



14

DEC 09 2011

Prepared by: Anthony J. Sylvester, Esq.

ENCROACHMENT AGREEMENT

December This ENCROACHMENT AGREEMENT ("Agreement") is made this 1st day of ~~July~~, 2011 by and among THE WOMAN'S CLUB OF RED BANK, INC. (the "Woman's Club"), 170 RED BANK LLC (the "Owner") and BANK OF AMERICA ("BOA").

WITNESSETH

WHEREAS, the Woman's Club is the owner of real property known and designated as Lot 13 in Block 104 in the Borough of Red Bank, County of Monmouth and State of New Jersey, commonly referred to as 164 Broad Street ("Tract I"); and

WHEREAS, Owner is the owner of real property known and designated as Lots 14 and 15 in Block 104 in the Borough of Red Bank, County of Monmouth and State of New Jersey, commonly referred to as 170 Broad Street ("Tract II"); and

WHEREAS, Tract I and Tract II are adjacent to one another; and

WHEREAS BOA is the tenant of Tract II pursuant to a certain Lease Agreement with Owner dated February 15, 2008 (the "Lease") and expiring on March 27, 2028, unless extended pursuant to its terms, and,

WHEREAS BOA has caused to be constructed certain improvements, including but not limited to renovations to the existing building and installation of a large picture window (collectively the "Improvements"), on Tract II which create an encroachment onto Tract I at a certain point of the property line between Tract I and Tract II (the "Encroachment"), as shown on the Boundary & Location Survey, 170 Red Bank, LLC, 170 Broad Street, Lots 14& 15, Block 104, Borough of Red Bank, Monmouth County, State of New Jersey, prepared by Control Point Associates, Inc., dated December 29, 2010 and consisting of two (2) sheets which is attached hereto as Exhibit A, and

WHEREAS the Encroachment allegedly impacts Tract I which contains the historic home of Senator Anthony Reckless, a home registered on the National Register of Historic Places; and,

WHEREAS in exchange for certain valuable consideration, the Woman's Club has agreed to grant to the Owner and BOA, and the Owner and BOA have agreed to accept, certain rights on, over and across Tract I upon the terms and conditions set forth herein.

NOW THEREFORE in consideration of the mutual covenants herein and for ten dollars (\$10.00) and other good and valuable consideration, including, but not limited to, such

consideration set forth in a certain Agreement between the parties hereto executed simultaneously herewith, the parties do agree as follows:

1. Encroachment. The Woman's Club hereby acknowledges and accepts the Encroachment, as defined above and as illustrated on Exhibit A attached hereto, and agrees that the Encroachment may remain on Tract I until the sooner of the following: (a) the termination of BOA's Occupancy, defined below; or (b) the date upon which all of the improvements on Tract II are demolished (the "Term"). For purposes of this Agreement, Occupancy shall mean the full length of time of that BOA, or any sublessee of BOA, occupies Tract I, whether pursuant to the Lease or otherwise, including any and all extensions thereof. Nothing herein or elsewhere in this Agreement shall be construed to permit any additional encroachment onto Tract I by BOA or any unauthorized access onto the Woman's Club property. Further, the parties recognize and agree that the term of this Agreement is finite and nothing herein shall be construed to limit the Woman's Club's ability to charge for the use of its property after the termination of BOA's Occupancy as defined herein if the encroachment continues after said Occupancy by BOA.
2. Access. The Woman's Club hereby agrees that during the Term of this Agreement BOA and the Owner and their respective employees, agents and/or contractors will be permitted, upon prior written notice to the Woman's Club at the address herein, to enter on, over and across that portion of Tract I located within twenty (20) feet of the Encroachment, as shown on Exhibit A, to maintain and/or repair the Improvements as deemed necessary or desirable by BOA or the Owner so long as said entrance does not interfere with the Woman's Club's use of the property. If the proposed times and dates of entrance will unreasonably interfere with the Woman's Club's use of the property, Woman's Club shall promptly notify BOA or the Owner and then BOA or the Owner shall reschedule said entrance to dates and times as agreed upon by the Woman's Club, such agreement shall not be unreasonably withheld. BOA or the Owner shall provide the Woman's Club with a certificate of insurance for any employee, agent or contractor who shall enter on, over and across Tract I on behalf of BOA or the Owner.
3. Maintenance and Repairs. BOA agrees that any damage or disturbances to Tract I caused by BOA shall be promptly repaired and all such work to be done at the sole cost and expense of BOA. All maintenance and repairs, other than repairs described above, including but not limited to the area below the Encroachment and the driveway of the Woman's Club, shall be borne by the Women's Club.
4. No Interference. The Woman's Club retains, reserves and shall continue to enjoy the use of Tract I for any and all purposes that do not unreasonably interfere with the Encroachment or prevent the Encroachment from remaining on Tract I for the Term this Agreement. BOA acknowledges that the picture window is adjacent to the Woman's Club driveway and parking lot and the Woman's Club reserves all rights to use their driveway and parking lot as they see fit despite the presence of the picture windows. BOA retains, reserves and shall continue to enjoy the use of Tract II for any and all purposes that do not expand or otherwise increase the Encroachment for the Term this Agreement.

5. Removal of Encroachment. Within a reasonable period of time after the expiration of the Term of this Agreement, and provided that BOA has received written notice from the Woman's Club within ten (10) business days after the expiration of the Term of this Agreement requesting removal of the Encroachment, BOA agrees to remove the Encroachment and restore that portion of Tract I directly impacted by the Encroachment to as close to its original condition as existed prior to the Improvements being performed as possible, subject to compliance with zoning and other laws in effect at the time of such removal, at BOA's sole cost and expense. The Woman's Club agrees to cooperate with the Owner and BOA in connection with the removal of the Encroachment, including but not limited to entering into all access agreements necessary to complete the work contemplated herein. Upon expiration of the Term and removal of the Encroachment, this Agreement shall terminate, whereupon the parties shall have no further liability or obligation to one another except for those provisions, if any, which specifically survive such termination.
6. Cooperation. During the Term of this Agreement, the parties agree to cooperate fully with each other.
7. Covenants. The Owner and BOA covenant and agree as follows:
 - a. that it will not at any time during the Term damage or encroach onto any part of Tract I except to the extent described on Exhibit A hereto;
 - b. that it will not block or store any equipment on any portion of Tract I, including, but not limited to the Woman's Club's driveway, and that the access to Tract I granted herein is to be used solely for the purposes described above and any additional use of the access to Tract I shall be addressed under separate agreement between the parties;
 - c. that it will comply with the regulations and requirements of the municipality, state and federal governments, Board of Fire Underwriters and every public or governmental body exercising control over Tract I and Tract II, secure and pay for all necessary permits or consents required in connection with the Encroachment and/or this Agreement; and
 - d. that it will notify each and every tenant and contract purchaser of Tract II of all obligations hereunder and provide a copy of this Agreement and all agreements between the parties to said tenants and contract purchasers.
 - e. that BOA shall maintain window coverings, the type and color of which shall be at BOA's discretion, on the picture window which makes up part of the Encroachment.
8. Indemnification. BOA agrees to indemnify and hold harmless the Woman's Club, its officers and employees from and against all liability, losses, injuries, deaths, damages, claims, demands, suits, actions, fees, costs, charges and expenses, including reasonable attorney's fees and costs which may be incurred in the enforcement of this Agreement or as a result of, or arising out of, BOA's exercise of its rights under this Agreement, unless

caused by the gross negligence or willful misconduct of the Woman's Club. This obligation shall survive the termination of the Agreement herein granted.

9. Future Work. Prior to commencing any future construction or maintenance, other than those projects defined by agreements already in place between the parties, BOA shall submit a written request for access to Tract I with copies of all required certificates of insurance and shall not commence access onto Tract I until a written agreement is executed between the parties at the Owner and/or BOA's sole cost and expense. Access includes, but is not limited to, the storage of any materials or equipment on Tract I and the trespass of BOA, its heirs, successors, assigns, guests, invitees, contractors, subcontractors, professionals, employees on Tract I.

10. Authority. The Woman's Club, the Owner and BOA each hereby represent for itself as follows:
 - a. It has full power and authority to execute, deliver and carry out its obligations under this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. All persons executing this Agreement on behalf of each party have been duly authorized to do so.

 - b. This Agreement is the legal, valid and binding obligation of each party, enforceable against that party in accordance with its terms.

 - c. The execution, delivery and performance of this Agreement in accordance with its terms, will not violate, conflict with or result in the breach of any agreement or any law, regulation, contract, agreement, commitment, order, judgment or decree to which each party is a party or by which it is or may be bound.

12. Notices. All notices, requests, consents and other communications required or made hereunder shall be in writing and shall be personally delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or sent by private overnight express or same day delivery, addressed as follows:

If to the Woman's Club:
164 Broad Street
Red Bank, NJ 07701
Attn: President and Board

With a copy to:
Angela Dalton, Esq.
Zager Fuchs

If to the Owner:

170 Red Bank LLC
PO Box 8370

Red Bank, New Jersey 07701
Attention: James J. Stavola, Jr

With a copy to:

Mark Goldberg, Esq.
Goldberg & Pines LLP
4th Floor, 600 Mamaroneck Ave.
Harrison, New York 10528

If to BOA:

Bank of America, N.A.
101 South Tryon Street, 29th Floor
NC1-002-29-01
Charlotte, North Carolina 28255-001
Attn: Shelia J. Cox, Esq., Assistant General Counsel

With a copy to:

Riker Danzig Scherer Hyland & Perretti, LLP
Headquarters Plaza
One Speedwell Avenue
P.O. Box 1981
Morristown, New Jersey 07960-1
Attn: Anthony J. Sylvester, Esq.

13. Binding Effect. This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto. Notwithstanding, the parties recognize and agree that the term of this Agreement is finite and nothing herein shall be construed to limit the Woman's Club's right to be compensated for the use of its property after the termination of BOA's occupancy as defined herein if the encroachment continues after said occupancy by BOA.
14. Recording. This Agreement shall be recorded in the Clerk's office of Monmouth County, New Jersey by BOA at no cost to the Woman's Club.
15. Counterparts. This Agreement may be executed in several counterparts, which shall constitute one and the same instrument.
16. Further Assurances. The Woman's Club, Owner and BOA each agree to execute any and all reasonable documents necessary to effectuate the purposes of this Agreement.

IN WITNESS WHEREOF the parties have hereunto affixed their hands and seals the day and year first above written.

THE WOMAN'S CLUB OF RED BANK, INC.

By: ADA
Name: Christina D. Hardman-O'Neal
Title: President

170 RED BANK LLC

By: _____
Name: _____
Title: _____

BANK OF AMERICA

By: _____
Name: _____
Title: _____

Not Certified Copy

R/R to:

Riker, Danzig, Scherer, Hyland & Perretti LLP
Headquarters Plaza
One Speedwell Ave. CN-1981
Morristown, N.J. 07962-1981
Attn: A. Sylvester, Esq.

M CLAIRE FRENCH, CTY CLK
MONMOUTH COUNTY, NJ

INSTRUMENT NUMBER

2011113337

RECORDED ON

Dec 12, 2011

9:12:12 AM

BOOK: OR-8921

PAGE: 5779

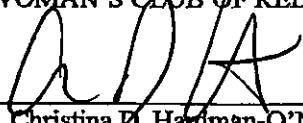
Total Pages: 14

COUNTY RECORDING FEES \$160.00

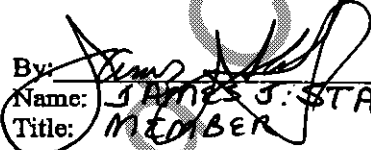
TOTAL PAID \$160.00

IN WITNESS WHEREOF the parties have hereunto affixed their hands and seals the day and year first above written.

THE WOMAN'S CLUB OF RED BANK, INC.

By: 
Name: Christina D. Hardman-O'Neal
Title: President

170 RED BANK LLC

By: 
Name: JAMES J. STAVOLA, JR.
Title: MEMBER

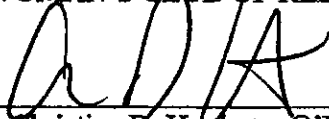
BANK OF AMERICA

By: _____
Name: _____
Title: _____

Not Certified Copy

IN WITNESS WHEREOF the parties have hereunto affixed their hands and seals the day and year first above written.


THE WOMAN'S CLUB OF RED BANK, INC.

By: 
Name: Christina D. Hardman-O'Neal
Title: President

170 RED BANK LLC

By: _____
Name: _____
Title: _____

BANK OF AMERICA

By: 
Name: Michael M. Sharp
Title: Senior Vice President

Not Certified Copy

ACKNOWLEDGEMENT

State of New Jersey)
SS:
County of Monmouth)

I certify that on October 27, 2011, Christina D. Hedman-O'Neil personally came before me and this person acknowledged under oath, to my satisfaction, that:

President (a) this person signed, sealed and delivered the attached document as of The Woman's Club of Red Bank, Inc.; and

(b) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

Angela W. Dalton
Notary Public
A NJ ATTORNEY AT LAW

ACKNOWLEDGEMENT

State of New Jersey)
SS:
County of Monmouth)

I certify that on DECEMBER 1, 2011, JAMES J. STAVOLA, JR. personally came before me and this person acknowledged under oath, to my satisfaction, that:

MANAGING MEMBER (a) this person signed, sealed and delivered the attached document as of [OWNER]; and

(b) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

Carolyn A. Gulick
Notary Public CAROLYN A. GULICK
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 19, 2012

ACKNOWLEDGEMENT

State of North Carolina

SS:

County of Mecklenberg

I certify that on November 9, 2011, Michael M. Sharp, personally came before me and this person acknowledged under oath, to my satisfaction, that:

SVP (a) this person signed, sealed and delivered the attached document as of Bank of America; and

(b) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

Lynelle R. John
Notary Public Lynelle R. John

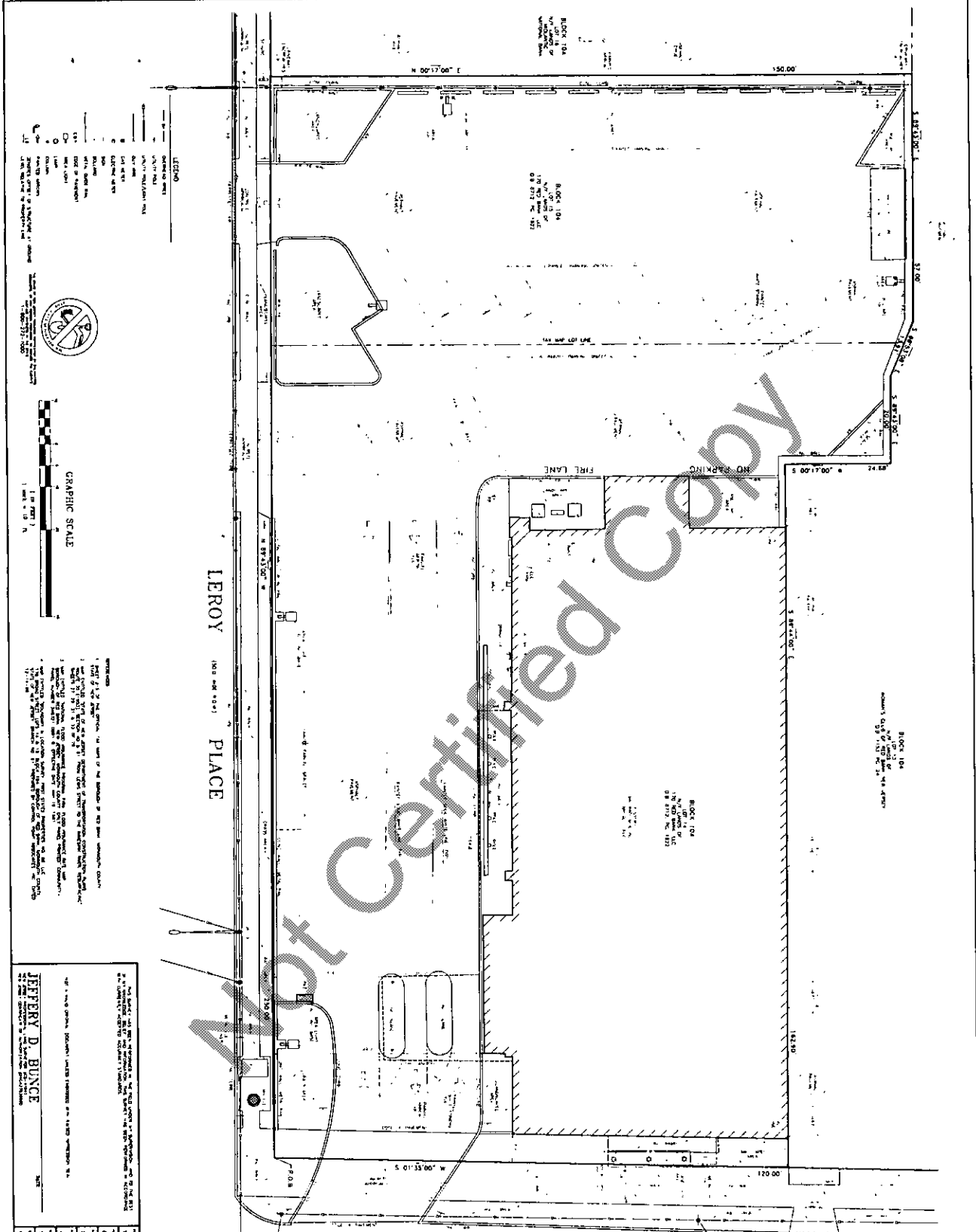
My commission expires
2-18-13

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EXHIBIT A

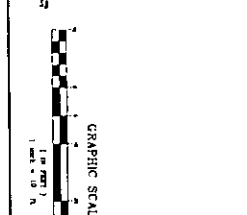
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LEGEND

- 1. Proposed Building
- 2. Existing Building
- 3. Lot Line
- 4. Easement
- 5. Utility Line
- 6. Fire Lane
- 7. Proposed Driveway
- 8. Proposed Parking
- 9. Proposed Fencing
- 10. Proposed Landscaping
- 11. Proposed Site
- 12. Proposed Access



NOTES

1. This plan shows the proposed layout of the site and is subject to the approval of the local zoning board.
2. The proposed buildings are shown in accordance with the zoning code and are subject to the approval of the local zoning board.
3. The proposed parking spaces are shown in accordance with the zoning code and are subject to the approval of the local zoning board.
4. The proposed fire lane is shown in accordance with the zoning code and is subject to the approval of the local zoning board.
5. The proposed driveway is shown in accordance with the zoning code and is subject to the approval of the local zoning board.
6. The proposed fencing is shown in accordance with the zoning code and is subject to the approval of the local zoning board.
7. The proposed landscaping is shown in accordance with the zoning code and is subject to the approval of the local zoning board.
8. The proposed site is shown in accordance with the zoning code and is subject to the approval of the local zoning board.
9. The proposed access is shown in accordance with the zoning code and is subject to the approval of the local zoning board.

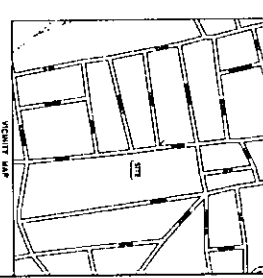
JEFFERY D. BUNCE

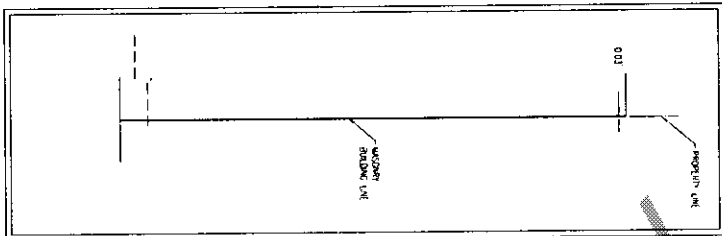
170 RED BANK, LLC

BOUNDARY & LOCATION SURVEY

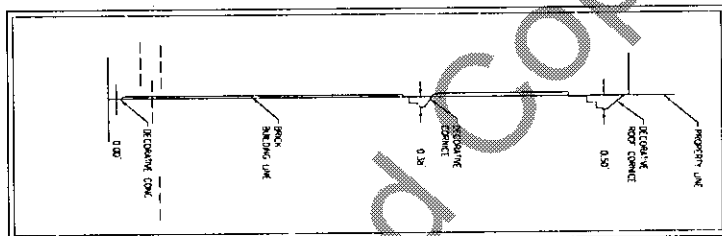
Lot No.	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)
1	13,271.18			
2	10,000.00			
3	10,000.00			
4	10,000.00			
5	10,000.00			
6	10,000.00			
7	10,000.00			
8	10,000.00			
9	10,000.00			
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46	10,000.00			
47	10,000.00			
48	10,000.00			
49	10,000.00			
50	10,000.00			

BROAD STREET
(FORMER HIGH ROAD)
(A.K.A. NEW JERSEY STATE HIGHWAY ROUTE 35)

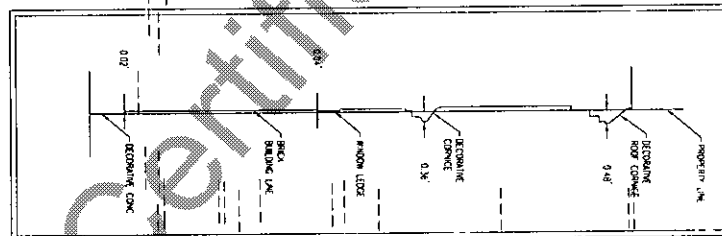




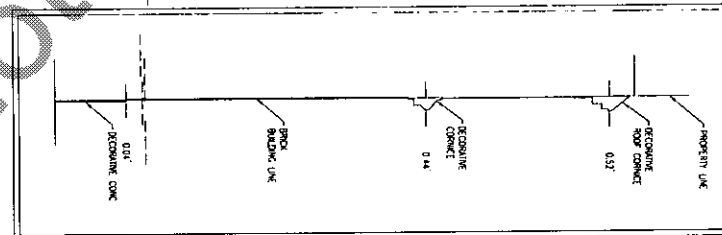
DETAIL 'D'



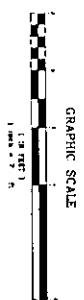
DETAIL 'C'



DETAIL 'B'



DETAIL 'A'



SEE SHEET 1 OF 2 FOR NOTES & REFERENCES

DATE	12-21-10	BY	JDB
REVISION	01-05-11	BY	JDB
PROJECT	NORTH BUILDING VIEW PROFILES		
CLIENT	170 RED BANK, LLC		
LOCATION	170 RED BANK, LLC, BLOCK 154		
DESIGNER	JEFFERY D. BUNCE		
ARCHITECT	CONTROL POINT		
DATE	12-21-10	BY	JDB
SCALE	1/8" = 1'-0"	SHEET	2 OF 2