

ORDINANCE NO. 3676-23

AN ORDINANCE OF THE BOROUGH OF RUTHERFORD, COUNTY OF BERGEN, STATE OF NEW JERSEY GRANTING EASEMENT TO OWNER OF PROPERTY ADJACENT TO VETERANS BOULEVARD

WHEREAS, the Borough of Rutherford (the “**Borough**”), a public body corporate and politic of the State of New Jersey, owns Veterans Boulevard, an asphalt roadway in the Borough; and

WHEREAS, 235 Veterans Boulevard Warehouse Urban Renewal, LLC (the “**Grantee**”), is the owner in fee simple of Block 219.04, Lot 1.01 in the Borough (the “**Grantee’s Property**”), immediately adjacent to Veterans Boulevard; and

WHEREAS, a portion of a landscape wall located on the Grantee’s Property encroaches onto a portion of the 80-foot wide right-of-way for Veterans Boulevard, as more particularly shown on the survey attached hereto and made a part hereof as **Exhibit A** (the “**Encroachment**”); and

WHEREAS, the Borough has agreed to grant an easement to Grantee (the “**Encroachment Easement**”) to allow the Encroachment to remain, on terms and conditions set forth in an agreement (the “**Encroachment Easement Agreement**”).

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF RUTHERFORD, NEW JERSEY AS FOLLOWS:

Section 1. The recitals are incorporated herein as though fully set forth herein.

Section 2. The Borough hereby grants the Encroachment Easement to Grantee, which shall thereafter run with the land.

Section 3. The Mayor of the Borough is hereby authorized to execute all documents necessary to effectuate the granting of the Encroachment Easement, including the Encroachment Easement Agreement, in substantially the same form as that attached hereto as **Exhibit B**, and to take all other necessary or appropriate action to effectuate the purposes of this Ordinance.

Section 4. This Ordinance shall take effect according to applicable law.

ATTEST:

BOROUGH OF RUTHERFORD


Margaret M. Scanlon, Borough Clerk


Frank Nunziato, Mayor

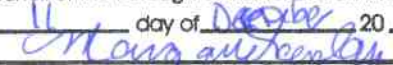
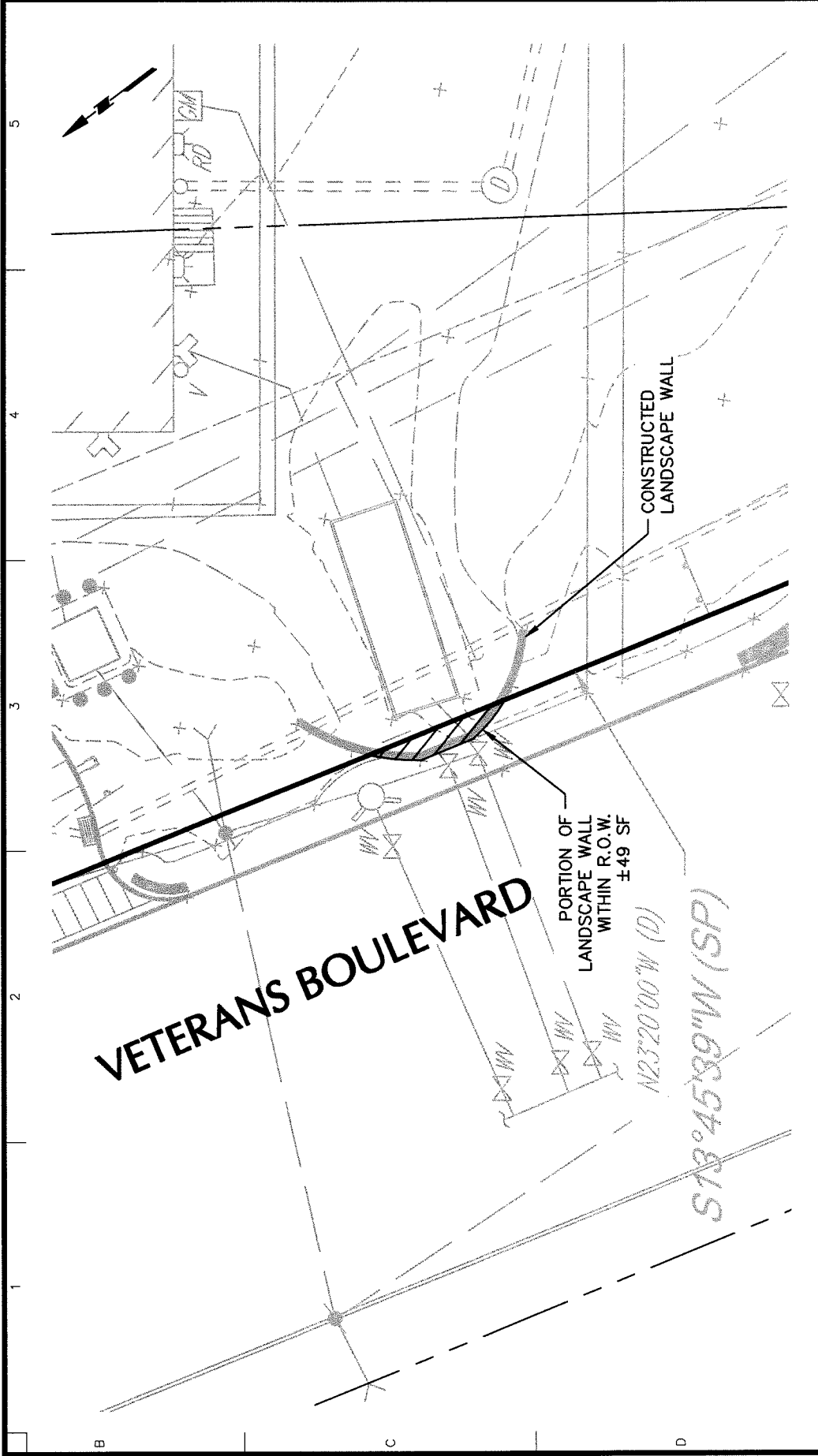
I hereby certify that this is a true and exact copy of an ordinance adopted by the Mayor and Council of the Borough of Rutherford on the 11 day of December, 2023

Margaret M. Scanlon
Borough Clerk

EXHIBIT A

Survey



REFERENCE NOTES:

1. EXISTING BOUNDARY, TOPOGRAPHIC, UTILITY AND BACKGROUND INFORMATION FOR THE SITE OBTAINED FROM A SURVEY ENTITLED "BOUNDARY, TOPOGRAPHIC, & UTILITY SURVEY" PREPARED BY CONTROL POINT ASSOCIATES INC., DATED 8/21/2023, LAST REVISED 10/25/2023.

LANGAN
 Langan Engineering and
 Environmental Services, Inc.
 300 Kimball Drive
 Patlisspany, NJ 07054
 T: 973.560.4900 F: 973.560.4901 www.langan.com
 NJ CERTIFICATE OF AUTHORIZATION No. 243627896400

Project
PROPOSED WAREHOUSE
 EXISTING BLOCK No. 215.04, LOT Nos. 1, 3, & 61
 PROPOSED BLOCK No. 215.04, LOT Nos. 1.01 & 3.01
 BERGEN COUNTY NEW JERSEY

Drawing Title
LANDSCAPE WALL EXHIBIT

Project No. 100496101
 Date 11/3/2023
 Drawn By SLF
 Checked By MRW

EXHIBIT B

Form of Encroachment Easement Agreement

RECORD AND RETURN TO:

Chiesa Shahinian & Giantomasi PC
105 Eisenhower Parkway
Roseland, New Jersey 07068
Attention: Joseph Zawila, Esq.

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (the “Agreement”) is dated _____, 2023 by and between THE BOROUGH OF RUTHERFORD, a municipality of the State of New Jersey having an address of _____ (the “Borough”), and 235 VETERANS BOULEVARD WAREHOUSE URBAN RENEWAL LLC, a New Jersey limited liability company having an address c/o UBS Realty Investors LLC, 10 State House Square, 15th Floor, Hartford, Connecticut 06103-3604 (the “Grantee”).

RECITALS

A. The Borough is the fee owner of Veterans Boulevard, an asphalt roadway within the Borough (“Veterans Boulevard”).

B. The Grantee is the fee owner of certain real property and improvements located within the Borough, as more particularly described on Exhibit A attached hereto and made a part hereof (the “Grantee’s Property”).

C. The Grantee’s Property is immediately adjacent to and fronts on Veteran’s Boulevard.

D. A portion of a landscape wall located on the Grantee’s Property (the “Landscape Wall”) encroaches into a portion of the 80-foot wide right-of-way for Veterans Boulevard (the “Veterans Boulevard ROW”), as more particularly shown on the survey attached hereto and made a part hereof as Exhibit B (the “Encroachment”).

E. The Borough has agreed to grant an easement to the Grantee in order to allow the Encroachment to remain, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Grant of Encroachment Easement. In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borough does hereby give, grant, establish and convey to and for the benefit of the Grantee (as fee owner of the Grantee's Property), and its successors and assigns (including without limitation all future fee owners of all or any portion of the Grantee's Property), an exclusive, perpetual easement (the "Encroachment Easement") on, over, across and under the portion of the Veterans Boulevard ROW shown on Exhibit B attached hereto (the "Easement Area") for the purpose of allowing the Encroachment to be and remain at all times. Without limiting the generality of the foregoing, the Encroachment Easement shall also include the right (i) to inspect, maintain, repair, restore and/or remove the Landscape Wall, (ii) to rebuild the Landscape Wall within the Easement Area in the event it is ever destroyed or removed for any reason and (iii) to enter onto such portions of the Veterans Boulevard ROW within the vicinity of the Easement Area as shall be reasonably necessary in order to undertake and/or perform any of such inspection, maintenance, repair, restoration, removal or rebuilding work.

2. Maintenance of Landscape Wall. The Grantee shall be solely responsible, at its cost and expense, for the inspection, maintenance, repair, restoration, removal and/or rebuilding of the Landscape Wall. Any and all such work may be performed by the Grantee from time to time as and when the Grantee determines in its sole discretion, subject to the following provision. To the extent that the Grantee does elect to perform any such work, (i) the Grantee shall perform all such work with due diligence, in a good and workmanlike manner and in accordance with all applicable laws, ordinances, codes and other legal requirements, including with respect to work hours and traffic control, (ii) the Grantee shall obtain necessary governmental permits and approvals, if any, required in connection with such work and (iii) to the extent reasonably practicable, the Grantee shall promptly restore any affected areas to substantially the same condition as existed immediately prior to such work.

3. Insurance. To the extent available at regular rates, the Grantee shall maintain comprehensive general liability insurance in commercially reasonable amounts with respect to existence of the Landscape Wall within the Easement Area. Such insurance coverage shall name the Borough as an additional insured thereon. Upon the written request of the Borough, the Grantee shall provide evidence of the insurance coverage required to be maintained hereby.

4. Indemnification. The Grantee shall, and hereby does, indemnify, defend and hold the Borough harmless from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, actions and expenses (including without limitation reasonable attorney fees) incurred by the Borough to the extent resulting from, arising out of or in connection with (i) the existence of the Landscape Wall within the Easement Area, (ii) the performance by the Grantee of any of the work described in Paragraph 2 hereof or (iii) a violation, breach or default by the Grantee of any of the covenants, obligations or duties of the Grantee under this Agreement which continues uncured for thirty (30) days after written notice from the Borough.

5. Binding Effect. The rights and obligations set forth in this Agreement shall run with the land and shall be perpetual. This Agreement shall be binding upon and shall inure to the

benefit of the parties hereto and their respective successors and assigns, including without limitation all future owners of properties affected hereby.

6. Further Assurances. Each party shall execute, acknowledge and deliver any and all such other instruments or documents, and shall do and take all such further acts, as the other party may reasonably request in order to carry out the intent and purpose of this Agreement. Without limiting the generality of the foregoing, upon the reasonable request of either party hereunder (whether in connection with a proposed sale, a proposed financing or otherwise), the other party hereto shall execute and deliver an estoppel certificate confirming that this Agreement is in full force and effect and that, to the best of such party's knowledge, neither party is in breach, violation or default under this Agreement (or, if applicable, identifying any breaches, violations or defaults of any party under this Agreement).

7. No Rights in Public. Nothing in this Agreement is intended, nor shall it be construed, held or taken, to create any rights in, to or for the benefit of the general public.

8. Attorneys' Fees. In connection with any litigation between the parties with respect to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

[Signatures on next page]

EXHIBIT A

Legal Description of Grantee's Property

(Added graphics) for legal purposes only: Being known as Block 219,04, Lot 1, Qualifier HM, Borough of

PARCEL A:

BEGINNING at a point on the easterly line of Veterans Boulevard (80 feet wide), said point being on the dividing line between Lot 1 and Lot 3 Block 219,04 and from said point of beginning running thence; the following 3 courses along the easterly line of Veterans Boulevard:

1. North 23 degrees 20 minutes 00 seconds East, a distance of 226.71 feet to a point of curvature; thence
2. Along a curve to the right, having a radius of 300.00 feet a central angle of 12 degrees 06 minutes 00 seconds an arc length of 63.36 feet, bearing a chord of North 29 degrees 23 minutes 00 seconds East, a chord distance of 63.24 feet to a point of tangency; thence
3. North 35 degrees 26 minutes 00 seconds East a distance of 45.22 feet to a point; thence, the following 2 courses along the dividing line between Lot 1 and Lot 61, Block 219,04; thence
4. South 44 degrees 34 minutes 00 seconds East, a distance of 218.77 feet to a point; thence
5. North 35 degrees 26 minutes 00 seconds East, a distance of 237.48 feet to a point of terminus of the former centerline of Borough Street (60 feet wide); thence, the following 3 courses along the dividing line between Lot 1 and Lot 2, Block 219,04;
6. South 44 degrees 34 minutes 00 seconds East, a distance of 61.62 feet to a point; thence
7. North 45 degrees 26 minutes 00 seconds East, a distance of 268.63 feet to a point; thence
8. Along the dividing line between Lot 1 and Lot 2,02, Block 219,04, South 44 degrees 34 minutes 00 seconds East, a distance of 415.47 feet to a point; thence along the dividing line between Lot 1, and lands now or formerly of Conrail New Jersey, Transit, F.K.A. Erie-Lackawanna Railroad, Paterson and Hudson River Railroad A.K.A. Lot 3, Block 227, the following 4 courses:
9. South 09 degrees 59 minutes 10 seconds East, a distance of 420.44 feet to a point; thence
10. South 38 degrees 00 minutes 50 seconds West, a distance of 41.00 feet to a point; thence
11. South 44 degrees 14 minutes 10 seconds East, a distance of 54.14 feet to a point; thence
12. South 09 degrees 59 minutes 10 seconds East, a distance of 1,140.19 feet to a point; thence
13. Along the dividing line between Lot 1 and Lot 83, Block 219,02, North 56 degrees 17 minutes 51 seconds West, a distance of 92.10 feet to a point; thence the following 3 courses along the dividing line between Lot 1 and Lot 65,08 Block 219,02;
14. North 02 degrees 57 minutes 00 seconds West, a distance of 102.37 feet to a point; thence

(Added graphics)s 00 seconds West, a distance of 223.74 feet to a point; thence

16. North 13 degrees 01 minutes 00 seconds East, a distance of 3.06 feet to a point; thence

17. Along the dividing line between Lot 1 with Lots 65.05, 65.06 and 66.06, Block 219.02, North 44 degrees 34 minutes 00 seconds West, a distance of 1,146.42 feet to a point; thence the following 2 courses along the dividing line between Lot 1 and Lot 3, Block 219.04;

18. North 45 degrees 21 minutes 00 seconds East, a distance of 55.70 feet to a point; thence

19. North 44 degrees 34 minutes 00 seconds West, a distance of 349.95 feet to the point and place of BEGINNING.

PARCEL B:

BEGINNING at a point being the most southwesterly corner of the herein described parcel, said point being distant the following course along the dividing line between Lot 66.05 and lot 66.06 from a point on the northeasterly sideline of Veterans Boulevard (80 foot wide), and running thence;

A, Along the dividing line between Lot 66.05 and Lot 66.06, North 45 degrees 21 minutes 00 seconds East, a distance of 461.97 feet to the point and place of beginning and from said point of beginning running, thence;

1. Along the dividing line between Lot 66.05 and 66.06 extended, North 45 degrees 21 minutes 00 seconds East, a distance of 48.03 feet to a point, thence;

2. Along the dividing line between Lot 65.07 and Lot 65.01, South 44 degrees 34 minutes 00 seconds East, a distance of 377.74 feet to a point, thence;

3. Along the dividing line between Lot 65.07 and Lot 65.06, South 45 degrees 26 minutes 00 seconds West, a distance of 48.03 feet to a point, thence;

4. Along the dividing line between Lot 65.07 and Lot 66.06, North 44 degrees 34 minutes 00 seconds West, a distance of 377.67 feet to the point and place of BEGINNING.

TRACT 2 (Shown for informational purposes only: Being known as Block 224, Lot 3.04, Borough of Rutherford):

PARCEL A:

BEGINNING at a point on the southwesterly sideline of Highland Cross (50 foot wide right of way), where said sideline is intersected by the dividing line between Lot 3.04, Block 224 and former Veterans Boulevard (Vacation Book 18, page 140 and Quit Claim Deed Book 9474, page 393), and from said point of beginning running thence:

1. Along said southwesterly line of Highland Cross, South 46 degrees 05 minutes 00 seconds East, a distance of 118.26 feet to a point, thence;

2. Along said northwesterly line of Veterans Boulevard (80 feet wide) Extension Acceptance Book 18, page 148, Ordinance No. 3042-04, South 35 degrees 26 minutes 00 seconds West, a distance of 180.81 feet to a point on the northeasterly line of Borough Street (60 feet wide), thence;

(Added graphics) North 44 degrees 34 minutes 00 seconds West, a distance of 118.76 feet to a point, thence;

5. Along southeasterly line of former Veterans Boulevard, North 35 degrees 26 minutes 00 seconds East, a distance of 177.63 feet to the point and place of BEGINNING.

PARCEL B:

BEGINNING at a point of intersection of the southwesterly sideline of Highland Cross (50 feet wide) with the northwesterly sideline of Veterans Boulevard (80 feet wide) and from said point of beginning running, thence;

1. Along the southwesterly sideline of Highland Cross extended, South 46 degrees 05 minutes 00 seconds East, a distance of 80.88 feet to a point, thence;

2. Along the southeasterly sideline of Veterans Boulevard (80 feet wide) proposed to be vacated, South 35 degrees 26 minutes 00 seconds West, a distance of 177.63 feet to a point, thence;

3. Along the northeasterly sideline of Borough Street extended (60 feet wide), North 44 degrees 34 minutes 00 seconds West, a distance of 81.24 feet to a point, thence;

4. Along the northwesterly sideline of Veterans Boulevard proposed to be vacated, North 35 degrees 26 minutes 00 seconds East, a distance of 175.46 feet to the point and place of BEGINNING.

PARCEL C:

BEGINNING at a point of intersection of the northwesterly line of Veterans Boulevard (80 feet wide) with the northeasterly line of Borough Street (60 feet wide), said point also being the southeasterly corner of Lot 3.04, Block 219.02 and from said point of beginning running, thence;

1. Along the northwesterly line of Veterans Boulevard (extended), South 35 degrees 26 minutes 00 seconds West, a distance of 30.46 feet to a point on the centerline of Borough Street, thence;

2. Along the center line of Borough Street (vacated), North 44 degrees 34 minutes 00 seconds West, a distance of 175.00 feet to a point, thence;

3. Along the easterly terminus of Borough Street, said point also being the extension of the dividing line between Lot 1, Block 219 (nif lands of EGDC) and Lot 58.01, Block 219, nif Lot 58.01, Block 219 (owner unknown), North 35 degrees 26 minutes 00 seconds East, a distance of 30.46 feet to a point, thence;

4. Along the northeasterly line of Borough Street (vacated), South 44 degrees 34 minutes 00 seconds East, a distance of 175.00 feet to the point and place of BEGINNING.

(Added graphics) for informational purposes only: Being known as Block 219.04, Lot 3, Qualifier HM, Borough of

BEGINNING at a point in the northeasterly line of Veterans Boulevard said point being the dividing line between Lots 67.04 and 66.05 (now known as Proposed Lot C) and Lot 66.06 as shown on a map entitled "Major Subdivision Plan, Linque - H.C., Partners, L.L.C., Lots 61, 63, 65.01, 65.04, 65.06, 66.05, 67.04, Part of Lot 65.07, Block 219.02, Lot 8.02, Block 223 & Lots 3.01, 3.02, Block 224, Borough of Rutherford, Bergen County, New Jersey," as prepared by Control Point Associates, Inc., and filed in the Office of the Bergen County Clerk on August 3, 2001 as Map No. 9237 and from said point running:

1. Along the northeasterly line of Veterans Boulevard, North 44 degrees 34 minutes 00 seconds West a distance of 67.40 feet to a point; thence
2. Continuing along Veterans Boulevard on a curve to the right having a radius of 50.00 feet an arc distance of 59.25 feet to a point; thence
3. Along the northeasterly line of Veterans Boulevard, North 23 degrees 20 minutes 00 seconds East a distance of 576.90 feet to a point; thence
4. South 44 degrees 34 minutes 00 seconds East, a distance of 349.95 feet to a point; thence
5. South 45 degrees 21 minutes 00 seconds West, a distance of 565.70 feet to the point or place of BEGINNING.

TRACT 4 (Shown for informational purposes only: Being known as Block 219.04, Lot 61, Qualifier HM, Borough of Rutherford):

BEGINNING at the corner formed by the intersection of the former centerline of Borough Street, now vacated, with the easterly line of Veteran's Boulevard, and running thence

1. Along said easterly line of Veteran's Boulevard, South 35 degrees 26 minutes 00 seconds West, 237.48 feet; thence
2. South 44 degrees 38 minutes 00 seconds East, 218.77 feet; thence
3. North 35 degrees 26 minutes 00 seconds East, 237.48 feet to said former centerline of Borough Street, now vacated; thence
4. Along the same, North 44 degrees 34 minutes 00 seconds West, 218.77 feet to the point and place of BEGINNING.

EXCEPTING therefrom any portion of the above described property referred to in certain deeds given to the Borough of Rutherford recorded on April 1, 1963 and January 13, 1966.

EXHIBIT B

Depiction of Easement Area/Encroachment