

When recorded, please return to:

City of Mesa
Real Estate Department
20 East Main Street, Suite 500
Mesa, Arizona 85201

DECLARATION OF PROPERTY RESTRICTIONS

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This Declaration of Property Restrictions (“**Declaration**”) is made to be effective as of _____, 2025 (“**Effective Date**”), by City of Mesa, an Arizona municipal corporation (“**Declarant**” or “**City**”) with respect to the real property legally described in Exhibit A, which is attached to, and incorporated into, this Declaration for all purposes (the “**Property**”).

1. **To Benefit the Public.** Although the Property is presently owned in fee by City, it is contemplated that private owners may acquire all or portions of the Property during the course of redevelopment in City’s downtown redevelopment area. The restrictions and limitations imposed by this Declaration are for the benefit of the public and are intended to promote development in City’s downtown redevelopment area and enhance the public’s use and enjoyment of the downtown redevelopment area.

2. **Prohibited Uses.** Those uses described on Exhibit B to this Declaration are prohibited on the Property, even though they may be permitted by applicable zoning and other ordinances of City.

3. **City Utility Services.** To the extent that City provides utility services to the Property, all owners must contract for and use (and require their tenants and subtenants to contract for and use) City’s utility services on the Property, including (but not limited to) City’s electric, water, sewer, gas, solid waste and recycling services (“**City Services**”). If City Services are expanded beyond the services named in this Declaration, City may require (in its sole election) that the obligation to use City Services will include such expanded services.

4. **Maintenance.** To the extent that a Private Owner (as defined in Section 6 below) installs or provides any public improvements appurtenant to the Property, which public improvements are dedicated to and accepted for maintenance by City but are deemed by City’s City Engineer to be non-standard, then the Private Owner must reimburse City for the additional cost of maintenance (including repairs and replacements) of all such non-standard improvements. The reimbursement required by this Section 4 must be paid in full within thirty (30) days of being billed to the Private Owner.

5. Encroachments. Encroachments from the Property over other and adjacent real property of City (such as sidewalks, rights-of-way and roadways) are prohibited except to the extent that City's City Engineer has authorized and issued a permit ("**Permit**") under Mesa City Code ("**M.C.C.**") Section 9-2-3(A). Subject to (A) compliance by the owner of the Property ("**Land User**") with this Declaration and all federal, state, county and local (statutory and common law) laws, ordinances, rules, regulations, permit requirements and other requirements and official policies of City, as they may be amended from time-to-time, and which apply to the Property (collectively, the "**Applicable Laws**"), and (B) Land User's compliance with the further terms, conditions, limitations and requirements set forth in Exhibit C to this Declaration, City intends this Section 5 to be a Permit in favor of Land User to maintain only those certain encroachments into City's sidewalks, rights-of-way and roadways that are built and existing as of the date of recordation of this Declaration, as described in Exhibit C-1 and depicted in Exhibit C-2 (collectively, the "**Encroachment**").

6. Binding Effect. The Declaration runs with the land and binds the Property in perpetuity notwithstanding any conveyance of all or any portion of the Property to a non-municipal owner ("**Private Owner**"). This Declaration may be amended or terminated only by City. A Private Owner may request that City release this Declaration (or a portion of this Declaration), but any release of this Declaration may be granted, withheld, conditioned or delayed in City's sole, absolute and unfettered discretion.

7. Enforcement. In order to enforce this Declaration and ensure the rights of the public, City may use any remedy available at law or in equity; and all costs of enforcement (including reasonable attorneys' fees) will be borne by the non-prevailing party in any such action brought to enforce this Declaration.

Declarant's signature and notarial acknowledgement are on the following page.

8. Declarant has executed, delivered and caused this Declaration to be recorded as of the Effective Date.

Declarant:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)

)

County of Maricopa)

On this the ____ day of _____, 2025, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____ self to be the _____ of the City of Mesa, Arizona, an Arizona municipal corporation; and that, being authorized so to do, __he executed the foregoing instrument.

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

Notary Public

My Commission Expires:

EXHIBIT A to DECLARATION OF PROPERTY RESTRICTIONS

Legal Description of Property

EXHIBIT B to DECLARATION OF PROPERTY RESTRICTIONS

Prohibited Uses on the Property

1. Group Residential, as defined by Chapter 64 of the Zoning Ordinance
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Zoning Ordinance
3. Pawn Shops, as defined by Chapter 64 of the Zoning Ordinance
4. Social Service Facilities, as defined by Chapter 64 of the Zoning Ordinance
5. Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Zoning Ordinance
6. Group Residential, as defined by Chapter 86 of the Zoning Ordinance
7. Off-Track Betting Establishment, as defined by Chapter 86 of the Zoning Ordinance
8. All sales of marijuana, including Medical Marijuana Dispensary, as defined by Chapter 86 of the Zoning Ordinance
9. Package liquor stores, except as part of a restaurant or bar concept
10. Kennels, as defined by Chapter 64 of the Zoning Ordinance

EXHIBIT C to DECLARATION OF PROPERTY RESTRICTIONS

Terms and Conditions of Encroachment Permit

1. Encroachment Allowed. City will permit the construction and maintenance only of the Encroachment as is built as of the recording date of this Declaration. The Encroachment is and all portions of the Encroachment must remain a minimum height of fifteen (15) feet above the finished floor and extend only into that portion of the right-of-way or public easement as it exists as of the recording date of this Declaration, as depicted on Exhibit C-2. For the avoidance of doubt, this Permit does not allow any of the following in City's right-of-way or public easements, or portions thereof: (a) at-grade improvements or encroachments; and (b) water lines, water pipes, or plumbing; except as may be modified pursuant to Section 2, below.

2. Modification. Land User may request modification to the Encroachment related to design or construction matters discovered after execution of this Permit by submitting, in writing, the proposed modification to the City Engineer for review. The City Engineer, in his/her sole, absolute, and unfettered discretion, may approve or deny the proposed modification. If the City Engineer approves a proposed modification, the City Engineer will provide to Land User written approval of the proposed modification that cites to this Section 2. Additionally, the City Engineer, in his/her sole, absolute, and unfettered discretion, may impose additional terms, requirements, and restrictions on the proposed modification that will be included in the written approval. All modifications to the Encroachment will be subject to Applicable Laws, and Land User will be required to obtain all applicable permits and approvals as required by City for the construction, installation, and maintenance of the approved modification, and to comply with all requirements of the M.C.C. including sections 9-1-2 and 9-2-3.

3. Construction; Maintenance; and Repair

a. Land User Obligation. Land User must, at its sole cost and expense, and in a first-class, sound, clean, and attractive manner and in compliance with Applicable Laws: (i) design, construct, and install the Encroachment; (ii) at all times maintain the Encroachment; and (iii) repair any and all damage to the Encroachment including damage caused by persons, vehicles, vandalism, and by City, contractors, and utility companies working in the right-of-way or public easement, except for damage solely and exclusively caused by the gross negligence or intentional misconduct of City. Land User must obtain all applicable permits and approvals as required by City for the construction, installation, maintenance, and repair of the Encroachment, and Land User must comply with all requirements of the M.C.C. including sections 9-1-2 and 9-2-3. City has no obligation to design, construct, install, maintain, or repair the Encroachment, except for repairing damage solely and exclusively caused by the gross negligence or intentional misconduct of City.

b. Notice to City; Inspection. Land User must submit written notice to the City Engineer twenty (20) days prior to commencement on and within five (5) days of completion of (i) construction of the Encroachment, (ii) all repairs made to the Encroachment, and (iii) all non-routine maintenance to the Encroachment. The City Engineer has sole, absolute, and unfettered

discretion to inspect the construction, repair, or non-routine maintenance to determine whether such complies with this Permit and Applicable Laws. For purposes of this Declaration, “**non-routine maintenance**” means any maintenance to the Encroachment involving or addressing concrete patching, welding, erosion of metal, or any maintenance not performed on a routine schedule or basis.

4. Repair or Replacement

a. Danger of Bodily Injury or Death. If the City Engineer determines the Encroachment presents a danger of bodily injury or death, the requirements of this Subsection apply.

i. Emergency Safety Measures. Upon notice from City, Land User, at its sole cost and expense, must proceed immediately to construct and install emergency safety measures designed to minimize to the fullest extent possible any danger of bodily injury or death until Land User can permanently repair or replace the Encroachment. Land User must use all and best efforts to complete the construction and installation of the emergency safety measures within forty-eight (48) hours of notice from City. The emergency safety measures must remain in place until Land User completes permanent repairs or replacement of the Encroachment as required by Subsection (ii).

ii. Repair or Replacement. In addition to its obligations in Subsection (i) above, Land User, at its sole cost and expense, must proceed immediately and use best efforts to repair or replace the Encroachment to bring the Encroachment into compliance with this Declaration and Applicable Laws and to eliminate the danger of bodily injury or death. Land User must use all and best efforts to complete the required repair or replacement within thirty (30) days of notice from City; provided, however, if the required repair or replacement cannot reasonably be completed within thirty (30) days of notice from City, and Land User promptly commenced physical construction of the required repair or replacement and diligently and continuously pursues completion of, and uses all and best efforts to complete, the required repair or replacement, the timeframe to complete the required repair or replacement will be extended for an additional ninety (90) days or other length of time as approved by the City Engineer.

b. Danger of Damage to real or personal property or to Encroachment. If the City Engineer determines the Encroachment presents a danger of damage to real or personal property (including sidewalks, curbs, gutters, building facades, or colonnades) or to the Encroachment, or Land User failed to design, construct, install, or maintain the Encroachment as required by this Permit, but the Encroachment does not present a danger of bodily injury or death, the requirements of this Subsection apply. Upon notice from City, Land User, at its sole cost and expense, must proceed promptly to repair or replace the Encroachment to bring the Encroachment into compliance with this Permit and Applicable Laws. Land User must diligently and continuously pursue the completion of the required repair or replacement. Both Land User and City will agree to a commercially reasonable timeframe for Land User to complete the required repair or replacement.

c. Notice to City; Inspection. Land User’s obligations under Subsections (a) and (b),

above, will not be complete until approved by City, and such approval will not be unreasonably denied. Land User must submit written notice to the City Engineer within five (5) days of installing the emergency safety measures and within five (5) days of finishing work on the required repair or replacement. City or a third-party engineer retained by City will inspect the emergency safety measures and the required repair or replacement to determine compliance with this Permit and Applicable Laws.

d. Notice to Land User. The ability of City to provide notice to Land User of a danger presented by the Encroachment as set forth in this Section is not an obligation of City to do so, nor a waiver of any obligations of Land User to inspect and maintain the Encroachment in accordance with this Permit and Applicable Laws.

e. Time Periods. City may extend the time periods in this Section if the City Engineer determines the circumstances warrant an extension.

5. Inspections. In addition to the inspections City may perform pursuant to Sections 3 and 4 above, from time to time, but not more often than annually, City may require Land User, at Land User's sole cost and expense, to retain a third-party engineer to inspect the Encroachment and to certify the Encroachment complies with this Permit and Applicable Laws. Inspection by City or a third-party engineer pursuant to Sections 3 or 4 or this Section 5 will not release Land User of its obligations to design, construct, install, at all times maintain, repair, and replace the Encroachment in a first-class, sound, clean, and attractive manner and in compliance with this Permit and Applicable Laws.

6. Compliance with M.C.C. This Permit does not modify, change, or alter M.C.C. requirements, ordinances, or regulations. Accordingly, separate from this Declaration, Land User will obtain all applicable permits and approvals as required by City for the construction, installation, and maintenance of the Encroachment, and Land User will comply with all requirements of the M.C.C. including sections 9-1-2 and 9-2-3.

7. Request for Additional Encroachment. All requests by Land User for additional encroachments not explicitly allowed by this Permit must be made through the standard City process and standard City encroachment agreement and must comply with Applicable Laws.

8. Indemnification. Land User will be solely responsible and liable for, and defend, indemnify, pay, and hold harmless the City, its City Council members, officers, representatives, directors, elected and appointed officials, agents, and employees (collectively, "**City Indemnitees**") for, from and against any and all claims arising from or related to, in whole or part: (a) the design, construction, installation, location, maintenance, repair, replacement, removal, or use of the Encroachment, (b) the use of the right-of-way or public easement for the Encroachment, (c) the maintenance, repair, or replacement of sidewalk, curb, and gutter improvements of, on, or adjacent to Main Street, (d) any person or object falling from the Encroachment, whether intentionally or negligently, and (e) any act or omission by Land User, or its employees, contractors, subcontractors, agents, representatives, tenants, subtenants, or invitees pursuant to or related to the Encroachment (collectively, "**Claims**"); except those claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnitee.

Land User's obligations pursuant to this Section extend to and encompass all costs incurred by Land User in defending such Claims, including attorney, witness, and expert witness fees, and any other litigation related expenses. The obligations to defend, indemnify, pay, and hold harmless in this Section are in addition to, and do not limit, Land User's obligations set forth in any other document. The obligations to defend, indemnify, pay, and hold harmless in this Section will survive the expiration, revocation, or termination of this Declaration.

9. Insurance

a. Types of Insurance. Land User must, at its sole cost and expense, procure and maintain for the duration of this Declaration the following types of insurance:

i. General liability insurance (including contractual liability coverage) for personal injury, bodily injury (including wrongful death), and damage to property, in, on, or at the Encroachment, with a combined single limit of not less than three million dollars (\$3,000,000.00) per occurrence and not less than five million dollar (\$5,000,000.00) general aggregate limit, insuring against any and all liability and claims for injury to persons or damage to property that may arise from or in connection to the use or maintenance of the Encroachment or criminal acts, and for injuries to persons or damages to property that may arise from or in connection with this Declaration by Land User, its agents, subtenants, employees, contractors, licensees, or invitees. The general liability insurance must include contractual liability coverage of Land User's indemnification obligations under this Declaration.

ii. Professional liability insurance for personal injury, bodily injury (including wrongful death), and damage to property, in, on, or at the Encroachment, with a combined single limit of not less than three million dollars (\$3,000,000.00) per occurrence and not less than five million dollar (\$5,000,000.00) general aggregate limit, insuring against any and all liability and claims for injury to persons or damage to property that may arise from or in connection to the design, construction, installation, use, or maintenance of the Encroachment or criminal acts, and for injuries to persons or damages to property that may arise from or in connection with this Declaration by Land User, its agents, subtenants, employees, contractors, licensees, or invitees. Land User must require all design professionals and consultants (*e.g.*, architects, engineers) to obtain professional liability insurance with limits of liability not less than those stated in this Subsection.

iii. At the time of this Declaration, the amount of general liability and professional liability insurance described herein is reasonable; however, this Declaration creates a potentially perpetual obligation of, and relationship among, Land User and City; and inflation and other economic pressures arising after the date of this Declaration may, over time, cause the amount stated above to be inadequate and may need to be adjusted to provide the protection reasonably required and expected by City. Accordingly, Land User must maintain general liability and professional liability insurance in amounts that are standard and reasonable for the sorts of activities being conducted at or from the Encroachment, in amounts sufficient to provide adequate public liability as contemplated by this Declaration. City will review the general liability and professional liability insurance coverage amounts every five (5) years and work in good faith to adjust the coverages to provide the protection required and expected by City but in no event less

than three million dollars (\$3,000,000.00) per occurrence with respect to any one (1) accident in, on, or at the Encroachment and not less than five million dollar (\$5,000,000.00) general aggregate limit five million dollars (\$5,000,000.00).

b. Additional Insurance Requirements. Land User and all policies of insurance procured by Land User must meet the additional insurance requirements of this Subsection.

i. All policies of insurance procured by Land User must be from insurance companies authorized to do business in the state of Arizona and with an “AM Best” rating of not less than A-VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Land User from potential insurer insolvency.

ii. City Indemnites must be named as additional insureds (up to the full coverage limit and to the same extent of coverage as the insurance purchased by Land User, even if those limits of coverage exceed those required by this Declaration) and added by endorsements on all policies of insurance procured by Land User. All required Certificates of Insurance and endorsements must be sent via email to City, for City’s review and approval, before the applicable coverage period, to Risk Management, Mesa City Attorney’s Office, at mesacityattorney@mesaaz.gov. City may require complete copies of the required insurance policies at any time, but not more than once each twelve (12) consecutive month period during the term of this Declaration.

iii. All policies of insurance procured by Land User will be primary and non-contributory with respect to all of City’s insurance sources.

iv. All policies of insurance procured by Land User will include a waiver of subrogation rights in favor of City Indemnites.

v. In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella policy is written on a “following form” basis.

vi. All policies of insurance procured by Land User must include provisions to the effect that they will not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days’ prior written notice to City.

vii. All deductibles and self-insured retention in excess of \$250,000 will be declared to and subject to approval by City. Land User will be solely responsible for payment of any deductible or self-insured amounts and waives all rights it may have to seek recovery of such amounts from City Indemnites.

c. Failure to Procure or Maintain. If Land User fails to procure or maintain any insurance required by this Declaration, City may, but is not required to, procure and maintain any and all insurance required by this Declaration, and Land User will fully reimburse City for all costs incurred in procuring or maintaining such insurance within ten (10) days of City requesting reimbursement.

10. Breach; Notice and Cure

a. Breach. Failure by either City or Land User to comply with any provision of this Declaration will be a breach of this Declaration.

b. Notice and Cure. Upon occurrence of a breach by either City or Land User, the breaching party will, upon written notice from the non-breaching party, proceed immediately to cure or remedy such breach; and, in any event, such breach must be cured within thirty (30) days of the breaching party's receipt of such notice.

11. Remedies of City

a. General. City's remedies for an uncured breach by Land User with respect to this Permit will consist of all remedies available at law or in equity (including recovery of costs and attorneys' fees). City's rights and remedies are cumulative, and the exercise by City of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same breach or any other breach by Land User.

b. Breach of Maintenance or Repair Obligations. In addition to the remedies in Subsection (a) above, if an uncured breach by Land User involves Land User failing to meet any of its obligations under Section 3 to maintain or repair the Encroachment, City may, but does not have an obligation to, maintain or repair the Encroachment. If City maintains or repairs the Encroachment, Land User must reimburse City, within thirty (30) days of invoice, for all costs incurred by City, including administrative fees and legal fees incurred to collect the reimbursement.

c. Breach of Repair or Replacement Obligations. In addition to the remedies in Subsection (a) above, if an uncured breach by Land User involves Land User failing to meet any of its obligations under Section 4 to repair or replace the Encroachment, City will have the following remedies:

i. City may repair or replace the Encroachment. If City repairs or replaces the Encroachment, Land User must reimburse City, within thirty (30) days of invoice, for all costs incurred by City, including administrative fees and legal fees incurred to collect the reimbursement. The ability of City to repair or replace the Encroachment, as set forth in this Subsection, is not an obligation of City to do so.

ii. City may revoke this Permit. If City revokes this Permit, upon notice from City, Land User, at its sole cost and expense, must proceed immediately to remove the Encroachment and restore the right-of-way or public easement to the condition immediately prior to the execution of this Permit. Land User must use all and best efforts to complete the removal of the Encroachment and restoration of the right-of-way or public easement within thirty (30) days of revocation of this Permit; provided, however, if the removal and restoration cannot reasonably be completed within thirty (30) days of notice from City, and Land User promptly commenced the removal and restoration and diligently and continuously pursues completion of, and uses all

and best efforts to complete, the removal and restoration, the timeframe to complete the removal and restoration will be extended for an additional ninety (90) days or other length of time as approved by the City Engineer.

City will not incur expense or liability for revoking this Permit. If Land User fails to remove the Encroachment or restore the right-of-way or public easement as required by this Subsection, City may, but does not have an obligation to, remove the Encroachment or restore the right-of-way or public easement, and Land User must reimburse City, within thirty (30) days of invoice, for all costs incurred by City, including administrative fees and legal fees incurred to collect the reimbursement.

12. Automatic Termination. Notwithstanding anything in this Permit to the contrary, in the event that the Encroachment is removed and no longer exists, this Permit will be automatically, and without further act or Notice required, terminate (except for Land User's obligations of indemnity that survive the termination of this Permit).

13. Remedies of Land User. Land User's sole and exclusive remedy for an uncured breach by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction, specific performance, or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Permit, and Land User hereby waives any and all right to recover actual, punitive, consequential, special, and any other type of damages whatsoever.

14. Nonexclusive. Nothing in this Permit will be construed to prevent or restrict, in any way, City from using or granting others the right to use the right-of-way or public easement where the Encroachment is located so long as such use does not unreasonably interfere with Land User's use as allowed by this Permit.

EXHIBIT C-1 to DECLARATION OF PROPERTY RESTRICTIONS

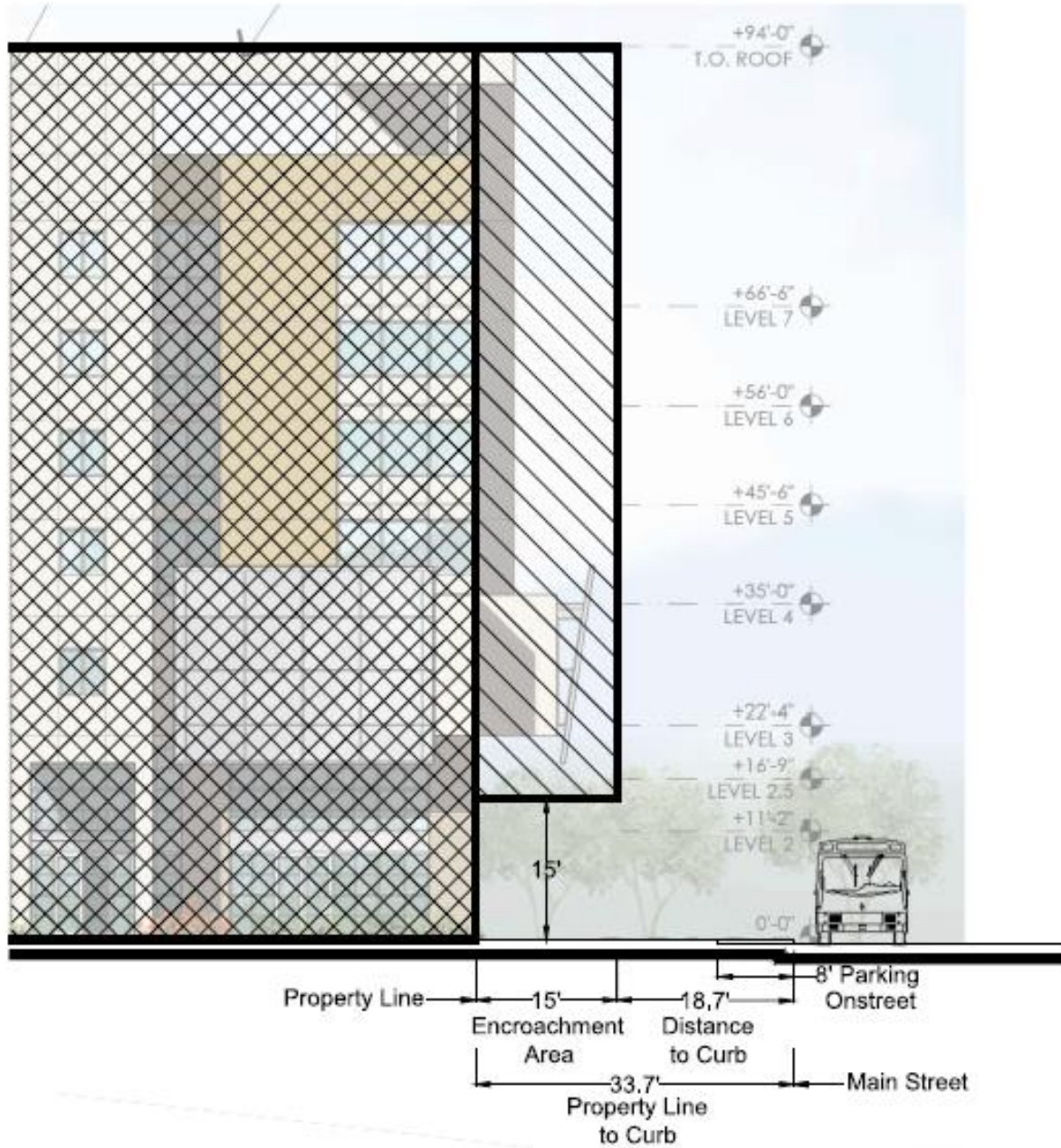
Description of Encroachment



The area projects 15 feet beyond the property line toward Main Street. The encroachment begins at approximately 22'4" and continues to the roof at approximately 94'0".

The setback distances are 15 feet from the property line to the edge of the encroachment. 18.7 feet from the edge of the encroachment to the curb and 33.7 feet total from the property line to the curb.

EXHIBIT C-2 to DECLARATION OF PROPERTY RESTRICTIONS

Depiction of Encroachment



-  Building Envelope
-  Encroachment Area

NOTE: Rendering in Background is for Illustrative Purposes only
Measurements are approximate