

When Recorded Return To:

CITY OF TEMPE BASKET

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SW 15 N4  
APN 132-28-931

425 S. Mill Avenue

EASEMENT  
FOR BUILDING ENCROACHMENT

For valuable consideration, CITY OF TEMPE, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, (hereinafter called "Grantor"), does hereby grant to the TEMPE 425 MILL LP, a Delaware limited partnership, (hereinafter called "Grantee") an easement for an existing building encroachment onto city right of way and within that certain real property described on Exhibit A and A-1, attached hereto and incorporated herein by this reference.

THE FOREGOING EASEMENT GRANT IS SUBJECT TO AND UPON THE FOLLOWING TERMS AND CONDITIONS, ALL OF WHICH GRANTEE AGREES TO BY ACCEPTANCE HEREOF:

1. Notwithstanding, the use of the words "grant" and "convey" herein, or the provision of ARS Section 33-435 to the contrary, the conveyances made herein by Grantor are made without warranty or representation whatsoever, and Grantee agrees to accept the easement and interests hereby granted AS IS, without relying upon any warranty or representation made herein or prior to or contemporaneously with or subsequent to the execution of this Easement.
2. Grantee shall exercise its rights hereunder in a manner so as not to damage Grantor's real property or any property that may at any time be thereon, and further agrees that Grantee shall promptly repair any damage caused by Grantee or its agents, employees, contractors, permittees, licensees, invitees or guests, and restore the real property or any property located thereon to Grantor's specification and approval.
3. Grantee shall indemnify and hold Grantor harmless for, from, and against any and all claims, damages, losses, costs, suits, liabilities, and expenses (including, without limitation, reasonable attorneys' fees) that may be brought or made against or incurred by grantor on account of or arising out of Grantee's or Grantee's permittees, licensees, invitees or guests' use and enjoyment of the easement privileges herein granted or any violation or breach by Grantee of the

terms hereof, including, without limitation, as a result of any damages, injuries, or death to persons or property.

- 4. The covenants and provisions herein set forth shall extend and inure in favor and to the benefit of, and shall be binding on the heirs, administrators, executors, successors in ownership and estate, assigns and lessees of Grantor and Grantee.
- 5. This easement shall automatically extinguish at such time that the building at 425 S. Mill Avenue, Tempe, Arizona (the Northeast corner of 5<sup>th</sup> Street and Mill Avenue) is either totally demolished or undergoes a renovation where more than 75% of the structure is demolished (three of the four existing structure walls).
- 6. The consideration paid for the easement is a one-time payment of \$2,400.00 based on an amount determined to be fair market value for the property described in Exhibit A and A-1. The payment will be paid prior to recordation of the Easement and the City Ordinance authorizing easement conveyance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED AS TO FORM:

CITY OF TEMPE, a municipal corporation

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Mark W. Mitchell, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF ARIZONA    )  
  )  
County of Maricopa    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Mark W. Mitchell, Mayor, on behalf of THE CITY OF TEMPE, a municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Seal:

\_\_\_\_\_  
Notary Public

TEMPE 425 MILL LP, a Delaware limited partnership

By: \_\_\_\_\_  
Member

STATE OF )  
 )  
COUNTY OF )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, Member, on behalf of TEMPE 425 MILL LP, a Delaware limited partnership.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Seal: \_\_\_\_\_  
Notary Public

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# EXHIBIT A

## DESCRIPTION OF ENCROACHMENT PERMIT AREA

A PORTION OF 5TH STREET LYING SOUTH OF LOT 1, MILL AVENUE LOFTS, BOOK 974 OF MAPS, PAGE 44, RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN A PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL IN WASHER STAMPED 42137 MARKING THE SOUTHWEST CORNER OF SAID LOT 1;

THENCE NORTH 89 DEGREES 48 MINUTES 45 SECONDS EAST 125.00 FEET TO A NAIL IN WASHER STAMPED 42137 MARKING THE SOUTHEAST CORNER OF SAID LOT 1;

THENCE SOUTH 00 DEGREES 12 MINUTES 47 SECONDS EAST 0.20 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 30 SECONDS WEST 125.00 FEET;

THENCE NORTH 00 DEGREES 21 MINUTES 42 SECONDS WEST 0.31 FEET TO THE POINT OF BEGINNING.

COMPRISING OF 31.8748 SQ. FEET OR 0.00073 ACRES MORE OR LESS, SUBJECT TO ALL EASEMENTS OF RECORD



EXPIRES 3/31/17

**SUPERIOR**  
SURVEYING SERVICES, INC.

21415 N. 23rd Avenue  
Phoenix, AZ 85027  
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info@superiorsurveying.com

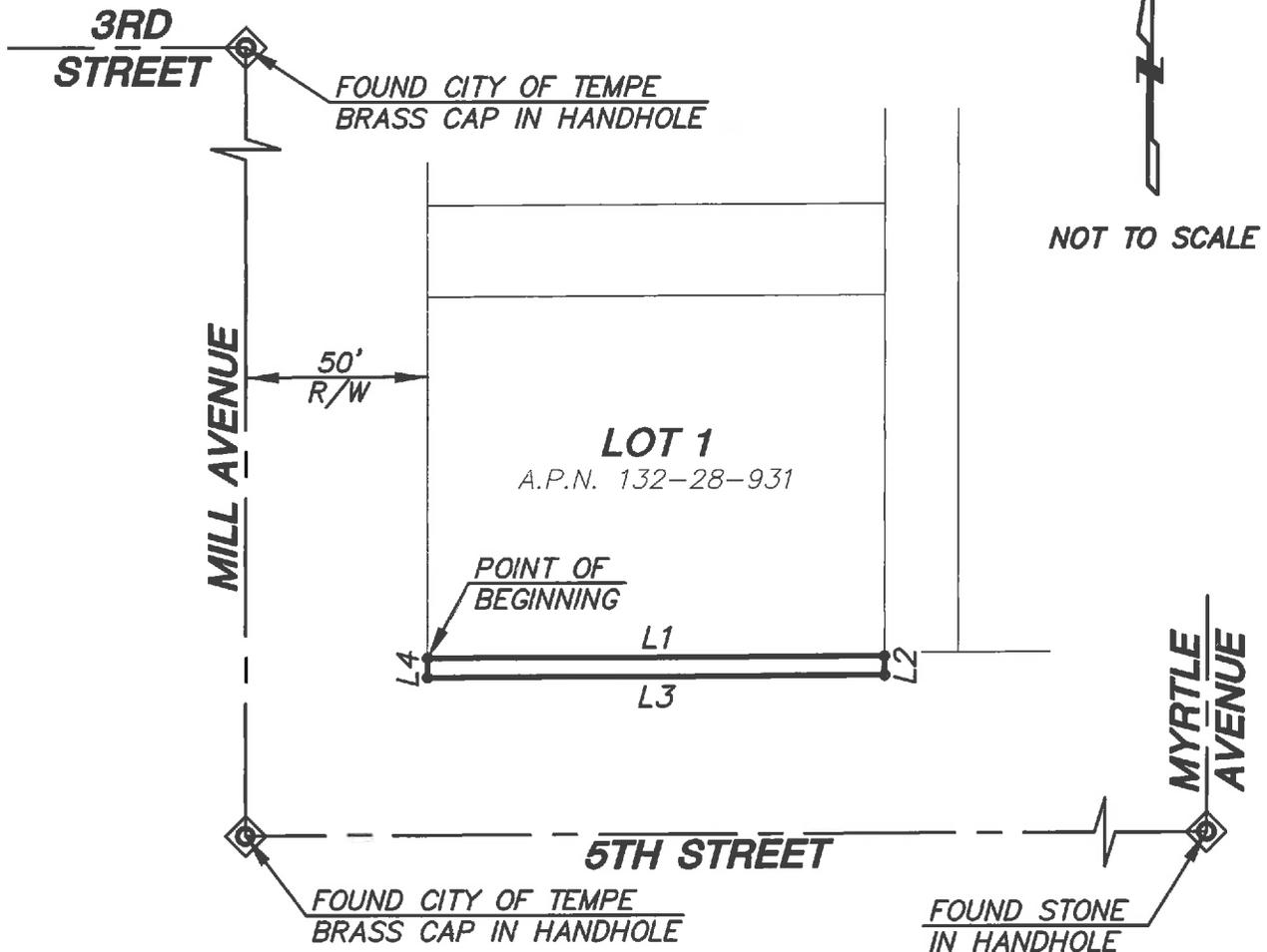
DATE: 8/26/16

JOB NO.: 130362

LINE TABLE		
LINE	BEARINGS	LENGTH
L1	N 89°48'45" E	125.00'
L2	S 00°12'47" E	0.20'
L3	S 89°45'30" W	125.00'
L4	N 00°21'42" W	0.31'

# EXHIBIT A-1

DEPICTION OF ENCROACHMENT PERMIT AREA



*David S. Klein*

EXPIRES 3/31/17

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