P	P	C	C
TABLE NOTE: ¹ Places of assembly with a seating capacity of less than 600 are a limited use ("L"). Places of assembly with a seating capacity of 600 or more are a conditional use ("C").																

b. *Use-Specific Standards for Community, Civic, Educational, and Institutional Uses.*

- i. *Cemetery.* Cemeteries may be approved in the A, R-E, and P zoning districts if it is demonstrated that they are not located within the Downtown Development Area, or within 1,320 feet of the boundaries of the Downtown Development Area.
- ii. *Day Care Center, Adult or Child.*
 1. A, R-E, R-1, R-2, R-3, and P: Day care center, adult or child may be approved in the A, R-E, R-1, R-2, R-3, and P zoning districts if it is demonstrated that the use meets all applicable state licensing requirements, and:
 - a. The use is accessed by a collector or arterial street, or by a local street if the subject property is located on the corner of a local street and an arterial or collector street; or
 - b. The use is co-located with an existing school (of any type), university or college, or place of assembly.
 2. I: Day care center, adult or child may be approved in the I zoning district if it is demonstrated that:
 - a. The use is primarily intended to provide an amenity to employees within the zoning district; and
 - b. Other existing and approved uses in the zoning district within 1,320 feet do not present a material hazard to the adults or children receiving care.
- iii. *Funeral Home.* Funeral home uses may be approved in the C-C, C-H52, C-E, and BLI zoning districts if it is demonstrated that the applicable standards of section 3.4.18 are met.

- iv. *Hospital.* Hospitals may be approved in the C-C, C-H52, I, and P zoning districts if it is demonstrated that, if the use includes an emergency room or trauma center, the subject property has access to an arterial street without the use of local or collector street segments that also provide access to residential uses.
- v. *Place of Assembly.*
 - 1. A, R-1, and R-2: Places of assembly may be approved in the A, R-1, and R-2 zoning districts if it is demonstrated that:
 - a. The subject property is at least two acres in area;
 - b. The floor area ratio does not exceed 0.15; and
 - c. The subject property adjoins an arterial or a collector street and takes access from either the adjacent arterial or collector street, or if located at an intersection with a local street, from the intersecting local street.
 - 2. R-3 and R-MH2: Places of assembly may be approved in the R-3 and R-MH2 zoning districts if it is demonstrated that:
 - a. The subject property is at least 1.5 acres in area;
 - b. The floor area ratio does not exceed 0.25; and
 - c. The subject property adjoins an arterial or a collector street and takes access from either the adjacent arterial or collector street, or if located at an intersection with a local street, from the intersecting local street.
 - 3. I: Places of assembly may be approved in the I zoning district if it is demonstrated that the use does not include an outdoor assembly area.
- vi. *Prison or Jail.* Prison or jail may be approved in the P zoning district if it is demonstrated that the prison or jail is connected to a courthouse facility and will be used only as a holding facility for people awaiting hearing, trial, or transfer to another facility.
- vii. *School, Vocational or Trade.*
 - 1. All zoning districts: Access to the subject property shall be provided based on the design capacity of the proposed use, as follows:
 - a. More than 250 students design capacity: Arterial or collector street.
 - b. 50 to 250 students design capacity: Arterial or collector, or a local street, provided that the route between the access point and the nearest arterial or collector does not pass a single-family or duplex residential use.

- c. Less than 50 students design capacity: Any street type.
- 2. I: School, vocational or trade may be approved in the I zoning district if it is demonstrated that:
 - a. If the use provides hands-on instruction, it meets the standards for the use that is most closely related to the hand-on instruction.
 - b. If the use that is most closely related to the hands-on instruction is not allowed in the I zone, then the vocational or trade school is not allowed.

viii. *University or College.*

- 1. All zoning districts: Access to the subject property shall be provided based on the design capacity of the proposed use, as follows:
 - a. More than 250 students design capacity: Arterial or collector street.
 - b. 50 to 250 students design capacity: Arterial or collector, or a local street, provided that the route between the access point and the nearest arterial or collector does not pass a single-family or duplex residential use.
 - c. Less than 50 students design capacity: Any street type.
- 2. I: University or college may be approved in the I zoning district if it is demonstrated that the area of the university or college that is located within the I zoning district provides hands-on instruction, research, workshop, or laboratory space that is closely related to a permissible land use in the I zoning district.

7. *Industrial, Processing, Recycling, Storage, and Disposal Uses.*

- a. *Industrial, Processing, Recycling, Storage, and Disposal Use Table.* The industrial, processing, recycling, storage, and disposal land uses that are allowed in each zoning district are set out in Table 3-7, Industrial, Processing, Recycling, Storage, and Disposal Uses.

Table 3-7 Industrial, Processing, Recycling, Storage, and Disposal Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Composting Facility	C	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Disposal Facility	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Heavy Industry	-	-	-	-	-	-	-	-	-	-	-	-	-	C	L	-
Heavy Logistics Center	-	-	-	-	-	-	-	-	-	-	-	-	-	C	L	-
Light Industry	-	-	-	-	-	-	-	-	-	-	-	C	P	P	P	-
Recycling Collection Center	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C

Table 3-7 Industrial, Processing, Recycling, Storage, and Disposal Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Resource Extraction (Minerals)	C	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C
Resource Extraction (Oil and Gas)	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Salvage Yard	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Self-Storage	-	-	-	-	-	-	-	-	-	-	C	C	-	C	C	-
Storage Yard	-	-	-	-	-	-	-	-	-	-	-	-	-	C	L	-
Waste Transfer Station	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-

b. *Use-Specific Standards for Industrial, Processing, Recycling, Storage, and Disposal Uses.*

i. *Composting Facility.* Composting facility uses may be approved if it is demonstrated that:

1. The use provides appropriate controls to prevent dust and windblown debris from leaving the site;
2. The use is spaced 1,000 feet from existing or approved places of assembly, schools (any type), colleges or universities, day care centers (adult or child), active or passive parks, zoos, and outdoor commercial amusement;
3. The applicable residential protection standards of section 3.4.12 are met; and
4. The applicable outdoor storage standards of section 3.4.16 are met.

ii. *Disposal Facility.* Disposal facility uses may be approved in the I zoning district if:

1. The disposal facility is not a hazardous waste disposal site as regulated by Title 25, Article 15, Part 2, Hazardous Waste Disposal Sites, as may be amended from time to time.
2. The application for approval of the disposal facility is reviewed by the Colorado Department of Public Health and Environment (“CDPHE”) pursuant to Title 30, Article 20, Part 1, Solid Wastes Disposal Sites and Facilities, Colorado Revised Statutes.
 - a. The report and recommendation of CDPHE are required prior to the processing of the application by the City.
 - b. No disposal site shall be approved without a recommendation of approval by CDPHE.

- c. Technical conditions of approval suggested by CDPHE shall be incorporated into the certificate of designation.
- 3. CDPHE issues a certificate of designation for the disposal site, as required by Title 30, Article 20, Part 1, Solid Wastes Disposal Sites and Facilities, Colorado Revised Statutes, as may be amended from time to time.
- 4. The facility has a recommendation of approval by the CDPHE and the Town Board finds that:
 - a. The facility is not located within an area of special flood hazard, an area of geological hazard, or an area that would create material risks to water supply, irrigation infrastructure, or significant wildlife habitat;
 - b. The subject property is at least 100 acres in area;
 - c. All disposal operations are set back at least 300 feet from property lines;
 - d. The applicable residential protection standards of section 3.4.12 are met;
 - e. The applicable outdoor storage standards of section 3.4.16 are met;
 - f. Trucks that enter and exit the facility have access to a state highway without traversing local or collector street segments that provide access to residential uses;
 - g. Property boundaries that are adjacent to streets are landscaped with a buffer that:
 - i. Is at least 40 feet wide;
 - ii. Includes a four-foot tall berm that is designed to appear integrated into the landscape; and
 - iii. Is planted with four trees per 100 feet of frontage or fraction thereof; and
 - h. There is no exclusive site for solid waste disposal (pursuant to C.R.S. § 30-20-107) with capacity to serve the Town's needs;
 - i. There is a demonstrated need for the facility to serve the residents and businesses of the Town;
 - j. The facility conforms to any the objectives or policies set out in the Comprehensive Plan, if any, with respect to such facilities;
 - k. The facility complies with all technical rules promulgated by CDPHE;

- l. The financial assurances provided pursuant to C.R.S. § 30-20-104.5, are adequate to serve their purposes; and
- m. The disposal facility would create a net public benefit to the region and the residents and property owners of the Town, taking into account:
 - i. The effect that the disposal site and facility will have on the surrounding property, taking into consideration the types of processing to be used, surrounding property uses and values, and wind and climatic conditions;
 - ii. The convenience and accessibility of the solid wastes disposal site and facility to potential users;
 - iii. The ability of the applicant to comply with the health standards and operating procedures provided for in Title 30, Article 20, Part 1, Solid Wastes Disposal Sites and Facilities, Colorado Revised Statutes, and such rules and regulations as may be promulgated thereunder; and
 - iv. Recommendations by health departments that have jurisdiction within five miles of the facility.
- iii. *Heavy Industry.* Heavy industry may be approved in the BLI and I zoning districts if it is demonstrated that:
 - 1. The subject property is at least five acres in area;
 - 2. Trucks that enter and exit the subject property have access to an arterial street without traversing local or collector street segments that provide access to residential uses;
 - 3. The applicable residential protection standards of section 3.4.12 are met;
 - 4. The applicable outdoor storage standards of section 3.4.16 are met; and
 - 5. The facility is buffered from adjoining arterial and collector streets and zoning district boundaries with a landscape strip (outside of any fenced areas) that is not less than 15 feet in width, planted with one tree and two shrubs per 35 feet of such boundary (a platted landscape buffer tract may be used for this purpose).
- iv. *Heavy Logistics Center.* Heavy logistics center may be approved in the BLI and I zoning districts if it is demonstrated that:

1. Trucks that enter and exit the subject property have access to a state highway without traversing local or collector street segments that provide access to residential uses;
 2. The applicable residential protection standards of section 3.4.12 are met;
 3. The applicable outdoor storage standards of section 3.4.16 are met;
 4. The facility is buffered from adjoining arterial and collector streets and zoning district boundaries with a landscape strip (outside of any fenced areas) that is not less than 15 feet in width, planted with one tree and two shrubs per 35 feet of such boundary (a platted landscape buffer tract may be used for this purpose).
- v. *Light Industry*. Light industry may be approved in the C-H52 zoning district if it is demonstrated that:
1. The light industrial use provides a product or service that is available to the public on-site;
 2. Bay doors are not visible from adjoining streets or R-E, R-1, R-2, or R-3 zoning district boundaries; and
 3. The applicable residential protection standards of section 3.4.12 are met.
- vi. *Recycling Collection Center*. Recycling collection center may be approved in the C-E, BLI, I, or P zoning districts if it is demonstrated that:
1. The use provides appropriate controls to prevent dust and windblown debris from leaving the site;
 2. Recyclable materials are collected indoors, or in bins or other secured containers outdoors, and all other activities, such as tipping, sorting, compaction, transfer, and reloading are conducted in a fully enclosed building;
 3. Public streets will not be utilized at any time for parking, stacking, or storage of employee vehicles, visitor vehicles, or trucks;
 4. The facility includes sufficient drive aisles and parking areas to avoid conflicts between truck operations, passenger vehicles (e.g., for drop-off of household wastes), and the use of emergency access easements and fire lanes;
 5. The internal circulation system is designed to eliminate the need for the backing of truck traffic, pavement design is suitable for heavy vehicles and the road base is capable of

withstanding expected loads, and drive aisles are designed to be passable by loaded collection and transfer vehicles in all weather conditions;

6. Parking and loading areas are paved and separated from areas where baled recyclable materials are stored;
 7. Trucks that enter and exit the subject property have access to a state highway without traversing local or collector street segments that provide access to residential uses;
 8. Scavenging will be prohibited and prevented;
 9. The applicable residential protection standards of section 3.4.12 are met; and
 10. The applicable outdoor storage standards of section 3.4.16 are met.
- vii. *Resource Extraction (Minerals)*. Resource extraction (minerals) may be approved in the A, I, or P zoning districts if it is demonstrated that:
1. The applicable residential protection standards of section 3.4.12 are met;
 2. The applicable outdoor storage standards of section 3.4.16 are met;
 3. The use is spaced at least 1,320 feet from places of public assembly, day care centers (adult or child), and schools (any type);
 4. Extraction activities are in accordance with a master plan for extraction that is approved by the Board of Trustees along with the conditional use, which addresses:
 - a. The potential for effective multiple sequential use of the subject property to provide the optimum benefit to the landowner, neighboring property owners, and the Town as a whole;
 - b. The development or preservation of land to enhance development of physically attractive surroundings that are compatible with the surrounding area;
 - c. The anticipating timing and sequencing of the mining operation, including the types and volumes of material anticipated to be extracted; and
 - d. A reclamation plan that implements the requirements of C.R.S. § 34-32-101, et seq., (“Colorado Mined Land Reclamation Act”).
 5. Property boundaries are landscaped with a buffer that:

- a. Is at least 25 feet wide;
 - b. Is planted with four trees and six shrubs per 100 feet of frontage or fraction thereof; and
 - c. Includes an eight-foot tall security fence on the inside of the buffer.
- 6. Crushing and processing operations are conducted in an enclosed facility that provides dust control;
- 7. Noise generated by the use shall not exceed 45 dBA at any residential building wall between the hours of 9:00 PM and 7:00 AM;
- 8. Trucks that enter and exit the subject property have access to a state highway without traversing local or collector street segments that provide access to residential uses, and the access route is designed and constructed to withstand the weight of loaded heavy vehicles and mining equipment; and
- 9. Access roads within the subject property are designed and maintained to limit airborne dust and erosion, and to prevent tracking of debris onto public rights of way.
- viii. *Resource Extraction (Oil and Gas)*. Resource extraction (oil and gas) is subject to Article 9, Oil and Gas Drilling and Production.
- ix. *Salvage Yard*. Salvage yard uses may be approved in the I zoning district if it is demonstrated that:
 - 1. The subject property does not have frontage on a state or federal highway or arterial street;
 - 2. Trucks that enter and exit the subject property have access to a state highway without traversing local or collector street segments that provide access to residential uses;
 - 3. No boundary of the subject property is also a zoning district boundary;
 - 4. The property is enclosed by a privacy fence or wall that is at least seven feet in height but not more than nine feet in height;
 - 5. The use will not accept or deposit hazardous wastes or hazardous materials, except as incidental to the salvage operation, and such operation will be conducted to remove hazardous wastes and materials and dispose of them according to state and federal requirements.
 - 6. The facility is at least three-miles from an existing storage yard, salvage yard, RV storage, or self-storage facility within the Town of Frederick or in another jurisdiction, measured from lot line to lot line;

7. The applicable residential protection standards of section 3.4.12 are met; and
 8. The applicable outdoor storage standards of section 3.4.16 are met.
- x. *Self-Storage*. Self-storage uses may be approved in the C-C, C-H52, CLI, and I zoning districts if it is demonstrated that:
1. A minimum 5/8-inch water tap serves (or will serve) the subject property;
 2. The facility is at least three-miles from an existing storage yard, salvage yard, RV storage, or self-storage facility within the Town of Frederick or in another jurisdiction, measured from lot line to lot line;
 3. The facility is designed such that exterior bay doors are screened from adjoining streets or R-E, R-1, R-2, or R-3 zoning district boundaries; and
 4. The applicable residential protection standards of section 3.4.12 are met; and
 5. The applicable outdoor storage standards of section 3.4.16 are met.
- xi. *Storage Yard*. Storage yard uses may be approved in the BLI and I zoning districts if it is demonstrated that:
1. A minimum 5/8-inch water tap serves (or will serve) the subject property;
 2. The facility is at least three-miles from an existing storage yard, salvage yard, RV storage, or self-storage facility within the Town of Frederick or in another jurisdiction, measured from lot line to lot line;
 3. The applicable residential protection standards of section 3.4.12 are met; and
 4. The applicable outdoor storage standards of section 3.4.16 are met.
 5. The storage container standards set out in section 3.4.17 (as may be applicable) are met.
- xii. *Waste Transfer Station*. The Town shall request a technical review of the site and facility documents and operation plan from CDPHE pursuant to 6 CCR 1007-2 § 7.1 for all applications for approval of a waste transfer station, and CDPHE recommendations are incorporated into the application materials prior to Town processing of the application. Waste transfer station uses may be approved in the I zoning district if, after such review, it is demonstrated that:

1. The subject property is at least five acres in area;
2. No building or area in which the unloading, storage, processing, or transfer of wastes or recyclable materials will take place shall be located within:
 - a. 100 feet of any property line; or
 - b. 500 feet of:
 - i. Any nonresidential structure located on property that is not owned or leased by the owner of the waste transfer station;
 - ii. Any area of special flood hazard;
 - iii. Any wetland;
 - iv. Any water well;
 - v. Any natural or artificial pond (including a detention or retention pond or facility), stream, irrigation ditch or canal, water way, or water course; and
3. Trucks that enter and exit the subject property have access to a state highway without traversing local or collector street segments that provide access to residential uses;
4. All activities associated with waste transfer, such as tipping, sorting, storage, compaction, transfer, reloading, and related activities are conducted in a fully enclosed building;
5. Public streets will not be utilized at any time for parking, stacking, or storage of employee vehicles, visitor vehicles, or trucks;
6. The facility includes sufficient drive aisles and parking areas to avoid conflicts between truck operations, passenger vehicles (e.g., for drop-off of household wastes), and the use of emergency access easements and fire lanes;
7. The internal circulation system is designed to eliminate the need for the backing of truck traffic, pavement design is suitable for heavy vehicles and the road base is capable of withstanding expected loads, and drive aisles are designed to be passable by loaded collection and transfer vehicles in all weather conditions;
8. The facility incorporates a collection and disposal system that prevents liquids contained in waste materials, as well as liquids generated by normal operations (such as wash-out and cleaning of equipment, trucks, and floors), from contaminating the soil, surface water, or ground water;

9. Tipping, loading, and unloading areas shall be constructed of impervious material and equipped with drains connected to either:
 - a. A public wastewater system; or
 - b. A corrosion-resistant holding tank; or
 - c. An alternative system, if the applicant demonstrates that the alternate design will prevent waste liquids from contaminating the soil, surface water, or ground water; and
10. The facility will accept only household wastes, commercial, and industrial wastes and recyclable materials, and no asbestos wastes, wastes classified as hazardous in accordance with C.R.S. § 25-15-101, et seq. shall be knowingly accepted;
11. Overnight truck parking will not be allowed;
12. An on-site operator will be on duty at all times that the facility is open;
13. The operation of the waste transfer station and the storage and handling of all solid wastes will be practiced according to an operations plan that includes methods to prevent the attraction, harborage, or breeding of wildlife or insects, rodents, and other vectors (e.g., flies, maggots, roaches, rats, mice, and similar vermin), and to eliminate conditions which cause or may potentially cause:
 - a. Harm to the public health and the environment;
 - b. Congregation of birds;
 - c. Safety hazards to individuals and surrounding property; and
 - d. Excessive odor problems, unsightliness, and other nuisances;
14. The facility will be maintained in a neat and orderly appearance at all times through the prevention and control of uncontained waste, trash, and litter;
15. Open burning and scavenging will be prohibited and prevented;
16. The applicable residential protection standards of section 3.4.12 are met; and
17. The applicable outdoor storage standards of section 3.4.16 are met.

8. *Motor Vehicle and Transportation Uses.*

- a. *Motor Vehicle and Transportation Use Table.* The motor vehicle and transportation land uses that are allowed in each zoning district are set out in Table 3-8, Motor Vehicle and Transportation Uses.

Table 3-8 Motor Vehicle and Transportation Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Fueling, Fast-Charging, or Service Station	-	-	-	-	-	-	-	-	-	C	L	L	C	L	L	-
Light Motor Vehicle Repairs and Service	-	-	-	-	-	-	-	-	-	-	L	L	-	L	L	-
Heavy Motor Vehicle Repairs and Service	-	-	-	-	-	-	-	-	-	-	C	-	-	L	L	-
Truck Stop	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Heliport	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-
Helistop	C	-	-	-	-	-	-	-	-	-	-	-	-	C	C	-
Motor Vehicle Wash	-	-	-	-	-	-	-	-	-	C	L	L	C	L	L	-
Surface Parking	-	-	-	-	-	-	-	L	L	-	C	C	P	P	P	L
Structured Parking	-	-	-	-	-	-	-	L	L	-	C	C	P	P	P	L
Passenger Motor Vehicle Sales or Rental	-	-	-	-	-	-	-	-	-	-	C	C	L	L	L	-
Heavy Motor Vehicle Sales or Rental	-	-	-	-	-	-	-	-	-	-	-	-	-	-	L	-
Motorcycle, Scooter, or ATV Sales or Rental	-	-	-	-	-	-	-	-	-	-	P	P	P	P	P	-
Bus or Taxi Terminal, On-Demand Transportation Dispatch	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-
RV Storage	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-

- b. *Use-Specific Standards for Motor Vehicle and Transportation Uses.*

i. *Fueling, Fast-Charging, or Service Station.*

1. All zoning districts: Fueling, fast-charging, or service stations are subject to the applicable residential protection standards of section 3.4.12., and the applicable stacking standards of section 3.4.18.
2. C-N: Fueling, fast-charging, or service stations may be approved in the C-N zoning district if it is demonstrated that the use does not include a vehicle wash or vehicle service.

- ii. *Light Motor Vehicle Repairs and Service.* All zoning districts: Light motor vehicle repairs and service is subject to the applicable residential protection standards of section 3.4.12.

- iii. *Heavy Motor Vehicle Repairs and Service.* All zoning districts: Heavy motor vehicle repairs and service is subject to the applicable residential protection standards of section 3.4.12.
- iv. *Truck Stop.* Truck stops may be approved in the I zoning district if it is demonstrated that:
 - 1. The use complies with the applicable residential protection standards of section 3.4.12.; and
 - 2. The use does not take access from Highway 52.
- v. *Heliport.* Heliport may be approved in the I zoning district if it is demonstrated that:
 - 1. The facility implements the applicable design standards set out in U.S. Department of Transportation Advisory Circular No. 150/5390-2C, dated April 24, 2012, as may be amended, supplemented, or superseded from time to time; and shall meet all other applicable Federal Aviation Administration (“FAA”) requirements.
 - 2. A noise impact assessment is provided that identifies the initial and 20-year projected Day Night Level (“DNL”) noise contour lines beginning with 50 DNL and proceeding to 65 DNL, showing compliance with the following standards:
 - a. The 65 DNL line is completely within airport property or property zoned I that is subject to an easement for noise and aviation; and
 - b. The 55 DNL line does not include any property that is zoned R-E, R-1, R-2, R-3, D-A, or D-B.
- vi. *Helistop.* Helistops may be approved in the A, BLI, or I zoning district if it is demonstrated that:
 - 1. The helistop complies with the standards that are applicable to heliports, as set out in section 3.4.8.b.iii.; and
 - 2. The helistop is associated with a hospital or a public agency that provides first-responder services.
- vii. *Motor Vehicle Wash.* Motor vehicle wash may be approved in the C-N, C-C, C-H52, C-E, BLI, and I zoning districts if it is demonstrated that:
 - 1. Ingress to and egress from automated and full-service vehicle wash facilities is oriented to side lot lines;
 - 2. Detailing and finishing operations do not interfere with site circulation or access to required parking spaces;
 - 3. The applicable residential protection standards of section 3.4.12 are met; and

4. The applicable stacking standards of section 3.4.18 are met.
- viii. *Surface Parking.*
1. D-A and D-B: Surface parking uses may be approved in the D-A and D-B zoning districts if it is demonstrated that:
 - a. The parking surface is paved with a dust-free, all-weather surface;
 - b. The subject property is not more than 1/2 acre in area;
 - c. The landscaping standards of section 2.14 are met; and
 - d. The use does not have frontage on Fifth Street.
 2. C-C, C-H52, and P: Surface parking uses may be approved in the C-C, C-H52, and P zoning districts if it is demonstrated that:
 - a. The parking surface is paved with a dust-free, all-weather surface;
 - b. The use provides parking for adjacent land uses or for park-and-ride transit services;
 - c. Overnight parking is prohibited; and
 - d. The landscaping standards of section 2.14 are met.

ix. *Structured Parking.*

1. D-A and D-B: Structured parking uses may be approved in the D-A, D-B zoning districts if it is demonstrated that:
 - a. The subject property is not more than 1/2 acre in area;
 - b. Vehicular ingress and egress is designed to minimized vehicular-pedestrian conflicts; and
 - c. Either the use does not have frontage on Fifth Street or the ground level of the Fifth Street frontage incorporates permissible hospitality, recreation, and entertainment uses or general commercial uses.
2. C-C and C-H52: Structured parking uses may be approved in the C-C and C-H52 zoning districts if it is demonstrated that:
 - a. The use provides parking for adjacent land uses or for park-and-ride transit services; and
 - b. Overnight parking is prohibited.
3. P: Structured parking uses may be approved in the P zoning district if it is demonstrated that the use is operated by the Town or another public or quasi-public entity, and provides parking for park-and-ride transit services or for adjacent or remote governmental or recreational facilities.

- x. *Passenger Motor Vehicle Sales or Rental.* Passenger motor vehicle sales or rental may be approved in the C-C, C-H52, C-E, BLI, and I zoning districts if it is demonstrated that:
 - 1. Not more than one vehicle display pad, which may be elevated up to three feet in height as measured at the highest point, is provided per 100 feet of road frontage.
 - 2. No other materials for sale will be displayed between the principal building and the right-of-way.
 - 3. Vehicles will be stored on paved parking surfaces.
 - 4. No bay door is oriented directly towards residential, public open space, or public right-of-way unless there is an intervening building that blocks the view of the bay door.
 - 5. If washing areas are provided, they are covered and have drains that are connected to the sanitary sewer system. The drains shall be constructed with an oil/water separator, and all treatment facilities shall be approved by the Town Engineer.
- xi. *Heavy Motor Vehicle Sales or Rental.* Heavy motor vehicle sales or rental uses may be approved in the I zoning district if it is demonstrated that the standards that apply to passenger motor vehicle sales or rental uses are met.
- xii. *RV Storage.* RV Storage may be approved in the I zoning district if it is demonstrated that:
 - 1. The facility is at least three-miles from an existing storage yard, salvage yard, RV storage, or self-storage facility within the Town of Frederick or in another jurisdiction, measured from lot line to lot line;
 - 2. The facility is designed such that exterior bay doors are screened from adjoining streets or R-E, R-1, R-2, or R-3 zoning district boundaries;
 - 3. The applicable residential protection standards of section 3.4.12 are met; and
 - 4. The applicable outdoor storage standards of section 3.4.16 are met.

9. *Utility Uses.*

- a. *Utility Use Table.* The utility land uses that are allowed in each zoning district are set out in Table 3-9, Utility Uses.

Table 3-9 Utility Uses																	
Land Use	Zoning District																
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P	
Battery Energy Storage Systems	L	L	L	L	L	L	L	-	-	-	-	L	L	L	L	-	
Data Center	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-	
Overhead Power Lines (110 kV or more)	C	C	C	C	C	C	C	-	-	C	C	C	C	C	C	C	
Photovoltaic Arrays (2 MW or more)	L	L	L	-	-	-	-	-	-	-	-	-	-	-	-	-	L
Utilities, Minor	L	L	L	L	L	L	L	L	L	L	L	L	L	L	P	L	
Utilities, Major	C	C	C	C	C	C	C	-	-	C	C	C	C	C	C	C	

b. *Use-Specific Standards for Utility Uses.*

- i. *Battery Energy Storage Systems.* Battery energy storage systems may be approved within the A, R-E, R-1, R-2, R-3, R-MH1, R-MH2, C-H52, C-E, BLI, and I zoning districts if it is demonstrated that:
 1. The facility is located within or adjacent to an existing or approved electrical substation or photovoltaic array (2 MW or more), or within 300 feet of same on the same side of the street;
 2. The facility complies with NFPA 1, *Fire Code*, and NFPA 855, *Standard for the Installation of Stationary Energy Storage Systems*;
 3. The cells, modules, units, and installation are certified for compliance with ANSI/CAN/UL 9540, *Energy Storage Systems and Equipment*;
 4. In container-type systems, containers are not stacked;
 5. The facility is enclosed with a seven-foot tall security fence; and
 6. In all zoning districts except A, BLI, and I, the facility is buffered from adjacent arterial and collector streets and residential district boundaries with a landscape strip (outside of the fenced area) that is not less than 15 feet in width, planted with one tree and two shrubs per 35 feet of such boundary, except where tree plantings would interfere with connections between the facility and the electrical substation;
 7. The applicant agrees that prior to construction, the applicant will provide written confirmation that:
 - a. The electric utility provider has approved the facility for connection to the power grid; and

- b. Easements, if necessary to connect the facility to the power grid, have been secured.
 - 8. The applicant provides reasonable assurances to the Town that batteries and equipment will be removed from the site at the end of their useful life and recycled or disposed of in accordance with applicable law; and if an outdoor BESS use is terminated, the site will be restored to its original condition.
- ii. *Overhead Power Lines (110 kV or more)*. Overhead power lines (110 kV or more) may be approved in any zoning district other than D-A or D-B if it is demonstrated that:
 - 1. If required by the Colorado Public Utilities Commission (“PUC”), a certificate of need from the PUC (or an exemption certification) has been issued.
 - 2. To the extent practicable, new transmission lines shall be located within existing transmission easements or routed outside of the Town.
 - 3. New transmission lines that are not located within existing transmission easements shall be routed to minimize the impact of poles and lines on existing development through spacing between the transmission line and the following uses or infrastructure:
 - a. 300 feet from dwelling units, schools (all types), and places of assembly; and
 - b. 500 feet from arterial streets.
- iii. *Photovoltaic Arrays (2 MW or more)*. Photovoltaic arrays (2 MW or more) may be approved within the A, R-E, R-1, or P zoning districts if it is demonstrated that:
 - 1. The facility is enclosed with a seven-foot tall security fence; and
 - 2. The applicant agrees that prior to construction, the applicant will provide written confirmation that:
 - a. If the facility is intended to be connected to the power grid, the electric utility provider has approved the facility for such connection; and
 - b. Easements, if necessary to connect the facility to the power grid, have been secured.
 - 3. The applicant provides reasonable assurances to the Town that equipment will be removed from the site at the end of its useful life and recycled or disposed of in accordance with applicable

law; and if photovoltaic array (2 MW or more) use is terminated, the site will be restored to its original condition.

- iv. *Utilities, Minor.* Minor utilities may be approved in any zoning district if it is demonstrated that:
 - 1. There is a need for the minor utility in order to serve residents of the Town, and the proposed location optimizes the delivery of the utility service to customers;
 - 2. The minor utility is designed and located to mitigate its impact on surrounding land uses in terms of noise, odor, and risk of fire, explosion, or release of hazardous materials or gasses; and
 - 3. The minor utility is appropriately secured, as determined by the Town Engineer according to applicable industry standards or best practices.
- v. *Utilities, Major.* Major utilities may be approved in any zoning district except D-A and D-B if it is demonstrated that:
 - 1. The utility provider demonstrates that there is a need for the major utility in order to serve residents of the Town;
 - 2. The facility is enclosed by a seven-foot tall security fence;
 - 3. The facility is buffered from adjacent arterial and collector streets and residential district boundaries with a landscape strip (outside of the fenced area) that is not less than 25 feet in width, planted with one tree and five shrubs per 35 feet of such boundary (keeping such areas as are necessary for access and connection to overhead power lines clear as required to ensure safe operations);
 - 4. The major utility use is not located in a special flood hazard area; and
 - 5. If the utility is a sewer plant, the subject property is situated in a location that will tend to minimize the impacts of odors on nearby residential uses and zones.

10. *Wireless Telecommunications Uses.*

- a. *Wireless Telecommunications Use Table.* The wireless telecommunications land uses that are allowed in each zoning district are set out in Table 3-10, Wireless Telecommunications Uses.

Table 3-10 Wireless Telecommunications Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Freestanding Communications Tower	C	C	C	C	C	C	C	-	-	C	C	C	C	C	C	C
Alternative Tower Structure	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Small Cell Wireless Facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Other Wireless Communications Facilities	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L

b. *Use-Specific Standards for Wireless Telecommunications Uses.* All wireless communications facilities (“WCFs”) in Table 3-10 are subject to the applicable standards and procedures in this subsection 3.4.10.b.

i. *General.* WCF includes a ground-mounted base station which must be used as an accessory structure that is connected to an antenna mounted on or affixed to an existing building.

ii. *Height and setbacks.*

1. Roof- or building-mounted commercial mobile radio service (“CMRS”) facilities may protrude no more than five feet above the parapet line of the building or structure, nor more than 2.5 feet outside of the building wall unless sufficient screening methods are demonstrated and accepted as part of the approval.
2. Roof- or building-mounted whip antennae of no more than three inches in diameter, in groupings of five or less, may extend up to 12 feet above the parapet wall.
3. All freestanding WCFs shall be set back at least 300 feet from all residentially zoned properties or residential structures on properties otherwise zoned.

iii. *Accessory buildings and facilities.*

1. Accessory buildings located on the ground shall be no larger than 400 square feet and must be constructed of durable, low-maintenance materials that are architecturally compatible and integrated with existing buildings and structures.
2. On sites with greater than 100 cubic feet of cabinet area that is visible from a public right-of-way or residentially zoned or used area, equipment must be enclosed in one or more accessory buildings.

3. Accessory buildings and facilities are to be screened, to the extent possible, from public streets and sidewalks, either by screening, landscaping, location, or other comparable techniques.
- iv. *Building- or roof-mounted facilities.* Building- or roof-mounted facilities are to be screened from public view, either by screening, location or other comparable techniques.
- v. *Wireless communications facilities in public rights-of-way or on public property.*
 1. Permission to use right-of-way ("ROW") or public property. For WCFs in the ROW, the applicant shall execute a nonexclusive license to use the public ROW in a form approved by the Town Attorney.
 2. Attachment of WCFs on an existing traffic signal, streetlight pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.
 3. Prior to, or concurrently with, seeking land use approval for a WCF on public property that is not in the ROW, the applicant shall execute a lease agreement with the Town.
- vi. *Operation and maintenance.* To ensure the structural integrity of WCFs, the WCF's owner shall ensure that it is maintained in compliance with the standards contained in applicable building and safety codes. If, upon inspection, the Town concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the Town's Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring the WCF into compliance within said time period, the Town may remove such WCF at the owner's expense.
- vii. *Abandonment and removal.*
 1. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the Town of the nonuse and shall indicate whether reuse is expected within the ensuing three months.
 2. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the Town. If such WCF is not removed within said 30 days, the

Town may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

Additionally, the Town, in its sole discretion, shall not approve any new WCF application until the applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the Town.

viii. *Camouflage/concealment.*

1. All WCFs and any transmission equipment shall, to the extent possible, use camouflage design techniques including, but not limited to, the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the WCF to the surrounding natural setting and/or built environment. Design, materials, and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located in the public right-of-way and on adjacent parcels.
 2. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). Should the Director determine that WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., camouflaged, placed underground, depressed, or located behind earth berms) to minimize their profile at the request of the Director.
 3. The camouflage design may include the use of alternative tower structures should the Director determine that such design meets the intent of this Code and the Town is better served thereby.
 4. All WCFs shall be constructed out of or finished with nonreflective materials (visible exterior surfaces only).
- ix. *Hazardous materials.* No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.
- x. *Collocation.* To the extent reasonably feasible based upon construction, engineering and design standards, WCF structures shall be designed and constructed to permit the facility to accommodate WCFs from at least two wireless service providers on the same WCF structure unless the Town approves an alternative design. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by

the Director, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site.

- xi. *Lighting.* WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration (“FAA”) or other governmental authority with jurisdiction, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- xii. *Noise.* Noise generated on the site must not exceed the levels permitted in this Code, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the Town.
- xiii. *Landscaping and fencing requirements (excluding building-mounted WCFs, alternative tower structures, and small cells in the ROW).*
 - 1. WCFs shall be landscaped with a buffer of irrigated plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
 - 2. Fencing for screening is required. The fencing or screening material shall meet the standard of the zoning district in which the WCF will be located. In no case may fencing material be wire.
 - 3. No trees larger than four inches in DBH may be removed, unless authorized by the Planning Director. To obtain such authorization, the applicant shall show that tree removal is necessary, the applicant’s plan minimizes the number of trees to be removed, and any trees removed are replaced at a ratio of two to one (2:1) to a total caliper of the removed trees. Additional landscaping required by the Town will be maintained at the expense of the owner of the WCF.
- xiv. *Base stations.* If an antenna is installed on a structure other than a tower or alternative tower structure, such as a base station (including, but not limited to, the antennas and accessory equipment), it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including, for example, without limitation, painting the antennas and accessory

equipment to match the structure. Additionally, any ground-mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the Director, and may, where to the extent reasonably feasible based upon construction, engineering, and design standards, require a flush-to-grade underground equipment vault.

- xv. *Alternative tower structures not in the ROW.* Alternative tower structures shall be located, designed, and constructed as follows:
1. The structure shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries;
 2. Siting decisions shall take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses, as well as the impact on the surrounding area of the proposed ingress and egress, if any;
 3. The structure shall resemble a building, facility, or structure that is typically found in the surrounding area, and shall be architecturally compatible with the surrounding area; or the structure shall be camouflaged/concealed consistent with other existing natural or manmade features in the surrounding area;
 4. The height or size of the proposed structure shall be minimized as much as possible; and
 5. The structure shall be designed and constructed in a manner that is compatible with the surrounding topography, tree coverage, and foliage, and with the overall design of the site, with particular reference to optimization of design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- xvi. *Alternative tower structures in the ROW.* Alternative tower structures and associated small cells or micro cells may be deployed in the ROW through the utilization of streetlight poles, distribution lines, utility poles, traffic signals or similar structures. Such facilities shall remain subject to the alternative tower structures standards of approval set out above, and subject to the following additional design criteria:
1. To the extent that an alternative tower structure is a vertical structure located in the ROW, with respect to its pole-mounted components, it must be located on or within an existing utility pole serving another utility.
 2. With respect to its pole components, such components shall be located on or within a new utility pole where other utility distribution lines are aerial, if there are no reasonable

alternatives, and the applicant is authorized to construct the new utility poles, provided that to the extent reasonably feasible, such alternative tower structures shall be:

- a. Consistent with the size and shape of the poles and pole-mounted equipment installed by communications companies on utility poles near the structure; and
 - b. Sized to minimize the negative aesthetic impacts to the public right-of-way.
3. Alternative tower structures shall be designed such that antenna installations on traffic signal standards are placed in a manner so that the size and appearance of the signal will not be considerably altered, and its function will not be impaired.
4. Any ground-mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the Director, and may, where to the extent reasonably feasible based upon construction, engineering, and design standards, require a flush-to-grade underground equipment vault.
5. Vehicular circulation or parking within the right-of-way and vehicular, bicycle, or pedestrian access or visibility along the right-of-way shall not be impeded. The alternative tower structure must comply with the Americans with Disabilities Act ("ADA") and every other local, state, and federal law and regulation. No alternative tower structure may be located or maintained in a manner that causes unreasonable interference. "Unreasonable interference" means any use of the right-of-way that disrupts or interferes with its use by the Town, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.
6. The pole or structure is not more than five feet taller (as measured from the ground to the top of the pole) than any existing utility or traffic signal pole within a radius of 500 feet from the pole or structure.
7. Any such pole shall in no case be higher than 30 feet.
8. Any such pole shall be separated from any other pole, accessory equipment, or WCF in the ROW by a distance of at least 500 feet unless deployed on an existing structure or

replacement pole in the public right-of-way. The Director may exempt an applicant from these requirements if the Director determines, when considering the surrounding topography, the nature of adjacent uses and nearby properties, and the height of existing structures in the vicinity, that placement of a WCF at a distance less than 500 feet from another WCF will meet the intent of reducing visibility and visual clutter of WCFs to the extent possible.

9. To the extent reasonably feasible, collocations are required in order to limit the number of poles within the right-of-way.
10. Equipment enclosures shall be located out of view as much as possible and shall comply with Town criteria (e.g., sight line criteria).
11. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential properties, or on the corner formed by two intersecting property lines. If these requirements are not reasonably feasible from a construction, engineering, or design perspective, the applicant may submit a written statement to the Director requesting the WCF be exempt from these requirements.

xvii. *Towers.*

1. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the Town.
2. Tower structures should use existing land forms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment.
3. Monopoles shall taper from the base to the top.
4. All towers, excluding alternative tower structures in the right-of-way, shall be enclosed by security fencing or wall at least six feet in height and shall also be equipped with an appropriate anti-climbing device consistent with Town Code.

xviii. *Related accessory equipment.* Accessory equipment for all WCFs shall meet the following requirements in addition to any other applicable standards of this subsection 3.4.10.b.:

1. All buildings, shelters, cabinets, and other accessory components shall be grouped as closely as technically possible.
 2. The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet, unless otherwise approved by the Director;
 - a. No related accessory equipment or accessory structure shall exceed 15 feet in height;
 - b. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.
- xix. *Abandonment and removal.* Prior to approval, affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six months.
- xx. *Decision.* Any decision to approve, approve with conditions, or deny an application for a WCF shall be in writing and supported by substantial evidence related to regulations and restrictions, as detailed herein, in a written record. The applicant shall receive a copy of the decision.
- xxi. *Compliance with applicable law.* Upon approval, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in Town Code and any other applicable laws or regulations. In addition, all WCF applications shall:
1. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
 2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
 3. Be maintained in good working condition and to the standards established at the time of application approval; and
 4. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than 10 calendar days from the time of notification by the Town or after discovery by the owner or operator of the site. Notwithstanding the foregoing, any graffiti on WCFs located in the rights-of-way or on other Town-owned property may be removed by the Town at its discretion, and the owner and/or operator of the WCF

shall pay all costs of such removal within 30 days after receipt of an invoice from the Town.

5. Compliance report. Upon request by the Town, the applicant shall provide a compliance report within 45 days after installation of a WCF demonstrating that, as installed and in operation, the WCF complies with all conditions of approval, applicable Code requirements and standard regulations.

xxii. *Conditional mitigation measures; co-location.*

1. The Town encourages co-location of wireless telecommunications facilities to minimize the number of sites.
2. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or location. Unfair exclusion of use by a competitor may result in the revocation of the use by conditional review or site development plan.

11. *Agricultural Uses.*

- a. *Agricultural Use Table.* The agricultural land uses that are allowed in each zoning district are set out in Table 3-11, Agricultural Uses.

Table 3-11 Agricultural Uses																
Land Use	Zoning District															
	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	D-A	D-B	C-N	C-C	C-H52	C-E	BLI	I	P
Agritainment	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial Agriculture	P ¹	P ¹	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Common Equestrian Stabling and Grazing	L	L	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TABLE NOTE: ¹ If the commercial agriculture use involves the keeping of animals (including bees), limited use review ("L") applies.																

- b. *Use-Specific Standards for Agricultural Uses.* Agritainment, commercial agriculture (when reviewed as a limited use), and common equestrian stabling and grazing may be approved if it is demonstrated that:
 - i. If the use involves the keeping of horses, cattle, llamas, buffalo, beefalo, or sheep, the subject property must have been used for grazing of such animals for a period of not less than two years immediately prior to annexation, and animal density is limited to:
 1. Two per acre for horses, cattle, llamas, buffalo, and beefalo, and at least one-half (1/2) acre of pasture is required for each such animal.
 2. Three per acre for sheep.

- ii. Corrals, if any, are spaced at least 100 feet from any existing residence or retail sales building (if a residence or retail sales building is constructed or relocated on the subject property, the corral must be relocated to maintain the 100-foot spacing).
- iii. Apiaries, if any, comply with the requirements set out in section 3.4.22.

12. Residential Protection Standards.

- a. *Purpose.* The purpose of the residential protection standards is to promote the public health, safety, and welfare by protecting existing residential uses and established residential neighborhoods from the potentially adverse visual, noise, light, traffic, and other impacts arising from the development of certain new commercial, retail, industrial, or institutional/civic uses in close proximity. Accordingly, these standards seek to create a "transition area" between the edges of nonresidential and residential zoning districts and uses.
- b. *Measurement of Minimum Distances.* All required minimum distances set forth shall be measured from the nearest property line of one designated location to the nearest property line of the other designated location along a straight line extended between the two points without regard to intervening structures.
- c. *Limitations on Permitted Uses.*
 - i. Unless specifically exempt pursuant to this section 3.4, notwithstanding any other provision of this section 3.4 (including Tables 3-1, 3-2, and 3-4 through 3-11, inclusive), the uses specified in Table 3-12, Residential Protection Spacing Standards, shall not be established or developed within the distance specified below of an existing residential use or of a residential zoning district boundary.
 - ii. Residential zoning districts, for the purposes of this standard, shall include residential portions of a mixed-use development that are not located on the same lot as a non-residential use.
 - iii. Nothing in this subsection shall be interpreted to prohibit a lawfully operating use listed below from continuing its operation, if subsequent to the listed use's establishment, a residential use or zone district, or other protected use, is established or locates within the distances specified below.

Table 3-12 Residential Protection Spacing Standards			
Land Use Category / Land Use	Required Spacing From . . .		Existing or approved residential uses in . . .
	R-E, R-1, R-2, R-3, R-MH1, and R-MH2 zoning district boundaries	C-E zoning district	all other zoning districts
Hospitality, Recreation, and Entertainment Uses			
Adult-Oriented Use	1,000 ft.	1,000 ft.	1,000 ft.
Bar, Tavern, or Nightclub	250 ft.	250 ft.	N/A

Table 3-12 Residential Protection Spacing Standards			
Land Use Category / Land Use	Required Spacing From . . .		
	R-E, R-1, R-2, R-3, R-MH1, and R-MH2 zoning district boundaries	Existing or approved residential uses in . . .	
		C-E zoning district	all other zoning districts
Indoor firing or gun range	250 ft.	250 ft.	250 ft.
Outdoor Commercial Amusement	500 ft.	500 ft.	N/A
Outdoor Firing or Gun Range	1,000 ft.	1,000 ft.	1,000 ft.
Outdoor Stadium, Arena, Amphitheater, or Drive-In Theater	1,000 ft.	N/A	N/A
Race Track	1,000 ft.	1,000 ft.	1,000 ft.
Restaurant with Drive-In or Drive- Through Facilities	250 ft.	250 ft.	N/A
Zoo	1,000 ft.	1,000 ft.	1,000 ft.
General Commercial Uses			
Convenience Lending	250 ft.	250 ft.	N/A
Pawnbroker	250 ft.	250 ft.	N/A
Retail sales and services – liquor stores	250 ft.	250 ft.	N/A
Retail sales and services – outdoor sales	250 ft.	250 ft.	N/A
Veterinary and Domestic Animal Uses			
Kennel, Indoor	125 ft.	125 ft.	N/A
Kennel, Outdoor	250 ft.	250 ft.	N/A
Veterinary Facilities, Large Animal Clinic	250 ft.	250 ft.	N/A
Community, Civic, Educational, and Institutional Uses			
Prison or Jail	1,000 ft.	1,000 ft.	1,000 ft.
Industrial, Processing, Recycling, Storage, and Disposal Uses			
Composting Facility	1,000 ft.	1,000 ft.	1,000 ft.
Disposal Facility	1,000 ft.	1,000 ft.	1,000 ft.
Heavy Industry	500 ft. (or separated by arterial street)	500 ft. (or separated by arterial street)	500 ft.
Heavy Logistics Center	500 ft.	500 ft.	N/A
Resource Extraction (Minerals)			
Resource Extraction (Oil and Gas)			
Salvage Yard	1,000 ft.	1,000 ft.	1,000 ft.
Storage Yard	500 ft.	500 ft.	500 ft.
Waste Transfer Station	1,000 ft.	1,000 ft.	1,000 ft.
Motor Vehicle and Transportation Uses			
Fueling, Fast-Charging, or Service Station	250 ft.	250 ft.	N/A
Light Motor Vehicle Repairs and Service	250 ft.	250 ft.	N/A
Heavy Motor Vehicle Repairs and Service	500 ft.	500 ft.	500 ft.
Truck Stop	500 ft.	500 ft.	500 ft.
Heliport	1,000 ft.	1,000 ft.	1,000 ft.
Helistop	1,000 ft.	1,000 ft.	1,000 ft.
Motor Vehicle Wash	250 ft.	250 ft.	N/A
Passenger Motor Vehicle Sales or Rental	250 ft. / 500 ft. from any outdoor repair or maintenance activities	250 ft. / 500 ft. from any outdoor repair or maintenance activities	N/A

Table 3-12 Residential Protection Spacing Standards			
Land Use Category / Land Use	Required Spacing From . . .		
	R-E, R-1, R-2, R-3, R-MH1, and R-MH2 zoning district boundaries	Existing or approved residential uses in . . .	
		C-E zoning district	all other zoning districts
Heavy Motor Vehicle Sales or Rental	250 ft. / 500 ft. from any outdoor repair or maintenance activities	250 ft. / 500 ft. from any outdoor repair or maintenance activities	N/A
Bus or Taxi Terminal, On-Demand Transportation Dispatch	250 ft.	N/A	N/A
RV Storage	500 ft.	500 ft.	N/A

d. *Development and Operational Standards.*

- i. *Applicability.* Land uses that are subject to residential protection standards, but not specifically identified in Table 3-12, Residential Protection Spacing Standards, are subject to these standards (in addition to applicable use and development standards stated in this Article and Article 2) when the proposed use is located either within or within 250 of a R-E, R-1, R-2, R-3, R-MH1, or R-MH2 zoning district boundary.
- ii. *Conflicting Provisions.* When the provisions of this subsection conflict with the provisions found in other sections of this Code, the provision that the director determines is more protective of existing residential uses shall apply.
- iii. *Operational Standards.*
 1. Seating and food service may be provided on an outside patio or enclosure of a restaurant use, provided the patio or enclosure is no more than one-third the gross floor area of the principal use.
 2. Outdoor seating and food service must close by 10:00 p.m. Outside activity shall not be conducted between the hours of 10:00 p.m. and 7:00 a.m., and no delivery, loading, privately-contracted trash removal or compaction, or other such operations shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. unless the Applicant submits evidence that such operations comply with the noise standards in Chapter 10-198 of the Municipal Code.
- e. *Parking, Access, and Circulation Standards.* The off-street parking area for the use shall be a minimum of 15 feet from the lot line of adjacent properties zoned for residential purposes. The parking area shall be landscaped according to section 2.14 and screened to prevent glare from vehicle headlights from intruding on adjacent residential properties.
- f. *Review of Uses Subject to this Subsection.*
 - i. Uses Permitted By-Right ("P") or by Limited Use Approval ("L").

1. *Review Process.* Uses subject to these residential area protection standards that are otherwise permitted by-right ("P") shall be reviewed according to the procedure stated in Article 4, "Site Plan," of this Land Use Code. At the Planning Director's discretion, based on consideration of the proposed use's potential impacts on nearby residential uses or zoning districts, full conditional use review may be required for any permitted by-right or limited use.
 2. *Review Criteria.* All by-right uses subject to this provision shall be approved, approved with conditions, or denied based on their compliance with both the standards stated in this subsection for residential area protection, and the general review criteria and standards applicable to a Site Plan.
 - ii. *Conditional Uses.* Uses subject to these residential area protection standards that are permitted as conditional uses ("C") shall be reviewed and approved according to Section 4.9, Conditional Uses. Approval or denial of the use shall be based on its compliance with both the standards stated in this subsection for residential area protection, and the general and applicable specific review criteria and standards stated in Section 4.9.
13. *Accessory Uses and Accessory Buildings (Except Accessory Dwelling Units and Home Occupations).*
- a. All accessory buildings and uses:
 - i. Shall be subject to the general, dimensional, operation, and use-specific regulations stated in this article. In the case of any conflict between the standards of this section and any other requirement of this Code, the standards in this section shall control.
 - ii. Must be reasonably and customarily incidental to the principal use and structure.
 - iii. Must be located on the same lot as the principal use and structure.
 - iv. Must be constructed concurrently or following construction of the principal use or structure, except for accessory dwelling units and caretaker units which must have a valid permit issued for the associated principal structure.
 - v. Shall not create a combination of uses, which is the combination of two principal uses. Combination uses will not meet the above standard in terms of being subordinate or providing service to the principal use.
 - vi. Must meet the restrictions on pervious surfaces as outlined in Article 2.

- b. *Accessory uses.* Accessory uses must be subordinate in the area of the footprint, size, and purpose to the principal use.
- c. *Accessory buildings.*
 - i. In the A zoning district:
 - 1. Accessory buildings are those buildings not related to the primary agricultural use such as barns or storage buildings for agricultural products. Garages for non-agricultural vehicles and other similar non-agricultural buildings are required to meet these standards.
 - 2. Accessory buildings shall have a maximum footprint of 5,000 square feet.
 - 3. The maximum height of the accessory building is the maximum height of the underlying zoning district.
 - ii. In all other zoning districts, the maximum total footprint of all accessory buildings is 90 percent of the footprint of the principal building, and the maximum height of accessory buildings is the same as the maximum height for principal buildings in the underlying zoning district.

14. *Home Occupations.* Home occupations are subject to the following standards:

- a. Medical, dental and real estate offices are not permitted as home occupations.
- b. In addition to the family occupying the dwelling containing the home occupation, there shall not be more than one outside employee in the home occupation.
- c. The employee and clients may park in on-street curbside parking spaces.
- d. The home occupation shall not exceed 1,000 square feet or 30 percent of the total square footage of the dwelling, whichever is less, or can be located in an accessory building not to exceed 500 square feet.
- e. All exterior aspects of the home occupation operation shall not disrupt the residential character of the area.
- f. The maximum number of clients which may visit the home occupation per day is 10.

15. *Accessory Dwelling Units.* Accessory dwelling units (“ADUs”) are subject to the following standards:

- a. A, R-E, R-1, and R-2 zoning districts: One ADU is allowed as an accessory to each single-family detached principal use in an A, R-E, R-1, or R-2 zoning district, provided that it is located on the same lot as the principal use, and subject to the following limitations on floor area:
 - i. In the A and R-E zoning districts --

1. Min. floor area: 500 sf.
2. Max. floor area: 50 percent of the total floor area of the principal building.
- ii. In the R-1 and R-2 Zoning Districts --
 1. Min. floor area: 500 sf.
 2. Max. floor area: 1,000 sf.
- b. BLI and I zoning districts: One ADU may be allowed as an accessory use, provided that it is located on the same lot as the principal use, and the applicant demonstrates the need for the ADU in order to provide for security or ensure safe operation of the use.

16. Outdoor Storage.

- a. All buildings on the site shall incorporate three different types of cladding materials, resulting in significant variation in the building facades, and the building materials used for buildings, roofs, and other structures are compatible with the desired character of the zone.
- b. All storage, equipment, and refuse areas shall be concealed from view from less intensive land uses, residential areas, abutting public rights-of-way and trails or trail corridors.
- c. All storage facilities shall be concealed through the use of a solid fence or wall that shall not have an uninterrupted length exceeding 50 feet. The maximum height of the fence shall be eight feet. Pilasters, brick, texture transitions and stepping of the fence planes are required. The use of additional trees and berming that provide year-round screening of a sufficient height to further conceal all stored materials is required to prevent visual impacts on neighboring businesses, residential uses and the streetscape.
- d. Storage shall not be permitted within any applicable setback, public right-of-way or in landscaped areas.
- e. A minimum of 25 percent of the site must be maintained in live landscaped area.
- f. A 50-foot wide landscaped buffer is required along all perimeter streets if storage is adjacent to the right-of-way.
- g. A mechanism for long-term maintenance of all fencing is required (i.e., owners' association, development agreement, or covenants).
- h. Outdoor loudspeaker systems are prohibited.

17. Use of Storage Containers.

- a. The use of storage containers shall be limited as provided in Table 3-13, Use of Storage Containers.

Table 3-13 Use of Storage Containers		
Zoning District	Number of Permanent or Transitory Containers Permitted on Subject Property	Additional Regulations
R-E, R-1, R-2, R-3, R-MH1, R-MH2, C-N, C-C, C-H52, C-E, D-A, D-B, and P	0	(c)
BLI and A	1/acre	(a), (b)
I	4/acre	(a), (b)

- b. Permanent containers are containers that remain on the subject property at all times. Permanent containers in the BLI, I, and A zoning districts are considered an accessory structure. Permanent containers shall be:
 - i. Identified on an approved site plan and located in an outdoor storage area that meets the requirements set out in section 3.4.16;
 - ii. Situated such that they meet all setbacks (contiguous lots under single ownership may be considered a single lot for this purpose) and are outside of all easements;
 - iii. Permanently anchored in accordance with the Building Code (a building permit is required);
 - iv. Painted to complement the principal building;
 - v. Accessible only to the landowner or employees of the business on the subject property; and
 - vi. Arranged so that they are not stacked.
- c. Transitory containers are containers that are not consistently kept on the subject property. These containers are not considered an accessory structure as they come and go from the site.
 - i. In the BLI, I, and A zoning districts, transitory containers:
 - 1. Shall not be present on the subject property for a period of more than 180 consecutive days;
 - 2. Shall be located in an outdoor storage area that meets the requirements set out in section 3.4.16;
 - 3. Shall be situated such that they meet all setbacks (contiguous lots under single ownership may be considered a single lot for this purpose) and are outside of all easements;
 - 4. Shall be accessible only to the landowner or employees of the business on the subject property.
 - 5. Shall be arranged so that they are not stacked.
 - ii. In all other zoning districts, transitory containers used for temporary on-site storage shall not be present on the subject property for more than 30 days per year, unless they are:

1. Used for temporary storage of construction materials or equipment in conjunction with a valid building permit; or
2. Allowed in conjunction with an approved temporary use.

18. *Stacking and Design Standards for Drive-In and Drive-Through Facilities.* The standards of this subsection apply to land uses that include drive-in, drive-through, and “app through” facilities, but not to land uses that provide curbside pick-up services.

- a. *Minimum Number of Vehicle Stacking Spaces.* Off-street stacking spaces shall be provided as set out in Table 3-14, Minimum Number of Vehicle Stacking Spaces by Land Use.

Table 3-14 Minimum Number of Vehicle Stacking Spaces by Land Use		
Activity Type	Minimum Stacking Spaces	Measured From ¹
Bank teller lane	4	Teller or Window
Automated teller machine	3	Automated Teller Machine
Restaurant drive-through	6	Order Box
Restaurant drive-through	4	Order Box to Pick-Up Window
Vehicle wash stall, automatic	4	Entrance
Vehicle wash stall, self-service	3	Entrance
Funeral home/mortuary	4	Primary Passenger Loading Area for Processions
All other drive-through facilities	4	Pick-Up Window
TABLE NOTE: ¹ Measured so that the driver’s side window is centered on the teller, order box, or window, as applicable.		

- b. *Design and Layout.* Required drive-through lanes and facilities and vehicle stacking spaces are subject to the following design and layout standards:

- i. *Vehicle Stacking Spaces.*

1. *Size.* The minimum dimensions of vehicle stacking spaces must be nine feet by 20 feet.
2. *Location.* Stacking spaces may not impede on- or off-site traffic movements, nor impede movements into or out of off-street parking spaces.
3. *Design.*
 - a. Stacking spaces shall be separated from other internal driveways by raised medians if the Town Engineer deems the median necessary for safe and efficient traffic movement.
 - b. Vehicle stacking areas adjacent to public streets or sidewalks shall be separated from such streets or sidewalks by walls or landscaping with berms.

- ii. *Drive-In (Drive-Through) Facilities and Lanes.*

1. *Location and Screening.*

- a. Drive-in facilities (order stations, pick-up windows, bank teller windows, money machines, etc.) shall be located on the side or rear of principal structures to minimize their visibility from public streets.
- b. To the maximum extent practicable, drive-in lanes shall not be located between the primary structure and adjacent public streets or sidewalks. If this is not possible, drive-in lanes and facilities shall be set back a minimum of 20 feet from any adjacent public street or sidewalk. The entire 20-foot setback must be landscaped and bermed to screen the drive-in lane and facility from adjacent streets.
- c. Drive-in lanes adjacent to public streets or sidewalks shall be separated from such streets or sidewalks by walls or landscaping with berms.
- d. Vehicle wash facilities and gas station auto service bays shall be located on the side or rear of principal structures to minimize their visibility from public streets.
- e. In addition to any buffering required by Article 2, drive-in lanes adjacent to residential uses shall be separated from such uses by an opaque wall at least six feet high, located so that required buffer landscaping is between the wall and the adjacent residential use.

19. *Design and Performance Standards for Nonresidential Uses in the C-E Zoning District.*

- a. *Limit on use outside buildings.* Except for off-street parking and loading areas, all outdoor storage shall be screened above and beyond what is required in other zoning districts as determined in this Land Use Code.
- b. *Building design.*
 - i. To the extent reasonably feasible, industrial buildings shall provide a primary entrance that faces and opens directly onto the adjacent street sidewalk or a walkway, plaza or courtyard that has direct linkage to the street sidewalk without requiring pedestrians to cross any intervening driveways or parking lots.
 - ii. Notwithstanding section 3.4.19.b.i., above, buildings may orient away from the street if the development provides a campus or park-like development block with a unifying, formative internal framework of outdoor spaces and connecting walkways that function as an alternative to street sidewalks by connecting buildings within the site and directly connecting to common destinations in the district (such as transit stops, restaurants, child care facilities and convenience

shopping centers). Such an internal network shall provide direct pedestrian access to the street sidewalk.

- c. Buildings shall be clad with one or more of the following materials: brick, CMU block, wood, vinyl, stucco, stone and other materials similar in type.
- d. Prefabricated buildings and metal buildings are not permitted.

20. *Seasonal Sales*. Seasonal Sales refers to temporary commercial uses that typically conduct business on vacant land, parking areas, public rights-of-way or other appropriate spaces during particular times of the year. Such uses shall include but not be limited to fireworks stands, Christmas tree lots and produce stands. Seasonal Sales uses shall be allowed to operate for a maximum of 90 days from the time a permit is issued. The proposed business may be subject to other regulations (fire, building, use of public spaces/right-of-way, health, etc.), and other permits or permissions may be required by other Town departments, outside agencies or private property owners.

21. *Backyard Chickens*. Backyard chickens may be kept in conjunction with an established single-family residence with the following conditions:

- a. Up to six hens may be kept. Roosters are not permitted.
- b. Backyard chickens shall be located within a designated chicken coop and chicken run that shall meet the following requirements:
 - i. The chicken coop and chicken run shall be located in the rear or backyard of a residential property.
 - ii. Neither the coop nor run, nor any part thereof, shall be located between the rear of the principal structure and the front yard lot line.
 - iii. The coop shall have a minimum five foot setback from any side or rear property line.
 - iv. Coops shall be predator-resistant, incorporating a solid covered roof.
 - v. Water shall be provided on site and accessible to chickens at all times.
 - vi. During daylight hours, the chickens shall have access to a chicken run that is adequately fenced and protected from predators and shall also have access to a chicken coop.
 - vii. From dusk until dawn, chickens shall be protected from predators by being enclosed within a chicken coop.
 - viii. The maximum chicken coop size is 100 square feet.
 - ix. A minimum of four square feet of space per chicken shall be provided in both the coop and the run.
 - x. The maximum height of a coop shall be no more than seven feet at the highest point of the roof.

- c. Chicken coops and chicken runs shall be maintained and shall be regularly cleaned to control dust, odor, and waste, and not constitute a nuisance, safety hazard, or health problem to surrounding properties.
- d. No on-site slaughtering is allowed.
- e. Chicken feed shall be stored in a resealable, airtight, predator-proof container or indoors.
- f. Chicken waste shall be stored in a resealable, airtight, predator-proof container.
- g. A license is required for the keeping of backyard chickens. The license is issued once. Renewal is not required.
- h. Many homeowner association covenants do not allow poultry of any kind. The Town of Frederick encourages residents to research their individual homeowner association regulations.

22. *Apiaries/Beekeeping.* Apiaries/beekeeping is permissible as an accessory use to a single-family detached use. A Town-issued license is required. License applications shall be granted upon demonstration that the standards of this subsection will be met. Once issued, licenses are perpetual, but may not be transferred. Licenses may be revoked upon noncompliance with the standards of this subsection.

- a. Maximum hives permitted.
 - i. A zoning district:
 - 1. Property less than five acres in size, 12 hives.
 - 2. Property five or more acres in size, no maximum.
 - ii. R-E zoning district: 4 hives.
 - iii. R-1 zoning district: 2 hives.
 - iv. R-2, D-A, and D-B zoning districts: 2 hives, provided that the lot area is at least 5,000 square feet and the primary use is single-family detached.
- b. Bee colonies shall be kept in hives with movable frames, which shall be kept in sound and usable condition.
- c. Hives must be located in the rear yard, at least five feet from a property line.
- d. A fresh supply of water shall be provided for all hives.
- e. Africanized bees and hybrids of Africanized bees are prohibited.

23. *Medical Marijuana Cultivation and Processing by Caregivers and Patients.*

- a. Medical marijuana caregivers and medical marijuana patients may grow up to six plants in a dwelling unit in the A, R-E, R-1, R-2, R-3, R-MH1, R-MH2, D-A, and D-B zoning districts.

- b. If approved by the State of Colorado, Medical marijuana caregivers and medical marijuana patients may grow more than six plants, but not more than 99 plants, in an enclosed building in the I zoning district, provided that the outer walls of the building are spaced not less than 500 feet from:
 - i. An R-E, R-1, R-2, R-3, R-MH1, or R-MH2 zoning district boundary;
 - ii. Land within the C-E zoning district that is used or approved for residential purposes; and
 - iii. Existing residential lot lines in any other zoning district.

Section 3. Sec. 4.11, Specific Requirements and Review Standards for Administrative Applications, Town of Frederick Land Use Code, is amended to add subsection 7 after subsection 6, as follows (strikethrough represents deleted text, underline means added text, and * * * means large blocks of unmodified text):

* * *

7. *Limited use.*

a. *General.* The limited use review process applies to those uses that are designated in Tables 3-1 through 3-10, inclusive, as limited uses ("L").

b. *Review procedure.* Applications for limited use approval are processed using the core procedure for review of administrative applications, set out in Section 4.10. Such applications shall be processed with a site plan (see Section 4.11.1) or plot plan (see Section 4.11.3), as applicable to the use.

c. *Review criteria.* The Planning Director may approve a limited use only upon finding that all applicable standards of this Code, including the use-specific standards of Section 3.4, are met.

Section 4. Codification Amendments. The codifier of the Frederick Land Use Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this ordinance into the Frederick Land Use Code.

Section 5. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 6. Severability. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Ordinance. The Board of Trustees hereby declares that it would have passed the Ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 7. Effective Date. This Ordinance shall become effective immediately.

Section 8. Necessity. The Board of Trustees of the Town of Frederick finds that this Ordinance is necessary for the immediate preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Frederick.

Section 9. Certification. The Town Clerk shall certify to the passage of this Ordinance and make not less than one copy of the adopted Code available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS __ DAY OF _____, 2023.

ATTEST:

TOWN OF FREDERICK

By _____ By _____
Meghan Martinez, CMC, Town Clerk Tracie Crites, Mayor



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MINUTES
TOWN OF FREDERICK
PLANNING COMMISSION
MEETING CONDUCTED IN PERSON AND VIA ZOOM
JANUARY 5, 2023
6:00 PM

CALL TO ORDER: At 6:10 p.m., Vice Chair Conroy called the meeting to order and requested roll call.

ROLL CALL:

- Present: Vice Chair Conroy, Commissioner Kelly, Commissioner Scott, Commissioner Sammartino.
- Not present: Chairperson Moe, Alternate Commissioner Mahoney.
- Staff: Planning Manager Ali van Deutekom, Land Use Attorney Todd Messenger, Land Use Attorney Christine Francescani, Town Clerk Meghan Martinez, Deputy Town Clerk Kelly Green, and Assistant Town Clerk Emily Nitcher.

APPROVAL OF AGENDA:

APPROVAL OF DECEMBER 15, 2022 MINUTES:

Motion by Commissioner Kelly and seconded by Commissioner Sammartino to approve the December 15, 2022 Minutes.

Upon roll call vote, motion passed 4 to 0.

Amendments to Articles 1, 3 and 4 of the Frederick Land Use Code:

Planning Manager Ali van Deutekom and Land Use Attorney Todd Messenger presented the proposed Amendments to Articles 1,3 and 4 of the Frederick Land Use Code.

Commissioner Kelly raised concerns about adding energy to oil and gas in the special use category. Commissioner Kelly also questioned if hyperlinks would be helpful for the public to use and not just for the planning commission, and if hyperlinks could also be added to the tables. Commissioner Kelly also raised concerns about the definitions not allowing open mics in coffee shops. Commissioner Kelly also questioned why Bed and Breakfasts are limited to 5 bedrooms.

Commissioner Scott raised concerns about storage containers, and would like more clarity about Pods. Commissioner Scott raised concerns about daycare.

Commissioner Sammartino had concerns about the acreage dedicated to assisted living facilities. Commissioner Sammartino also wanted clarity about mixed use zoning.

Vice Chair Conroy raised concerns over urgent care and if they belong under hospitals or under medical offices. Vice Chair Conroy also raised concerns over Auto Repair not being called out well, and suggested that it be added back in.

Built on What Matters.

Motion by Commissioner Sammartino and seconded by Commissioner Kelly to approve PCR-2023-01C with the following conditions; 1. Staff share with the Board the discussion by the planning commission, 2. The attorneys look into remedying the specific aspects highlighted by the planning commission.

Upon roll call vote, motion passed 4 to 0.

OTHER BUSINESS:

Upcoming Meeting:

Upcoming joint meeting with Town Board on February 14, 2023.

There being no further business of the Planning Commission, Vice Chair Conroy adjourned the meeting at 7:37 p.m.

Approved by the Planning Commission:

Tracy Moe, Chairperson

ATTEST:

Emily Nitcher, Secretary to Planning Commission

Attachment A- Summary of the Planning Commission discussion and amendments made pursuant to that discussion.

1. Under special use designation it says oil and gas only. Should we include energy? for things like wind and solar and biomass? Looking at energy generation, should that be included?

Todd Messenger: The special use that is currently in the Town's code is so we can regulate oil and gas. Wind and solar infrastructure are conventional land uses covered under other use categories.

Changes to proposed ordinance: No changes necessary.

2. Table 1 design parameters, should we consider the trail component or should that be in the green open space wording? It's a valuable amenity in communities.

Todd Messenger: We'll be looking at that within the comprehensive plan discussions and likely it will be a requirement for new development to implement the trails plan. We are confident that the new land use code will implement the park, trails, and transportation plans.

Changes to proposed ordinance: No changes necessary.

3. Under the bar section, we do a good job defining what they are but I don't see a place where we can allow open mic type events at coffee houses.

Todd Messenger: We didn't contemplate something like in the Planning Commission draft, but that is something we can add.

Changes to proposed ordinance:

- (a) Updated definition of "restaurant" to state that "Restaurants may also provide live entertainment for customers seated at indoor dining tables." The "seated at indoor dining tables" differentiates restaurants from bars, taverns, and nightclubs, in that bar, tavern, and nightclub patrons do not necessarily sit at indoor dining tables.
 - (b) Also added to definition of "restaurant" that the term "restaurant" does not include the phrase "bar, tavern, or nightclub" (although they can be co-located as zoning may allow), and does not include the phrase "adult-oriented use."
4. 5 room bed and breakfast is allowed. Is there a reason we put a limit on the number of bedrooms?

Todd Messenger: No reason for that other than we haven't had a reason to change it. Could be related to building code. If over 5 rooms it may be moved to the IBC, where it goes into commercial. We will look into it.

Changes to proposed ordinance: No changes are proposed. This issue relates to building codes with regard to the conversion of existing single-family homes. Also, there are no known 6 room bed and breakfasts in Frederick, and no known opportunities for a 6 room bed and breakfast in Frederick. Such a use would be "commercial lodging".

5. Under gas station, they can serve food but you can't sit down. Can we have some of the gas stations that are connected to a fast-food place so people can sit down and eat? We have a lot of gas stations.

Todd Messenger: That combination would be considered a "fueling, fast-charging, or service station" and a "restaurant." The combined use would have to meet standards for both of these uses. Both uses are potentially permissible in C-N, C-C, C-H52, C-E, BLI, and I zoning districts (restaurants without "fueling, fast-charging, or service station" components are also allowed in the D-A and D-B zoning districts).

Changes to proposed ordinance: No changes necessary.

6. Marijuana uses are not allowed in Frederick but it is defined in the definitions. Is that in case Frederick changes their policy or so we can point to that and say yes we don't allow them.

Todd Messenger: One might argue (probably unsuccessfully) that marijuana sales is a retail land use. Currently in the land use table, medical marijuana patient (the individual) is listed as a land use. People are not land uses, and it appears that by this provision, the Town is simply acknowledging that a person within a single-family residence may grow up to 6 plants as allowed by state law. If a caregiver as licensed by the state is allowed to grow more, it can grow in an industrial area according to its state license. The proposed ordinance articulates what the marijuana use definitions are by referencing updated provisions of state law. The proposed ordinance, like the current code, prohibits any marijuana use that is licensed by the state (except caregiver).

Changes to proposed ordinance: No changes necessary.

7. Multiple use zoning codes often overlap. Can we use hyperlinks to direct people to what the zoning definitions mean?

Todd Messenger: Yes, we are trying to compartmentalize information and make it clearer. We will work with the Town's codifier to ensure that definitions and cross-references include hyperlinks.

Changes to proposed ordinance: No changes necessary.

8. Battery storage - we define 150 mega-watt hours as minor utility; did we add an exception or do we define a Tesla power wall in someone's garage as a minor utility?

Todd Messenger: We can look at that. Battery storage for a pv system or a battery wall are more considered mechanical vs a larger operation that dominates the landscape and requires utility hookups, which would be considered a land use. The latter are what will require a land use application.

Changes to proposed ordinance: No changes necessary. The proposed definition of "battery energy storage system" is "an electric storage resource capable of receiving electrical energy from the power grid and storing it in batteries for later provision of electrical energy back to the power grid, with a capacity of 150 MWh or greater. Battery Energy Storage Systems with a capacity of less than 150 MWh are classified as 'Utilities,

Minor.” The facilities that are contemplated by the “Utilities, Minor” classification are “used in the provision or distribution of utility service.” By contrast a Tesla Powerwall (and similar systems) stores electricity (about 12 to 14 kWh) to store energy from rooftop solar panels, to adjust peak hours of power use, and to provide backup power. While a Powerwall or similar system might be connected to the power grid, it is not principally intended to be “used in the provision or distribution of utility service.”

9. Can you have storage containers? In most districts not allowed but in some places our web page it says 30 days.

Ali van Deutekom: If you need a pod for a few days, that is allowed on private property but not in rights of ways. Permanent storage containers are not allowed in residential zones.

Changes to proposed ordinance: No changes necessary. Storage container regulations were moved, but their substance was not changed.

10. Home daycare is defined as 5 or more unrelated children, where did the 5 come from?

Todd Messenger: The numbers are from the licensing provisions of Colorado statutes. There are many different licensing classifications and certain license exemptions. So, the definition that is provided attempts to capture all of that. State licensing officials will usually ask if the applicant is in a zoning district that allows daycare, so it is prudent and efficient to define the use in the same manner as the state.

Changes to proposed ordinance: No changes necessary.

11. In the use table daycare is a conditional use in all zoning except residential estate. (R-E). Why is that?

Todd Messenger: We will have to look into it, but it may be because it adds the extra traffic to an area that doesn't account for it. We can look into why it's not currently allowed in the R-E district.

Changes to proposed ordinance: Added day care, adult or child to R-E zoning district as a conditional use (like A, R-1, R-2, and R-3) in Table 3-6, and added the R-E zoning district to the use-specific standards after the table.

12. Acreage allocated to nursing homes, where does that number come from?

Todd Messenger: Combined with the height limit, parking requirements, and maximum floor area ratio, the minimum land area requirement limits the number and scale of such facilities such that they fit better into the surrounding residential fabric. The minimum land area also helps to prevent overuse of the site in the residential context, including by offering a buffer to help mitigate disruptions to the neighborhood from parking and loading areas, and provision of services by food deliveries, trash hauling, and linen services.

Changes to proposed ordinance: No changes necessary.

13. How do you achieve a mixed-use development in this language?

Todd Messenger: Under the proposed ordinance, one can build what is allowed in the zoning district, including multiple permitted, limited, or conditional uses on the same lot. Each use must comply with the standards that apply to it, and development of the lot must also comply with physical development standards. As such, in the proposed ordinance, mixed use is not a use category. Ultimately, economics will drive use mixes (and forms), based on what the market demands.

Changes to proposed ordinance: No changes necessary.

14. Will urgent care fall under hospital or long-term care? Where does urgent care fall under.

Todd Messenger: Urgent care falls under medical office and free-standing emergency room is hospital.

Changes to proposed ordinance: No changes necessary.

15. Are we comfortable with the medical office definition? Modern doctors' offices are not just the doctor anymore. Now there is a surgery center attached or MRI machines and pretty much mesh everything short of overnight beds.

Todd Messenger: A hospital will generate a lot more traffic, employees, and ambulance use. So, a medical office with a surgery center or MRI machines may be larger than "traditional" medical offices, they typically won't have the ambulance, noise, and traffic that a hospital produces.

Changes to proposed ordinance: No changes necessary.

16. Where did auto repair go?

Todd Messenger: Depending on what it is, it may be light industrial, for brakes and fueling and such or heavy industrial. It doesn't jump out so we can look into adding that back in so it's clearer.

Changes to proposed ordinance: Added definitions for "light motor vehicle repairs and service" and "heavy motor vehicle repairs and service" and modified related definitions to exclude these new uses. Added the new uses to Table 3-8, assigned limited use status to both uses in the BLI, and I zones, and to light motor vehicle repairs and service in the C-C and C-H52 zones, and assigned conditional use status to heavy motor vehicle repairs and service in the C-C zone. Created use-specific standards for both uses, which are listed after Table 3-8. Updated the neighborhood protection standards in Section 3.4.12 to include the new uses.

**A Resolution of the Planning Commission Recommending Conditional Approval of
Amendments to the Town of Frederick Land Use Code Articles 1, 3 and 4**

Be it resolved by the Planning Commission of the Town of Frederick, Colorado:

Section 1. The Frederick Planning Commission finds that:

1.1 Amendments to Land Use Code Sections 1, 3 and 4 to update the land use table, definitions and associated subdivision regulations.

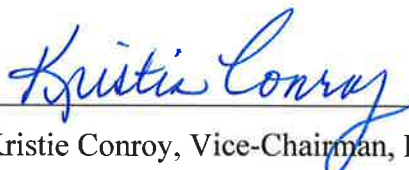
1.2 Said amendments generally conform with the applicable requirements of Section 4.7.9.b. of the Frederick Land Use Code.

Section 2. This resolution constitutes the written report, findings and decision of the Town of Frederick Planning Commission.

Section 3. On the basis of the above, the Town of Frederick Planning Commission recommends approval of the application with the following conditions:

1. Staff share with the Board the discussion by the planning commission and;
2. The attorneys look into remedying the specific aspects highlighted by the planning commission.

This resolution approved this 5th day of January 2023, by a vote of 4 to 0.



Kristie Conroy, Vice-Chairman, Planning
Commission



TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Trustee
Mark Lamach, Trustee
Kevin Brown, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

Consideration of the Prosperity Subdivision Landscape Wavier

Agenda Date: Town Board Meeting - January 24th, 2023

Attachments:

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

Finance Review:

Administrative Services

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 focus area— Frederick is dedicated to investing in existing and future transportation, water, storm water, and technology while planning for sustainable growth and development.

Built on What Matters.

Detail of Issue/Request:

Applicant: Richard Jablonski

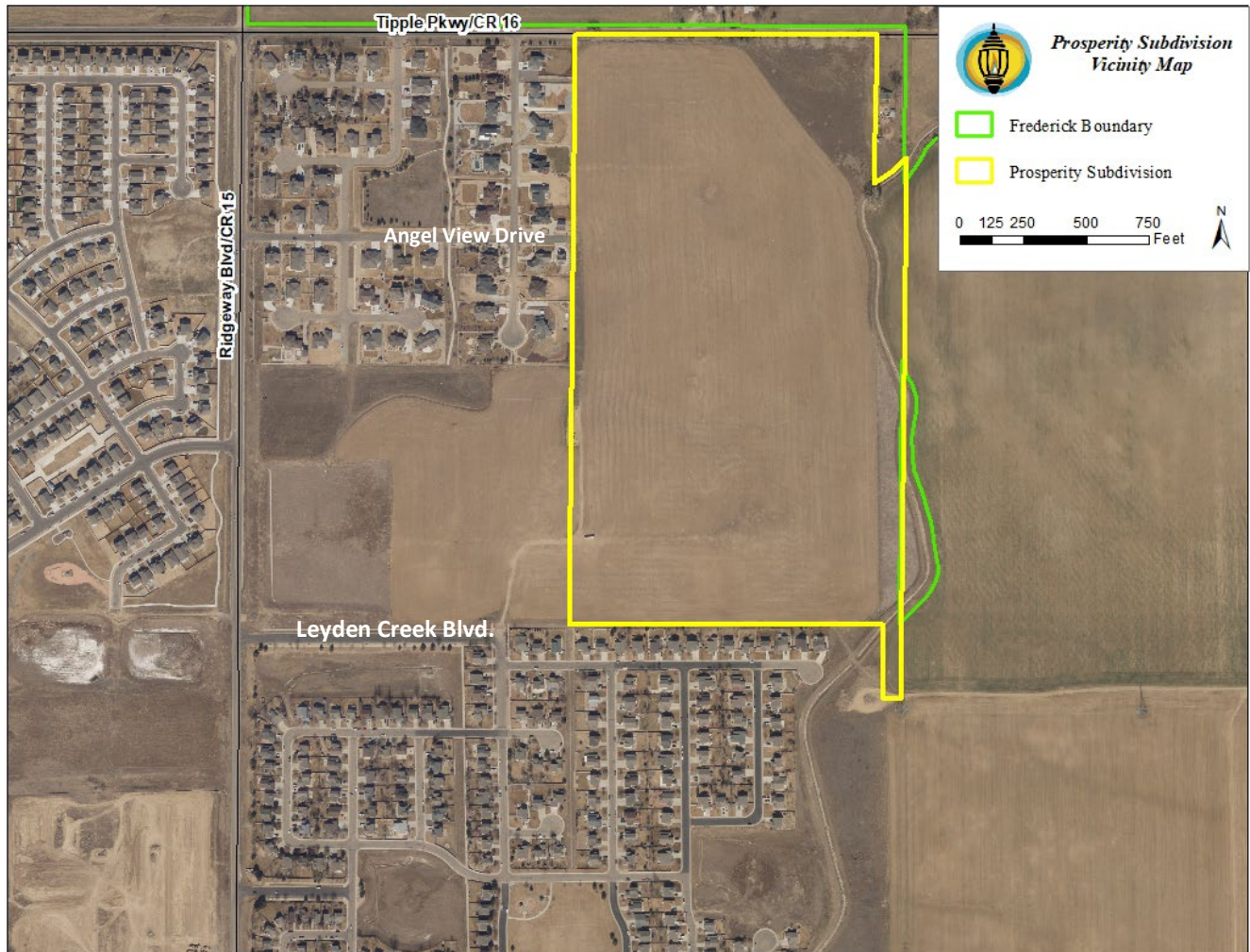
Owner: Jablonski Family LLLP

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 in order 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 wavier 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. The Engineering Department has been working on a Municipal Code update that will be changing the water dedication requirements in addition to other sections of the Code. These changes will be proposed to the Board in a future work session to collect feedback before implementation. 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 believes 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 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.
2. 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.
3. Such practical difficulties or unnecessary hardships has not been created by the applicant.

Staff Comment: In order 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 wavier request regarding landscaping requirements and believes the request conceptually is in line with the policy direction within the Town's adopted water efficiency plan. That being said, 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.

Legal Comments:

The application has been reviewed by the Town Attorney.

Alternatives/Options:

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

Item 1 Regarding a Request to Reduce Irrigated Turf Area:

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 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 restriction.

**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.

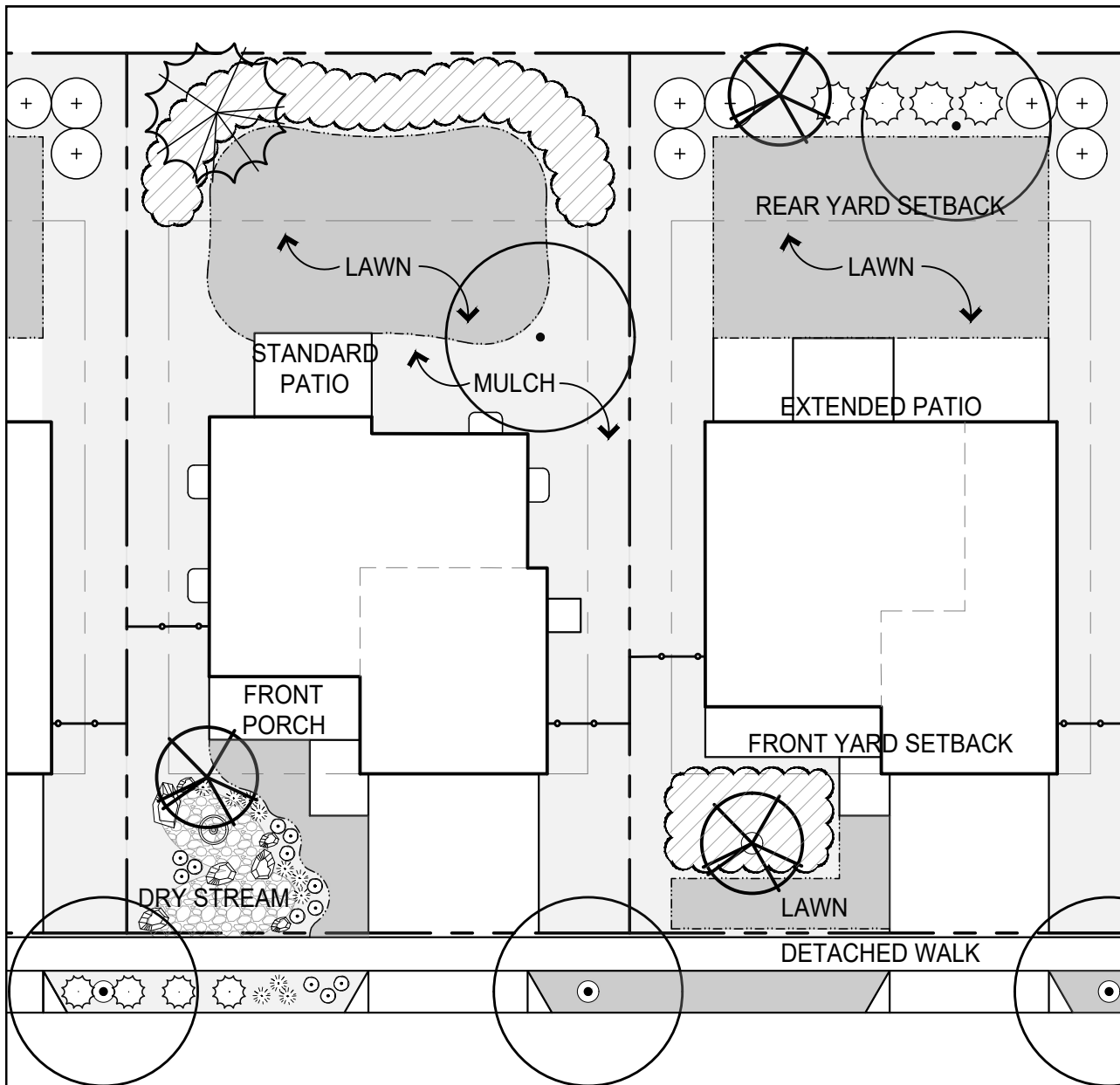
You advised that the Town Code does not currently provide a process for alternatives to the Town's established landscape requirements. Therefore, you suggested that we prepare and submit these materials and request a waiver. As justification, we also enclose our water demand analysis showing measurably 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.

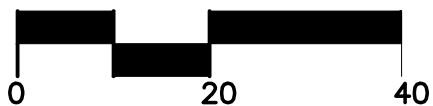
Jablonski Family, LLLP
A Colorado limited liability limited partnership

Richard T. Jablonski, General Partner

Enclosures



SCALE: 1"=20'



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.;

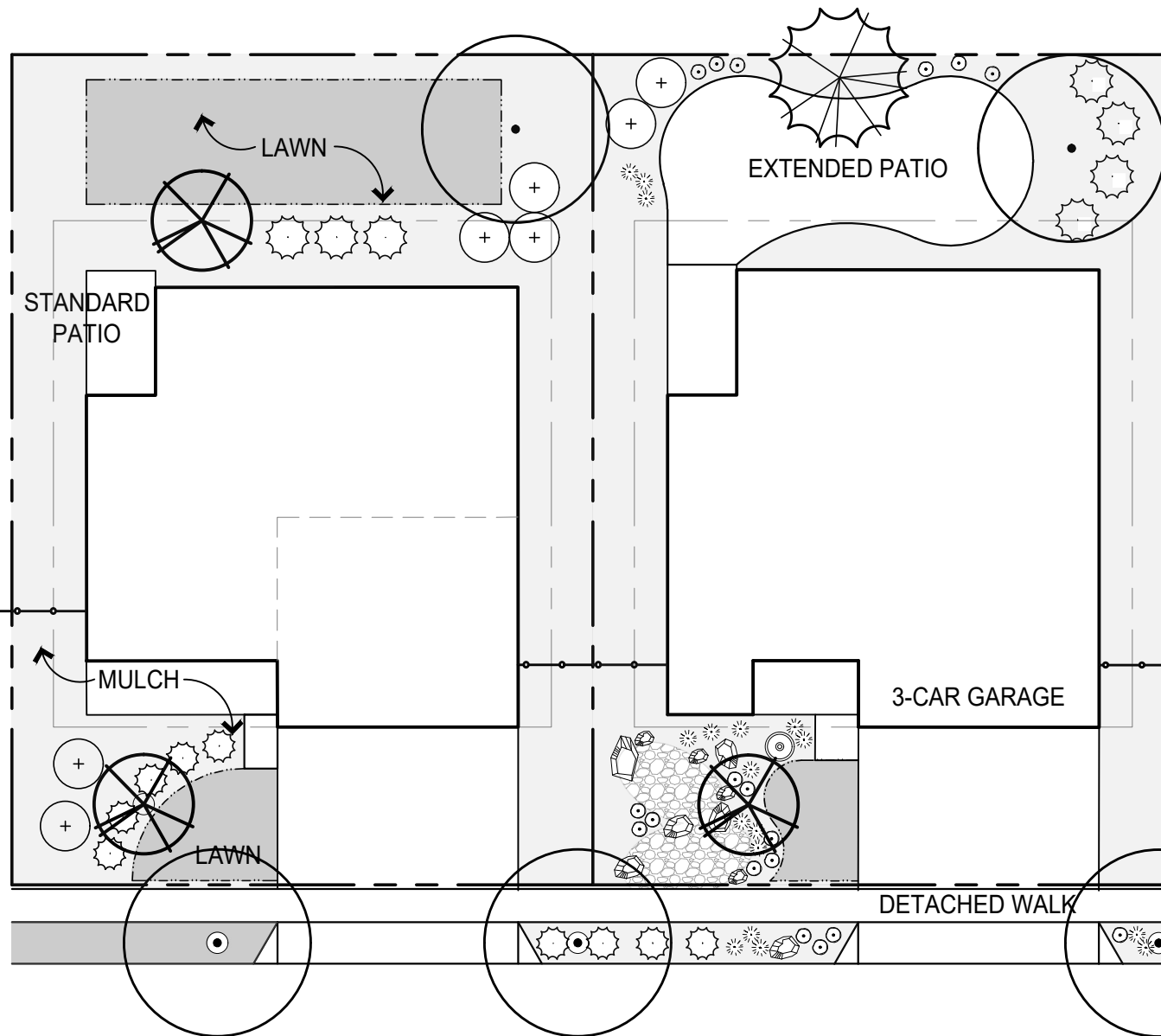
25% MIN. LIVE PLANT MATERIAL;

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.

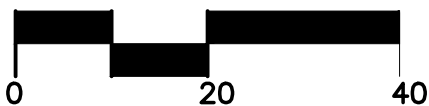
FRONT YARD LANDSCAPE REQUIREMENTS:

PROPOSED:

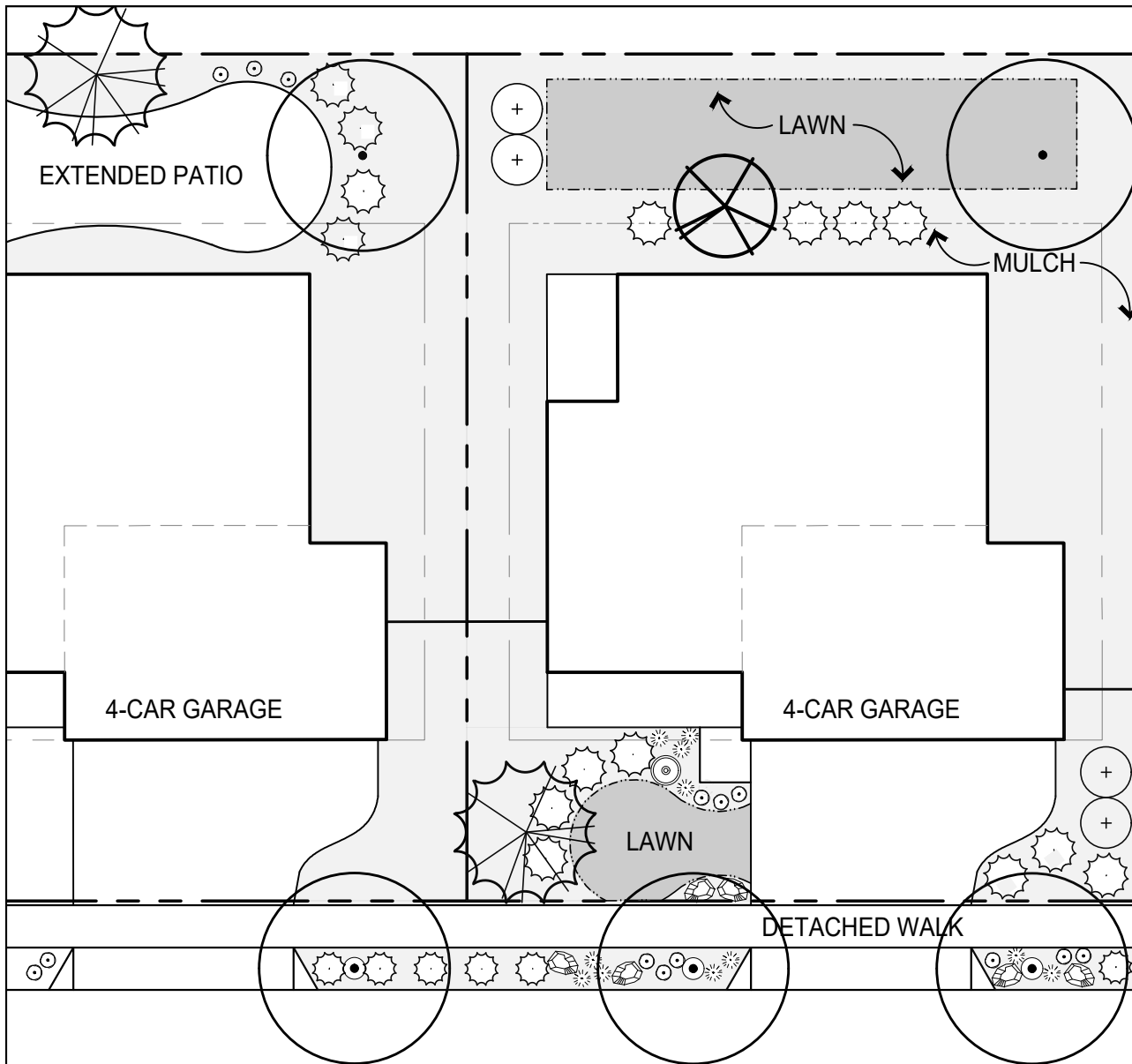
- NO TURF REQUIREMENT--200 SF MAX.;
- 25% MIN. LIVE PLANT MATERIAL;
- 75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH
- DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

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

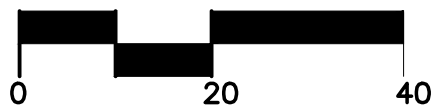
SCALE: 1"=20'



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 Utility Lines. 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 Drainage. 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 Fences. 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 No Surface Use for Drilling or Mining. 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 ACC Rules and Procedures. 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 Exterior Maintenance. 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.**

DRAFT

EXHIBIT B
LOT LANDSCAPING STANDARDS
FOR
PROSPERITY SUBDIVISION

DRAFT