

**CITY OF LEADVILLE, COLORADO
RESOLUTION NO. 7
SERIES OF 2023**

**A RESOLUTION APPROVING A TEMPORARY CONSTRUCTION AND ACCESS
EASEMENT AGREEMENT WITH LTF REAL ESTATE COMPANY, INC. FOR
INSTALLATION AND CONSTRUCTION OF TEMPORARY FENCING AND A STAIR
TOWER RELATED TO PHASE 3 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 northern exterior of the TOH including the masonry and ghost sign to the west end of the north elevation, above the upper and lower roofs of the TOH (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 a stair tower 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 2023 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 4th day of April, 2023 by a vote of 7 in favor, 0 against, and 0 absent.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:



Deputy City Clerk



EXHIBIT 1
EASEMENT AGREEMENT

(see attached)

2023 TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

This **2023 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 northern exterior of the TOH, and the work includes rehabilitation of the masonry and ghost sign to the west end of the north elevation, above the upper and lower roofs of Grantor's building located on the Grantor's Property (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 the temporary, non-exclusive construction and access easements over, across and upon portions of the Grantor's Property as described below and as depicted in **EXHIBIT B**, attached hereto and incorporated herein by this reference solely for the following purpose:
 - A. **Narrative Description.** 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 a stair tower on the paver portion of Grantor's Property, laydown EPDM rubber mats on Grantor's lower and upper roofs, and ancillary work necessary to the Project as specifically described in the A&M Renovations, LLC Narrative Description dated March 29, 2023 (the "Narrative Description") and attached hereto as **EXHIBIT A**.

B. Ground Level Easement. 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 (the "**Ground Level Easement**"). Within the Ground Level Easement, the Grantee's Project Representatives, as defined below, may erect construction fencing and a stair tower in connection with the Project.

C. Lower Roof Easement. The width of the temporary easement upon the lower roof of the Grantor's Property shall not exceed a distance of fourteen (14) feet from the Northerly wall of the TOH (the "**Lower Roof Easement**"). Within the Lower Roof Easement, the Grantee's Project Representatives, as defined below, may place EPDM rubber mats, temporary railings, a temporary gate on the easternmost walkway, a plywood base for the temporary placement of a twenty (20) foot extension ladder to access the upper roof of the Grantor's Property in connection with the Project.

D. Upper Roof Easement. The width of the temporary easement upon the upper roof of the Grantor's Property shall not exceed a distance of eighteen (18) feet from the Northerly wall of the TOH (the "**Upper Roof Easement**"). Within the Upper Roof Easement, the Grantee's Project Representatives, as defined below, may place EPDM rubber mats, temporary railings, temporary stanchions and connecting rope on the western side of said upper roof, a plywood base and temporary railings for the landing of the twenty (20) foot extension ladder accessing the upper roof of the Grantor's Property 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 Ground Level Easement, the Lower Roof Easement, and the Upper Roof Easement (collectively, the "**Temporary Easements**") 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 Easements 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 Easements for the purposes set forth herein. Grantor also reserves the right but not the obligation to remove any EPDM rubber mats, construction fencing or other 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 Easements or Grantor's Property by the date that is no later than fifteen (15) days after termination of this Agreement or fifteen (15) days from the date of Grantor's notice to Grantee regarding such repair or restoration.

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 Easements.
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 Easements 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, intentional acts, willful misconduct, 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 October 31, 2023.
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 Temporary Easements are 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
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 (Mar 30, 2023 12:13 CDT)

Printed name: Kari L. Broyles

Title: Vice President, Deputy General Counsel

Date of execution: March 30, 2023

GRANTEE:

CITY OF LEADVILLE, a Colorado municipal corporation

By: _____

Name: _____

Title: _____

Date of execution: _____

Greg Labbe

GREG LABBE

MAYOR

6-23-23

ATTEST:

Abraham Schen
Deputy City Clerk

APPROVED AS TO FORM:

Christiana McFormick
City Attorney

EXHIBIT A

NARRATIVE DESCRIPTION

(see attached)

A&M Renovations, LLC

Tabor Opera House

2023 Work on North Elevation, Above Lifetime Fitness Building

Final Narrative Description of Planned Approach

March 29, 2023

From May 2023 through October 2023, A&M Renovations will continue its ongoing restoration of the Tabor Opera House. Work this season will include restoring the masonry and ghost sign at the west end of the building's north elevation, above the upper and lower roofs of the Lifetime Fitness Building. To gain access to these portions of the Tabor Opera House while respecting our neighbor's physical property and ongoing operations, we would propose the following work plan.

Our scaffold contractor will anchor three adjustable swing stages to the roof of the Tabor Opera House. These work platforms can be moved up and down, allowing our masons and paint conservators to complete their work on the Opera House without installing any scaffolding or other heavy equipment on the Lifetime Fitness roofs.

Immediately to the east of the lower Lifetime Fitness roof, a stair tower will be erected on the pavers at ground level, allowing our crew to load both personnel and materials directly onto the swing stages from the stair tower. Most work will therefore be performed from the swing stages, and both personnel and materials will generally be loaded onto the swing stages from the stair tower. There are three instances, however, in which our crews will need to access the Lifetime Fitness roofs directly.

1. Site protection and cleanup.

At the beginning of the project, we will blanket the Lifetime Fitness roofs with EPDM rubber to a distance of 14 - 18 feet from the north wall of the Opera House. Our masonry crew will regularly sweep this rubber and the surrounding roof deck to prevent a buildup of debris. The EPDM rubber will be removed at the conclusion of the project. If the roof is damaged in any way during the course of the project, any necessary repairs will be performed in a timely fashion.

We will remove some of the railings from the deck and stairway on the lower Lifetime Fitness roof in order to protect the railings and improve access. The only railings that will be removed are those associated with egress from the Opera House. We will temporarily bar access from the Opera House door on the second story until such time that the railings may be reinstalled. No railings will be removed from the sections of the deck or stairway that provide egress from the Lifetime Fitness building, nor will the Lifetime Fitness building's egress be impeded in any way at any point in the project. Any railings removed will be installed at the conclusion of the project. The railing that we anticipate removing are indicated on the attached schematic Plan View.

At the west end of the upper Lifetime Fitness roof, temporary stanchions and caution lines will be set up to keep crew members back from the roof edge per OSHA specifications.

2. Masonry work on the lower courses of brick.

Because the swing stages cannot be lowered all the way to the roof deck, our masons will restore the lowest 6 feet of each wall from the corresponding roof deck. In addition to the EPDM rubber already on the roof deck, plywood sheets will be laid down when work is performed from the roof deck to distribute any loads and provide

5800 E. 58th Ave. Unit K
Commerce City, CO 80022
andy@heritagewindowrestoration.com
720-435-6750

2023 Temporary Construction and Access Easement Agreement

Grantor: LTF Real Estate Company, Inc.

Grantee: City of Leadville, CO

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additional protection. No more than 100 pounds of bricks, mortar, or other materials or equipment will be set on the roof deck at any one time, and any such materials will always be placed on the plywood. No more than 4 masons will work on a single roof deck at any one time, and they will typically be spread across the roof deck rather than concentrated in any one location.

If safe and feasible, masonry personnel working on the upper roof deck will access the upper roof deck from the swing stages. If this is not safe and feasible, masonry personnel will access the upper roof using the same extension ladder as the ghost sign conservators (see below). In any case, all masonry materials will be transported to the upper roof deck via the swing stages.

3. Ghost sign restoration.

Our ghost sign conservators will work independently of the masons, and thus they will access their swing stage—located at the far west end of the upper Lifetime Fitness roof—directly from the roof deck. They will access the upper roof using an extension ladder set on the lower roof, immediately to the south of the doorway to the Lifetime Fitness apartment. We will install temporary plywood platforms on both the lower and upper roofs where the ladder will be set in order to maximize safety and protect the Lifetime Building; see the attached sketch for an indication of how these platforms will be constructed. To prevent unauthorized access to the upper roof, the extension ladder will be taken down every night and stored in the construction yard. The ghost sign conservators will only use small amounts of materials, such as cans of paint, so they will not need to place any significant loads on the roof deck, nor will they generate significant amounts of debris.

To secure the jobsite, A&M Renovations will install a construction fence as indicated in the attached schematic drawing, with a similar configuration as the fence used in 2022. Where the fence meets the Lifetime Fitness building, it will be set to the south of the Lifetime Fitness egress stairway, thereby maintaining egress from the Lifetime Fitness building at all times. The construction fence will be kept locked when no crews are onsite. Lifetime Fitness staff and the general public will be able to safely utilize the Lifetime Fitness parking area outside of our construction fence.

Throughout the course of this project, we will maintain close contact with the local Lifetime Fitness staff, and should any unforeseen impacts arise from our work, we will work with Lifetime Fitness to address these problems as quickly as possible.

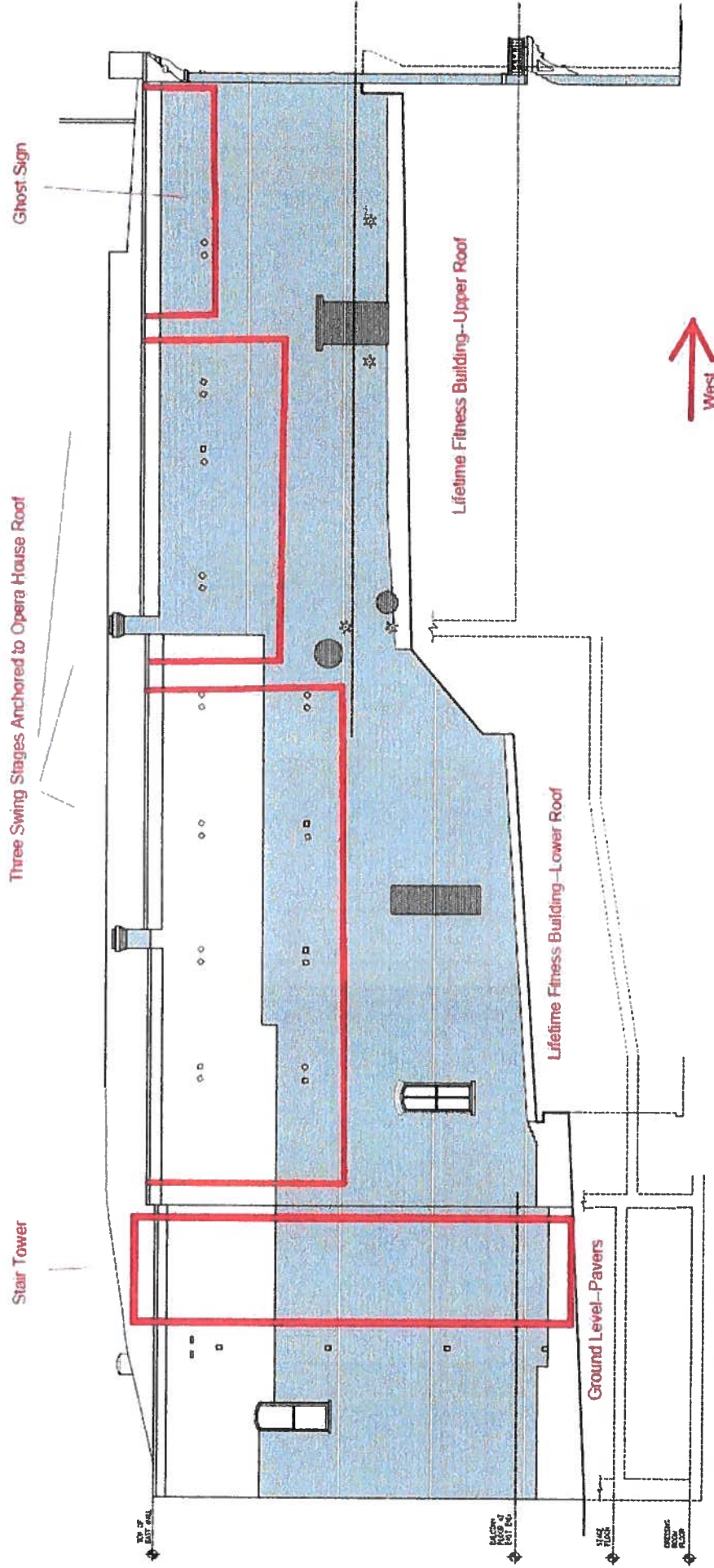
5800 E. 58th Ave. Unit K
Commerce City, CO 80022
andy@heritagewindowrestoration.com
720-435-6750

EXHIBIT B

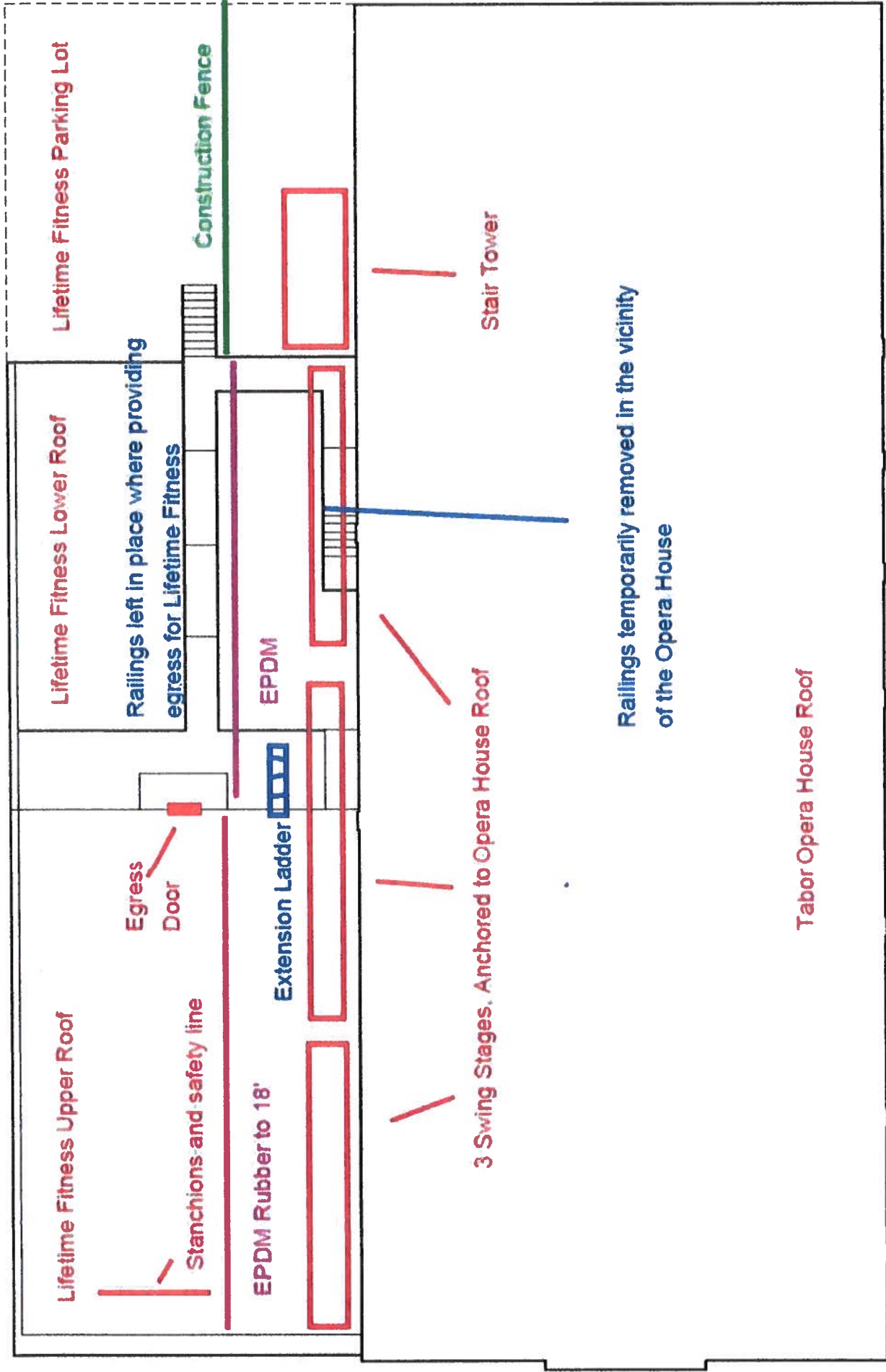
LOCATION OF TEMPORARY EASEMENTS

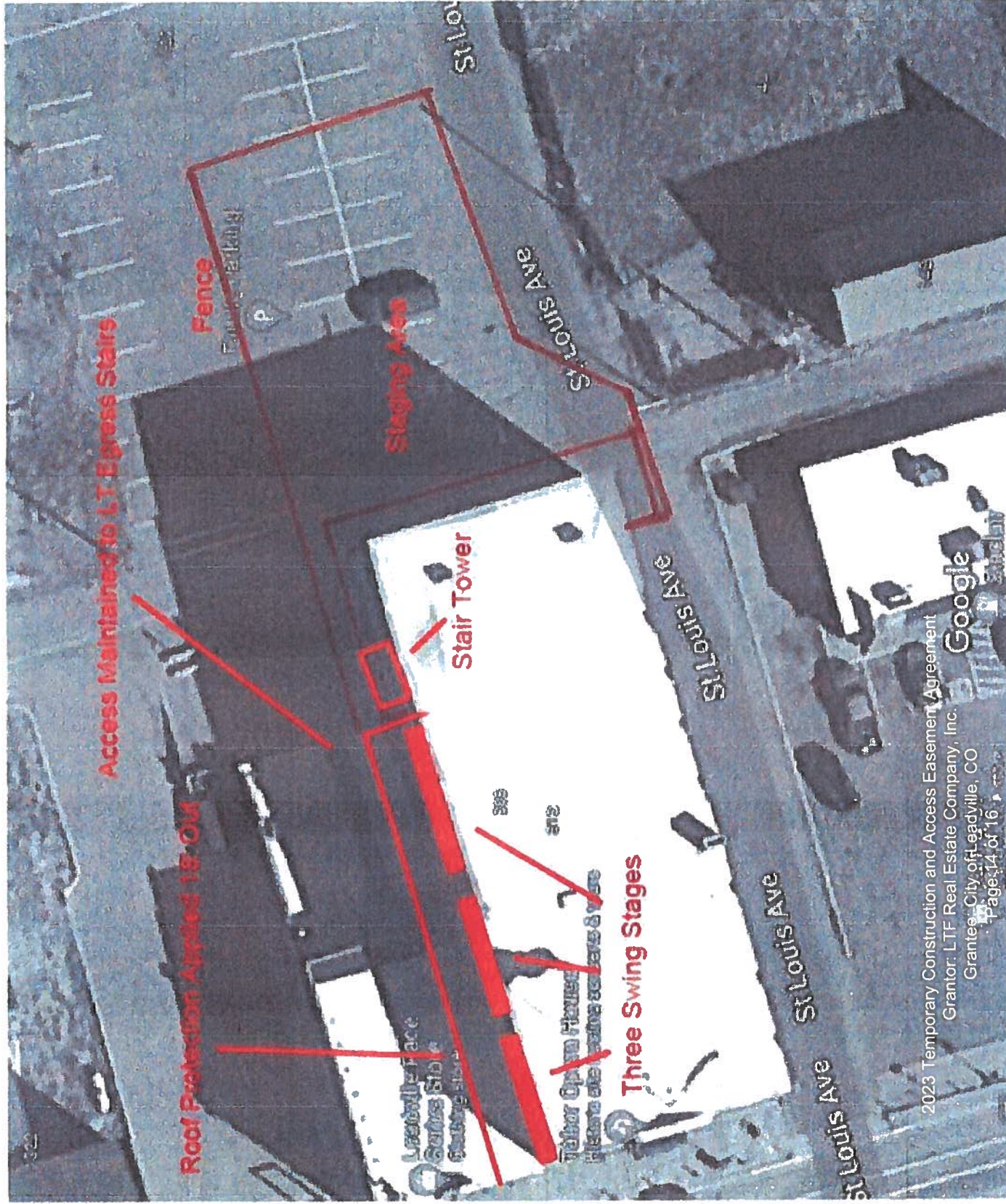
(see attached)

Tabor Opera House 2023 Work, North Elevation



Tabor Opera House 2023 Work, Plan View



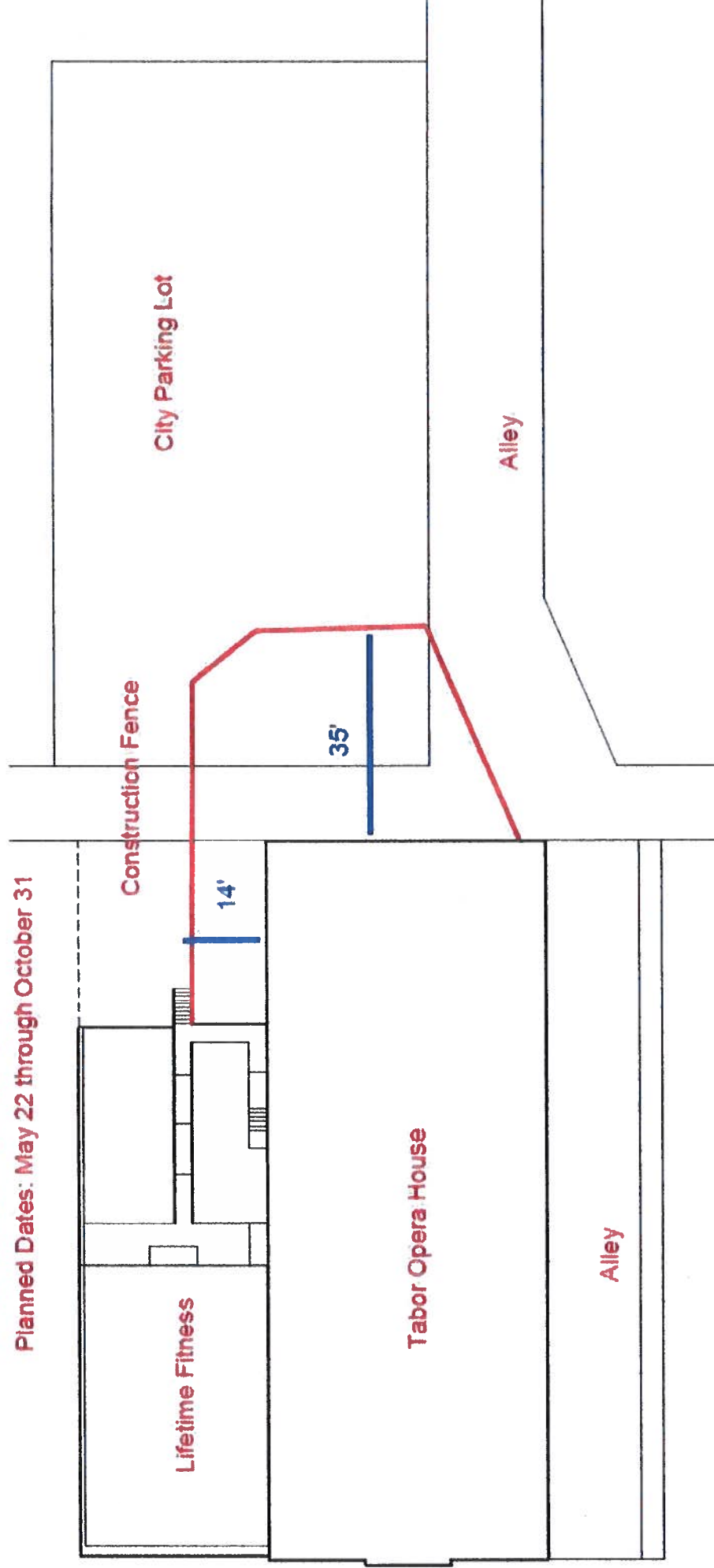


Encroachment Permit Application for Construction Fence

Tabor Opera House, 308 Harrison

Work Planned for Summer 2023

Planned Dates: May 22 through October 31



Tabor Opera House 2023 Work

Extension Ladder From Lower to Upper Roof of Lifetime Fitness Building

