



1114336

Kathleen Neel - Summit County Recorder

5 Pages

06/23/2016 08:16 AM

DP: \$0.00

**LICENSE AGREEMENT**

This License Agreement is made and entered into by and between **111 Main Street Condominium Association, Inc.**, a Colorado nonprofit corporation (the "Association"), with an address of c/o Basic Property Management, P.O. Box 4844, Dillon, CO 80435-4844, **Pocket Full of Sunshine, LLC**, ("Sunshine"), with an address of P.O. Box 858, Frisco, CO 80443-0858, and **Log Cabin Eatery, LLC, d/b/a Log Cabin Café**, ("Log Cabin") with an address of P.O. Box 858, Frisco, CO 80443-0858. The Association, Sunshine and Log Cabin are together referenced below as the "Parties" and each sometimes referenced individually as a "Licensee" or together as the "Licensees."

**RECITALS**

A. Sunshine is the owner of Lots 1, 2, Block 2, King Solomon Addition, and the west 1/2 of 2d Avenue, Town of Frisco, Summit County, Colorado, which property is adjacent to 111 Main Street Lodge and Condominiums. Log Cabin leases the property from Sunshine pursuant to a verbal lease, and operates a restaurant on the property.

B. The Association is responsible for management, maintenance and repair of the Common Elements at 111 Main Street Lodge and Condominiums pursuant to the Declaration of Covenants, Conditions and Restrictions of 111 Main Street Lodge & Condominiums, recorded on June 23, 1998 under Reception Number 568374, (the "Declaration") in the real property records of the Summit County Clerk and Recorder (the "Common Elements").

C. The Association desires to use a portion of the Sunshine property for parking and snow storage, and Sunshine agrees to grant a license to use the portion of the Sunshine property more particularly depicted on the Improvement Survey attached hereto as Exhibit A (the "Parking and Snow Storage Property").

D. Sunshine wishes to receive and the Association, pursuant to Section 12.2.3 of the Declaration and pursuant to C.R.S. §38-33.3-302(i), wishes to grant a license to a portion of the Common Elements for use in connection with Log Cabin restaurant operations, which portion is more particularly depicted on the map attached hereto as Exhibit A (the "CE Patio").

E. The CE Patio and Parking and Snow Storage Property are together referenced below as the "Licensed Premises."

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

1. Grants of License. The Association hereby grants to Sunshine, and Log Cabin as Sunshine's lessee, the personal privilege and permission to enter upon and have use of the CE Patio for Log Cabin's restaurant operations, subject to the terms and conditions and limitations of this License Agreement and the Declaration. Sunshine grants to the Association the personal privilege and permission to enter upon and have use of the Parking and Snow Storage Property for parking by its owners and guests and snow storage, subject to the terms and conditions and limitations of this License Agreement.

2. Term. This License Agreement and the licenses granted for the use of the Licensed Premises will commence May 1, 2016 and will continue for a fifteen-year term, and subsequent to the expiration of the fifteen-year term, renewing annually, unless sooner terminated pursuant to the terms of this Agreement.

3. Consideration. Each of the licenses is granted as an accommodation to the Parties and as consideration the Parties agree to abide by the covenants set forth in this License Agreement and the Declaration. Sunshine agrees to replace the CE Patio surface with concrete at its sole cost before its customers use such Licensed Premises. Attorney's fees and costs incurred by the respective parties relating to the preparation of this License Agreement will be borne solely by each respective party.

4. No Interest in Land. The Parties understand and agree that this License Agreement does not create in real property interest or estate in the Licensed Premises. The members in the Association retain ownership of the CE Patio as it will be improved by Sunshine with the new concrete surface, and Sunshine retains ownership of the Parking and Snow Storage Property; this License Agreement merely

grants to Sunshine, and Log Cabin as Sunshine's lessee, and the Association the personal privileges to use the Licensed Premises in accordance with and during the term of this License Agreement.

5. Limited Scope of License. All uses of the Licensed Premises and replacement of the surface of the CE Patio will conform to all applicable building codes and laws. Costs of cleaning, maintenance and snow removal of the Licensed Premises will be at the sole expense of each respective Licensee.

6. License Not Exclusive. This license is not exclusive to the Licensees and the Licensees will have the privilege only of using the Licensed Premises for the purposes set forth in this License Agreement. The Parties will have the right to enter upon the Licensed Premises for their own purposes, and/or to permit others to enter upon the Licensed Premises at any time to perform any necessary operations, but such entry will be performed in a manner to minimize disruption to the Licensee.

7. Indemnification and Insurance. The Licensees will exercise their privileges hereunder at their own risk and each Licensee will indemnify the other Licensee against all liability for damages, claims, costs, losses, expenses, including but not limited to reasonable attorneys' fees, resulting from, arising out of, or in any way connected with the occupation or use of the Licensed Premises or the breach of this Agreement by the Licensees, their agents, employees, members, invitees or guests.

Each licensee shall carry Commercial General Liability Insurance issued by an A-rated insurance company on a per occurrence basis with limits of at least One Million Dollars (\$1,000,000) per occurrence. The insurance must provide coverage for the indemnification obligations assumed by each licensee in this agreement. Each licensee shall be named as an additional insured on the insurance for the other licensee, but only for any claim against that licensee resulting from, arising out of, or in any way connected with the other licensee's use or occupation of the licensed premises. Each licensee shall provide a certificate of insurance to the other licensee evidencing such insurance coverage at the time this agreement is executed, and for each subsequent year while this License Agreement is in effect. The insurance must be endorsed to be primary as respects the coverage afforded to the licensee named as an additional insured and shall be primary to any other insurance maintained by that licensee. Any other insurance maintained by the licensee named as an additional insured shall be excess of and shall not contribute with that licensee's insurance, regardless of the "other insurance" clause contained in that licensee's own insurance policies.

8. Termination. The Association or Sunshine may terminate this License upon not less than ninety (90) days' written notice before the end of the initial fifteen-year term or the start of each successive annual term to the other Licensee. Such termination will be documented by recording a Termination of License Agreement in the office of the Summit County Clerk and Recorder, whereupon all rights, duties, and liabilities hereby created shall terminate.

9. License Assignable. This License Agreement may not be assigned by the Parties except (1) if Log Cabin sells the restaurant business to a third party, this License Agreement insofar as it pertains to Log Cabin may be assigned by Log Cabin to that third party; or (2) if Sunshine sells the real property to a third party, then upon such conveyance, this License Agreement will be binding on the third party, and the Parties' successors and assigns.

10. Entire Agreement. This License Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understandings relating to the subject matter hereof. This License Agreement can be modified or amended only by a duly authorized written instrument executed by the parties hereto.

11. Waiver. The failure of the Parties to exercise any of its rights under this License Agreement shall not be a waiver of those rights.

12. Recordation. This License Agreement shall be recorded by the Association in the records of the Summit County Clerk and Recorder.

13. Notices. Any notice, demand, consent, approval, request, or other communication or document to be provided to any party shall be in writing and deemed to have been provided (1) three (3) business days after being sent as certified or registered mail in the United States mail, postage prepaid, return receipt requested, to the address of the party set forth in this Agreement or to any other address in

the United States of America as the party may designate from time to time by notice to the other party, or (ii) upon being given by hand, e-mail or other actual delivery to the party.

14. Counterparts. This License Agreement may be executed in one or more counterparts, by electronic execution, each of which shall constitute an original agreement, but all of which together shall constitute a single agreement.

15. Dispute Resolution.

a. Negotiation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this License Agreement promptly by negotiations. If either Licensee gives written notice of any dispute not resolved in the normal course of business, within five (5) days after receipt of the notice, the Parties shall meet at a mutually acceptable time and place, and thereafter as often as the Parties reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within ten (10) days of the notice of dispute, or if the Parties fail to meet within five (5) days, either Licensee may initiate mediation of the controversy as provided below.

b. Mediation. If the dispute has not been resolved by negotiation as provided above, the Parties shall endeavor to settle the dispute by mediation with a neutral third party. If the Parties encounter difficulty in agreeing on a neutral third party, they may each appoint a neutral third party, such third parties to appoint a neutral third party to mediate. The mediator should be an attorney or an expert in the area of dispute. For instance, in any dispute involving financial matters, a certified public accountant would be an appropriate mediator. The parties to the mediation shall share equally in the cost of the mediator, but remain solely responsible for their respective attorneys' fees and other costs associated with the mediation.

c. Provisional Remedies. The preliminary procedures specified in this section shall be the required procedures for the resolution of disputes among the parties arising out of or relating to this Agreement before initiation of any litigation; provided, however, that a party may seek a preliminary injunction or other provisional judicial relief if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the parties will continue to participate in good faith in the procedures specified in this section.

d. Performance to Continue. Each Licensee is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

e. Breach. Should either Licensee breach or fail to comply with any of the terms or conditions of this License Agreement, the party attempting to enforce this Agreement or the prevailing party in any dispute resolution or litigation brought to enforce this Agreement shall be entitled to costs and reasonable attorney's fees arising out of or resulting from the breach or failure to comply together with any damages or other expenses so incurred.

This License Agreement is effective May 1, 2016.

111 Main Street Condominium Association, Inc., a Colorado nonprofit corporation

By: David J. Wachs, Title: President, Board of Directors

STATE OF COLORADO )  
County of Summit ) ss.

The foregoing document was acknowledged before me this 22<sup>nd</sup> day of June, 2016, by David J. Wachs, President of 111 Main Street Condominium Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My Commission expires: June 1, 2020.  
Mary M. Winston  
Notary Public

MARY M. WINSTON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124034394  
MY COMMISSION EXPIRES JUNE 01, 2020

Pocket Full of Sunshine, LLC, a Colorado limited liability company

By: Wendy Salazar, Title: owner-manager

STATE OF COLORADO )  
County of Summit ) ss.

The foregoing document was acknowledged before me this \_\_\_ day of June, 2016, by Wendy Salazar owner of Pocket Full of Sunshine, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission expires: June 1, 2020  
Mary M. Winston  
Notary Public

MARY M. WINSTON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124034394

~~Log Cabin Eatery, LLC, d/b/a Log Cabin Café, a Colorado limited liability company~~

By: Michelle McDoonick, Title: owner-manager

STATE OF COLORADO )  
County of Summit ) ss.

The foregoing document was acknowledged before me this 22 day of June, 2016, by Michelle McDoonick owner of Log Cabin Eatery, LLC, d/b/a Log Cabin Café, a Colorado limited liability company.

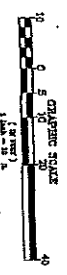
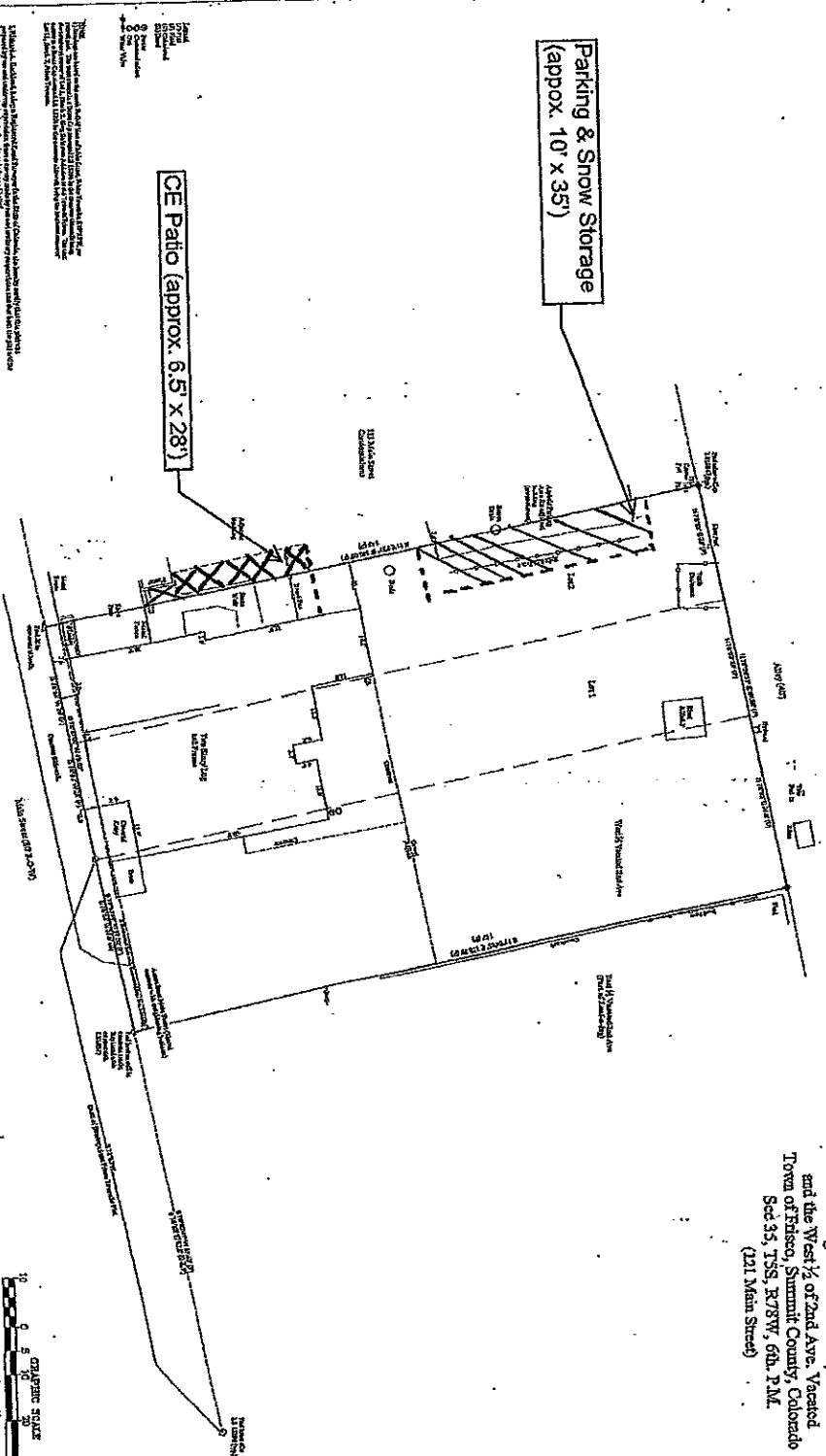
Witness my hand and official seal.

My Commission expires: June 1, 2020  
Mary M. Winston  
Notary Public

MARY M. WINSTON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124034394  
MY COMMISSION EXPIRES JUNE 01, 2020

**EXHIBIT A to LICENSE AGREEMENT**

**Improvement Survey Plat**  
 Lots 1 and 2, Block 2  
 King Solomon Addition  
 and the West 1/2 of 2nd Ave. Located  
 Town of Frisco, Summit County, Colorado  
 Sec 34, T5S, R7SW, 6th P.M.  
 (121 Main Street)



**Notes:**  
 1. This plat is subject to all existing and future utility easements and rights of way.  
 2. The boundaries shown on this plat are based on the survey of the King Solomon Addition and the West 1/2 of 2nd Ave. located in the Town of Frisco, Summit County, Colorado, Section 34, T5S, R7SW, 6th P.M. (121 Main Street).  
 3. The area shown on this plat is not to be used for any purpose other than that for which it was originally intended.  
 4. The area shown on this plat is not to be used for any purpose other than that for which it was originally intended.  
 5. The area shown on this plat is not to be used for any purpose other than that for which it was originally intended.

**SB** Background  
 Land Surveys  
 6903 66th Street  
 Frisco, CO 80424  
 PO Box 489 Frisco, CO 80424  
 www.sbsurveys.com  
 Improvement Survey Plat  
 Lots 1 and 2, Block 2 King Solomon  
 Addition and the West 1/2 of  
 2nd Ave. Located  
 Rev. 05/2010 1/25/10

**EXHIBIT A to LICENSE AGREEMENT**

**Improvement Survey Plat**  
 Lots 1 and 2, Block 2  
 King Solomon Addition  
 and the West 1/2 of 2nd Ave. Vacated  
 Town of Frisco, Summit County, Colorado  
 Sec 35, T5S, R78W, 6th. P.M.  
 (121 Main Street)

**Parking & Snow Storage**  
 (approx. 10' x 35')

**CE Patio (approx. 6.5' x 28')**

- Legend**
- (P) Plat
  - (F) Field
  - (C) Color/Label
  - (D) Deed
  - (O) Pole
  - (C) Curved/Label
  - (G) GN
  - (W) Water/Value

**Notes:**  
 1) Bearings are based on the north R-O-W line of Main Street, Frisco Township, 67°53'W, per record plat. The west corner is a Brass Cap stamped LS 15236 in the corner adjacent being the southeast corner of Lot 1, Block 2, King Solomon Addition to the Town of Frisco. The east corner is a Brass Cap stamped LS 15236 in the corner adjacent being the southeast corner of Lot 11, Block 7, Frisco Township.

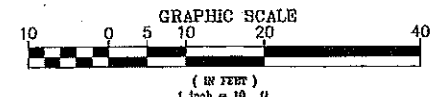
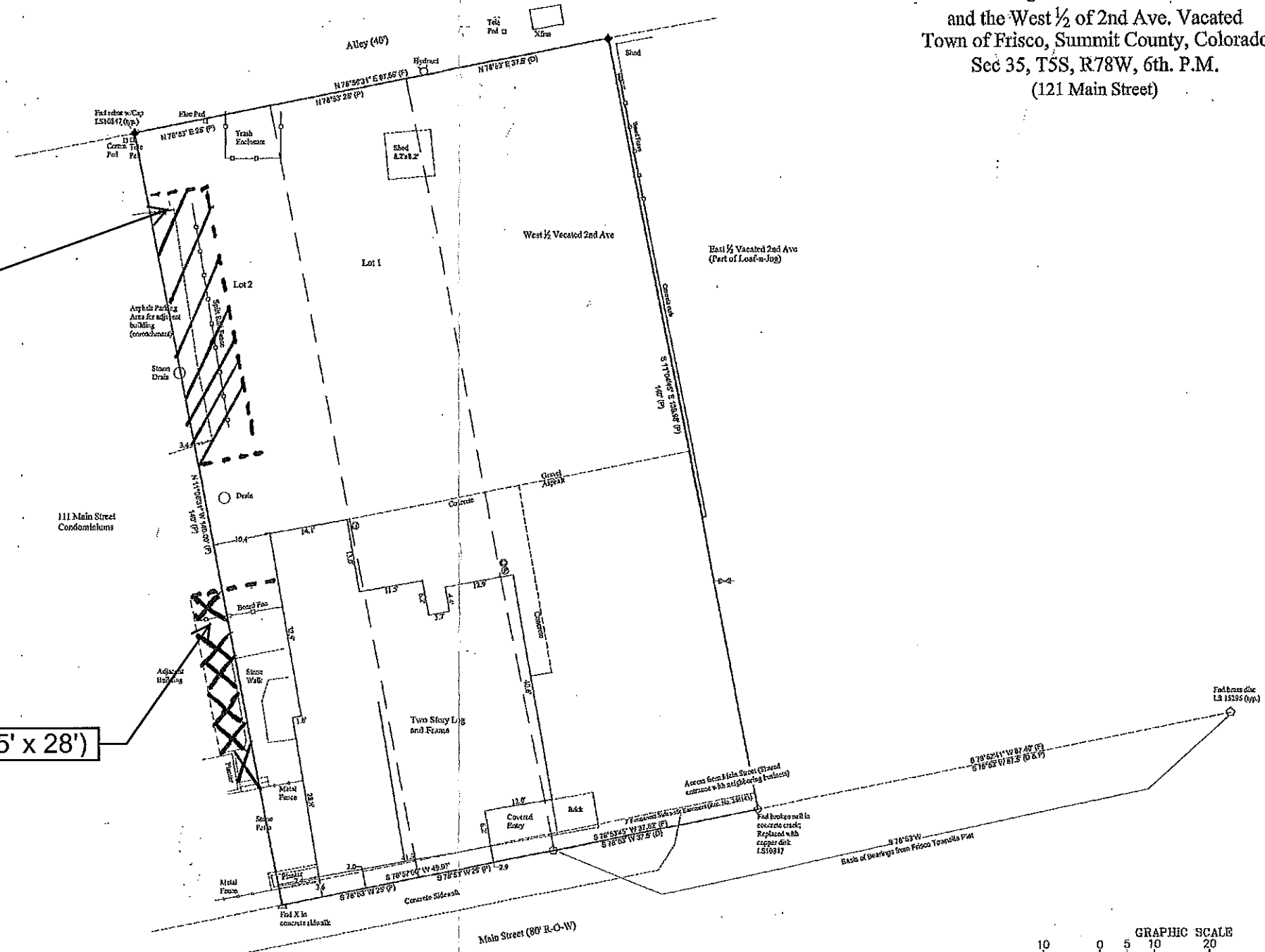
I, Richard A. Backlund, being a Registered Land Surveyor in the State of Colorado, do hereby certify that this plat was prepared by me and under my supervision from a survey made by me and under my supervision and that both the plat and the survey are true and correct to the best of my knowledge and belief.

Date \_\_\_\_\_ By \_\_\_\_\_

Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

This Land Survey Plat was accepted for deposit on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is filed under Land Survey Plat Reception no. \_\_\_\_\_, in the office of the Summit County Clerk and Recorder.

Richard A. Backlund  
 Summit County Surveyor



This survey does not constitute a title or ownership search by Backlund Land Surveys. All ownership, easement and public record information was based on the owner's title Commitment No. 536631, issued by Centennial Divide Title Company. Property is subject to exceptions as described in the title policy as referenced.

**Backlund Land Surveys**  
 (970) 668-3730  
 PO Box 1800 Frisco, CO 80443  
 www.backlundlandsurveys.com

**Improvement Survey Plat**  
 Lots 1 and 2, Block 2 King Solomon  
 Addition and the West 1/2 of  
 2nd Ave. Vacated

Date: 09/27/2016 B663