

**CITY OF LEADVILLE, COLORADO
RESOLUTION NO. 20
SERIES OF 2022**

**A RESOLUTION APPROVING A TEMPORARY CONSTRUCTION AND ACCESS
EASEMENT AGREEMENT WITH LTF REAL ESTATE COMPANY, INC. FOR
INSTALLATION OF TEMPORARY CONSTRUCTION FENCING AND
SCAFFOLDING RELATED TO PHASE 2 OF THE TABOR OPERA HOUSE
REHABILITATION OF EXTERIOR ENVELOPE PROJECT**

WHEREAS, the City of Leadville, Colorado (“City”) will soon be performing construction work on the City’s historic Tabor Opera House (“TOH”) located at 308 Harrison Avenue, Leadville, Colorado 80461, which real property is owned by the City (“City Property”); and

WHEREAS, the TOH is a contributing building in the Leadville National Historic Landmark District as noted on the National Register of Historic Places and designated as a National Treasure by the National Trust for Historic Preservation; and

WHEREAS, the purpose of the construction work is to rehabilitate the exterior of the TOH, and the work includes rehabilitation of the masonry and windows on the east (rear) and north elevations, both of which are highly deteriorated (the “Project”); and

WHEREAS, LTF Real Estate Company, Inc., a Minnesota corporation (“LTF”), is the owner of that certain real property known as 316 Harrison Avenue, Leadville, Colorado 80461 (“LTF Property”), which is adjacent to the City Property; and

WHEREAS, the work for the Project on the City Property requires access by City contractors and employees to the LTF Property to place and install construction fencing and scaffolding related to the Project; and

WHEREAS, LTF has agreed to grant the City a temporary construction and access easement over a portion of the LTF Property for the City’s work on the Project during the 2022 construction season, which easement is described and depicted in the Temporary Construction and Access Easement Agreement (“Easement Agreement”), attached hereto as **Exhibit 1**; and

WHEREAS, City Council finds that it is in the best interests of the City to approve the Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein by reference as findings and determinations of City Council.

Section 2. The City Council hereby: (a) approves the Easement Agreement in substantially the form attached hereto as **Exhibit 1**; (b) authorizes the City Attorney to make any changes to the Easement Agreement that do not increase the financial obligations of the City; and (c) authorizes the Mayor to execute the Easement Agreement on behalf of the City once in final form.

Section 3. Severability. If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

Section 4. Effective Date. This Resolution shall take effect upon its adoption by the City Council.

ADOPTED this 17th day of May 2022 by a vote of 7 in favor, 0 against,
0 abstaining, and 0 absent.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:



Deputy City Clerk

EXHIBIT 1
EASEMENT AGREEMENT

(see attached)

TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

This **TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT** ("Agreement") is entered into by and between the **CITY OF LEADVILLE**, a municipal corporation of the State of Colorado with offices at 800 Harrison Avenue, Leadville, Colorado 80461 (the "**City**" or "**Grantee**"), and **LTF Real Estate Company, Inc.**, a Minnesota corporation with an address of 2900 Corporate Place, Chanhassen, Minnesota 55317 (the "**Grantor**") (together the "**Parties**"). This Agreement shall be effective upon the date of its mutual execution by the Parties.

For consideration in the amount of Ten and 00/100 Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee hereby agree as follows:

1. **Grantor's Property**. The Grantor is the owner of that certain property known as 316 Harrison Avenue, Leadville, County of Lake, Colorado 80461, as described in that certain Special Warranty Deed to the Grantor recorded in the real property records of the Lake County Clerk and Recorder at Reception No. 355661 and having a legal description as follows: Lots 4, 5, 6 and the North 15 feet Lot 7, Block 1, Leadville Improvement Company's Addition to the City of Leadville, County of Lake, State of Colorado (the "**Grantor's Property**").
2. **Grantee's Project**. Grantee is performing construction work, funded wholly by grants and state tax credits, on Grantee's property adjacent to the Grantor's Property and having an address of 308 Harrison Avenue, Leadville, Colorado 80461, as described in that certain Special Warranty Deed to the Grantee recorded in the real property records of the Lake County Clerk and Recorder at Reception No. 369050 and having a legal description as follows: The South 10 feet of Lot 7, and Lots 8 and 9, Block 1, Leadville Improvement Company's Addition to the City of Leadville, County of Lake, State of Colorado ("**Grantee's Property**") in coordination with the Colorado nonprofit corporation Tabor Opera House Preservation Foundation. Grantee's Property houses the historic Tabor Opera House ("**TOH**"), a contributing building in the Leadville National Historic Landmark District as noted on the National Register of Historic Places and designated as a National Treasure by the National Trust for Historic Preservation. The purpose of the construction work is to rehabilitate the exterior of the TOH, and the work includes rehabilitation of the masonry and windows on the east (rear) and north elevations, both of which are highly deteriorated (the "**Project**").
3. **Grant of Temporary Easement**. Subject to the terms and conditions of this Agreement, Grantor hereby grants, bargains, sells, and conveys to the Grantee a temporary, non-exclusive construction and access easement (the "**Temporary Easement**") over, across and upon a portion of the Grantor's Property lying South of Grantor's existing rear stairway as shown in **EXHIBIT A**, attached hereto and incorporated herein by this reference solely for the following purpose:
 - A. To provide access by construction personnel to the Grantee's Property that is necessary for the completion of the Project and to place and install construction fencing and scaffolding related to and necessary for the Project.

The width of the Temporary Easement on the Grantor's Property shall not exceed a distance of fourteen (14) feet from the Northerly wall of the TOH, and the westerly limit of the Temporary Easement shall end no closer than one (1) foot from the Grantor's railing and decking on Grantor's lower roof. Within the Temporary Easement, the Grantee's

Project Representatives, as defined below, may erect temporary security fencing and scaffolding in connection with the Project.

In connection with the exercise of its rights pursuant to this Agreement, Grantee may permit its contractors, subcontractors, employees, agents, and representatives of the City (the "Grantee's Project Representatives") to enter upon the Temporary Easement for the purposes set forth above. The term Grantee's Project Representatives includes the City's construction contractor and its subcontractors completing work on the Project ("Grantee's Construction Contractor").

4. **Reserved Rights.** Grantor reserves the right to use the Grantor's Property for any purposes that do not unreasonably interfere with Grantee's use of the Temporary Easement granted herein. Grantor further reserves the right to grant additional easements or other rights to third parties over, under, and upon the Grantor's Property on the condition that such easements or other rights do not unreasonably interfere with Grantee's use of the Temporary Easement for the purposes set forth herein. Grantor also reserves the right but not the obligation to remove any scaffolding, security fencing or Project materials of Grantee or Grantee's Project Representatives which may remain on Grantor's Property after termination of this Agreement upon at least 24 hours' advance notice to Grantee.
5. **Maintenance and Repair.** Grantee shall make reasonable efforts to minimize interference with the use and operation of any improvements owned by Grantor located on the Grantor's Property or activities of Grantor on the Grantor's Property. Grantee and Grantee's Project Representatives shall not block or otherwise impede access to the rear entrances or stairways of the Grantor's building located on the Grantor's Property. Grantee shall repair and restore any damage to the surface of the Grantor's Property or any improvements located thereon caused by Grantee's and/or Grantee's Project Representatives use of the Temporary Easement or Grantor's Property.
6. **Insurance.** Grantee shall require Grantee's Construction Contractor to maintain in full force and effect the following insurance during the period this Agreement is in effect: (a) comprehensive general liability insurance with limits of liability of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate; and (b) umbrella/excess liability insurance with limits of liability of a minimum of two million dollars (\$2,000,000) in the aggregate. Each liability policy shall contain an endorsement naming Grantor (and such other parties holding insurable interests as designated by Grantor) as additional insureds thereunder. All insurance policies required pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage which Grantee or Grantee's Project Representatives may carry. The Grantee will provide certificates evidencing the above liability policies and endorsements to Grantor no less than five (5) business days prior to entering or using the Temporary Easement.
7. **Indemnification.** To the extent permitted by law, Grantee shall indemnify, defend, and hold harmless Grantor from and against any and all claims, causes of action, demands, obligations, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") arising from or as a result of, or in connection with, any activities conducted within the Temporary Easement on the Grantor's Property by Grantee or Grantee's Project Representatives to the extent caused by the negligent act, omission, error, professional error, mistake, negligence, or other fault of Grantee or Grantee's Project Representatives (excluding, however, liability,

damage, liens, costs or expenses to the extent caused by Grantor's negligence or willful misconduct).

8. **Mechanic's Liens.** Grantee shall not permit any mechanic's or materialman's liens to be filed or enforced against the Grantor's Property in connection with any work performed over, upon or across the Grantor's Property by or at the direction of the Grantee and/or Grantee's Project Representatives or for any materials furnished in connection with work for the Project. If such a lien is filed, Grantee shall cause the lien to be removed of record within thirty (30) days thereafter, or, if any foreclosure action to enforce the lien actually commences, within five (5) days after commencement of such foreclosure action.
9. **Amendment.** This Agreement may be amended only by a written instrument duly executed by Grantor and Grantee.
10. **Termination.** This Agreement shall terminate without any further action by the parties on November 30, 2022.
11. **No Assignment.** It is expressly acknowledged and agreed that the Grantee shall have neither the right nor the authority to assign to any third party the rights or obligations granted by virtue of this Agreement without prior written approval from Grantor, which be withheld in Grantor's sole discretion.
12. **Successors and Covenants Running with the Land.** Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors, and permitted assigns of the Grantor and the Grantee. The rights and responsibilities set forth in this Agreement are intended to be covenants running with the land until the Easement is abandoned or terminated pursuant to the terms set forth herein.
13. **No Waiver of Immunity.** Nothing in this Agreement is intended to waive any protection afforded to the Grantee, or its respective officials, employees, and agents by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. or any other applicable law providing immunity to the Grantee, its officials, employees, and agents.
14. **Recordation.** This Agreement shall not be recorded in the offices of the County Clerk and Recorder for Lake County, Colorado.
15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute one original Agreement. In order to expedite the execution of this Agreement, electronic signatures may be used in place of original signatures on this Agreement and any amendments thereto. All Parties hereto intend to be bound by the signatures on the electronic document, are aware that other parties shall rely on the electronic signatures, and hereby waive any and all defenses to the enforcement of the terms thereof based on the form of signature.
16. **Authority.** Grantor and Grantee hereby represent and warrant to each other that they have the full right and authority to enter into this Agreement, and that the undersigned are duly authorized to execute this Agreement on behalf of Grantor and Grantee.
17. **Notices.** Any notice hereunder must be in writing and shall be effective upon three (3) business days after being deposited in the United States mail, certified mail, return receipt requested, addressed to the respective parties as set forth below (or as may be designated

from time-to-time by any such Owner, pursuant to the procedures provided in this paragraph), or upon confirmed transmission, if sent by email, or when actually received by the party to be notified, if hand delivered. For the purposes of notice, the address of the parties hereto, until changed as herein provided, shall be as follows:

Grantor: LTF Real Estate Company, Inc.
2900 Corporate Place
Chanhassen, MN 55317
Attn: Kari L. Broyles
Email: kbroyles@lt.life

With a copy to: LTF Real Estate Company, Inc.
2900 Corporate Place
Chanhassen, MN 55317
Attn: Property Manager
Email: propertymanagement@lt.life

Grantee: The City of Leadville
800 Harrison Avenue
Leadville, CO 80461
Attn: City Administrator
Email: cityadmin@leadville-co.gov

With a copy to: Tabor Opera House Preservation Foundation
308 Harrison Avenue
Leadville, CO 80461
Attn: Executive Director
Email: execdirector@taboroperahouse.net

Michow Cox & McAksin LLP
6530 S. Yosemite Street, Ste 200
Greenwood Village, CO 80111
Attn: Leadville City Attorney
Email: christiana@mcm-legal.com

18. **Section Headings.** Any section headings contained herein are included for reference purposes only.
19. **Attorneys' Fees.** In the event either party seeks to enforce its rights hereunder through litigation or another legal proceeding, the court or panel shall award to the prevailing party in such litigation or other legal proceeding, as part of its judgment or award, its reasonable attorneys' fees and costs.
20. **Governing Law.** The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado.
21. **Police Powers Reserved.** Nothing in this Agreement waives or is intended to waive the Grantee's authority to exercise its police powers.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as provided herein.

GRANTOR:

LTF REAL ESTATE COMPANY, INC., a Minnesota corporation

By: 
Kari Broyles (May 12, 2022 14:19 CDT)

Printed name: Kari L. Broyles

Title: Vice President and Deputy General Counsel

Date of execution: May 12, 2022

GRANTEE:

CITY OF LEADVILLE, a Colorado municipal corporation

By: _____

Name: _____

Title: _____

Date of execution: _____

Greg Labbe

GREG LABBE

MAYOR

5/19/22

ATTEST:

Sari Iye

Deputy City Clerk

APPROVED AS TO FORM:

Christiana McFormitt

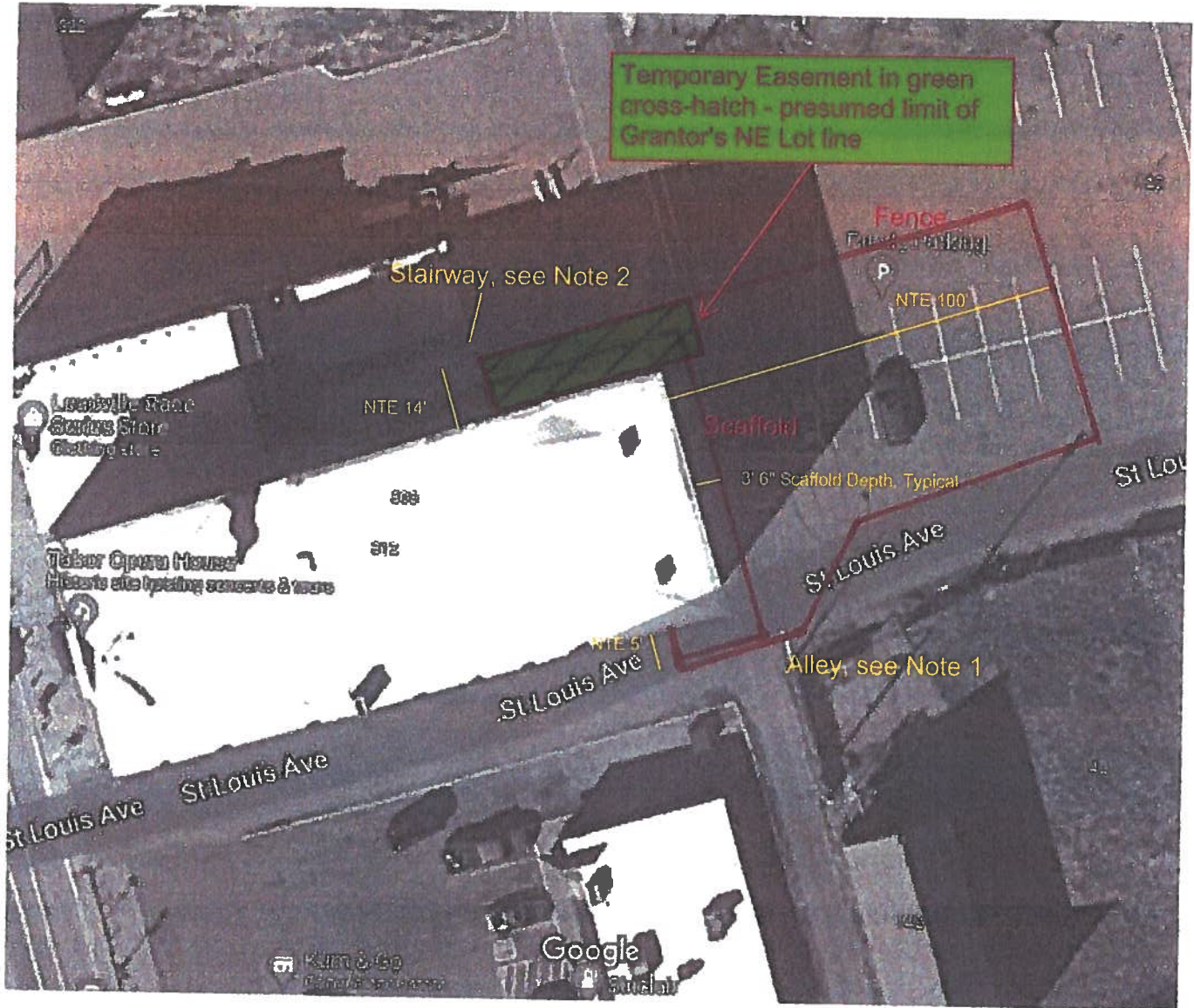
City Attorney

EXHIBIT A

TEMPORARY EASEMENT LOCATION

(see attached)

Google Maps Tabor Opera House, Proposed 2022 Construction Area



Map data ©2022, Map data ©2022 20 ft

Note 1: At the southeast corner of the Tabor Opera House, enough space will be left for cars to access the parking lot from the alley to the south if the scaffold configuration allows.

Note 2: Construction fence to be set south of Lifetime Fitness stairway/fire escape, maintaining egress from the Lifetime Fitness building.

Temporary Construction and Access Easement Agreement
Grantor: LTF Real Estate Company, Inc.
Grantee: City of Leadville, CO
Page 8 of 8